

The United Nations Security Council and Humanitarian Intervention:  
Causal Stories about Human Rights and War

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### *Dedication*

While the work of this dissertation occurs at a certain level of abstraction, it is crucial to remember that the crises investigated in this dissertation involve real people and to honor the survivors for teaching us about the immense strength of the human spirit. Let us never forget the millions of people who have died in the ethnic cleansing and genocide campaigns of the late twentieth and early twenty-first century – each one a member of a family.

This dissertation is dedicated to Dayne, Bennett and Emery.

## Abstract

A dramatic shift in international practice emerged in the 1990s when the United Nations Security Council authorized military humanitarian intervention to stop gross human rights violations. During the Cold War, the Security Council did not halt mass killing and sanctioned states that intervened in sovereign states, despite humanitarian motives or effects. It has responded unevenly to mass killing, however. This dissertation seeks to answer the puzzle of why the Security Council intervenes militarily in defense of human rights in some places but fails to stop ethnic cleansing in others. It traces the emergence of a new norm of humanitarian intervention, the course of its evolution (1991-2004) and the conditions of its use. The dissertation relies on qualitative, comparative case studies: the establishment of no-fly zones in Iraq; three cases of Security Council authorized humanitarian intervention (Somalia, Bosnia-Herzegovina and Sierra Leone); and three “non-cases” where humanitarian intervention might have been expected but was not authorized (Rwanda, Kosovo and Darfur, Sudan). There is a connection between the ways that Council Members argue about conflicts and their intervention decisions. For humanitarian intervention to become possible, members of the Security Council, including most of its permanent members, must adopt or accede to a common story about the character of the conflict and its resultant human rights violations - *an intentional causal story with clear victims and identifiable and intentional perpetrators*. When significant contestation over competing causal stories occurs, the success of any particular causal story is mediated by: the extent to which humanitarian intervention in that particular case would conflict with or complement the highly internalized norms of state sovereignty and non-intervention; the support of Great Power leadership; and the coherence between causal stories and expert testimony, forensic evidence, and media imagery on the cause and character of the conflict. I conclude that humanitarian intervention does not threaten sovereignty but reformulates it to include citizen protection and the recognition of fundamental human rights. The nascent norm of humanitarian intervention, encapsulated in the responsibility to protect, is gaining international support but has not yet cascaded throughout the international system.

# **The United Nations Security Council and Humanitarian Intervention: Causal Stories about Human Rights and War**

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## Chapter 1:

### Humanitarian Intervention and a Theory of Causal Stories

Contemporary international society is increasingly concerned with human rights. Beginning in 1991, the United Nations Security Council authorized, in several cases, the use of military force to end gross human rights violations in sovereign states without their consent. These authorizations signal that state observance of minimal human rights standards is an increasingly significant component of state responsibility within the global system of states. The authorizations marked a dramatic shift in both state practice and state justifications with regard to military interventions. During the Cold War, for example, the Security Council not only failed to halt mass killing, it also sanctioned states that intervened to halt the bloodshed in neighboring states, despite positive humanitarian motives or effects. These include the Indian intervention in East Pakistan in 1971, the Tanzanian intervention in Uganda in 1979 and the Vietnamese intervention in Cambodia in 1979.<sup>1</sup> Intervening states justified military incursions to the Security Council by appealing to principles of sovereignty, self defense and the protection of vital interests, not human rights, even though both sovereignty and human rights principles are enshrined in the United Nations Charter. This was the case even when underlying motives for military intervention were in part humanitarian.<sup>2</sup> Yet beginning in the 1990s

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<sup>1</sup> Robert H. Jackson, "Armed Humanitarianism," *International Journal* XLVIII (Autumn 1993): 588. For a more detailed discussion of these cases see Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

<sup>2</sup> Wheeler *Saving Strangers*. Martha Finnemore. *The Purposes of Intervention: Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003).

the Security Council itself justified its authorizations for the use of military force against non-consenting states by referencing human rights concerns – concerns traditionally within the domestic jurisdiction of sovereign states and beyond the purview of the Security Council. The practice of humanitarian intervention – *the use of military force by a group of states against a sovereign state without the consent of its authorities for the purpose of preventing, halting, or punishing widespread and gross violations of the fundamental human rights of individuals* – has been authorized on a case by case basis by the Security Council acting under Chapter VII of the Charter of the United Nations.<sup>3</sup>

Kofi Annan, former Secretary-General of the United Nations, sums up this shift in action and perspective well. In his annual address to the General Assembly in 1999 he argued that ‘states must not be allowed the right to enslave, persecute, or torture their own citizens.’ He defended a conceptualization of state sovereignty where “the State is now

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<sup>3</sup> Examples of widespread and gross human rights violations include mass killing, ethnic cleansing and genocide. Importantly, humanitarian intervention, defined in this way, is non-consensual and multi-lateral. Further, it refers to the use of military force but only in the most severe contexts of human suffering and only for expressed humanitarian purposes. Finally, my definition has a minimum threshold of effectiveness: interveners must act to prevent, halt or punish atrocities, even if those actions fail. Humanitarian intervention does not refer to the provision of aid or humanitarian relief in situations of conflict or disaster, nor does it refer to the actions of non-governmental agencies, organizations, or other non-state actors. Peacekeeping missions of the United Nations or regional organizations are excluded from this definition because such operations are by definition consensual arrangements between state parties and troop-contributing organizations. My definition is consistent with, and draws significantly from, existing literature on humanitarian intervention. See in particular Adam Roberts, “The United Nations and Humanitarian Intervention.” In *Humanitarian Intervention and International Relations*, ed. Jennifer Welsh (Oxford: Oxford University Press, 2004):146. J.L. Holzgrefe, “The Humanitarian Intervention Debate.” In *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and Robert Keohane (Cambridge: Cambridge University Press, 2003):18. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003): 243. There is a considerable debate within the humanitarian community and the United Nations, however, over whether or not military intervention should ever be termed humanitarian, despite its humanitarian purpose or results. See Michael Byers and Simon Chesterman, “Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law.” In *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and Robert Keohane (Cambridge: Cambridge University Press, 2003): 20. International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (International Development Centre, Canada, 2001).

widely understood to be the servant of its people, and not vice versa.” The Secretary-General contrasted traditional notions of state sovereignty, as enshrined in Article 2.7 of the United Charter, with individual sovereignty – representing the human rights and fundamental freedoms of the UN Charter – arguing that the latter has been enhanced at the end of the twentieth century.<sup>4</sup> Finally, he called upon the Security Council to “unite behind the principle that massive and systematic violations of human rights conducted against an entire people cannot be allowed to stand”<sup>5</sup>. Despite this changing normative landscape, however, the United Nations Security Council’s record on authorizing humanitarian intervention to halt massive human rights violations during conflict in decidedly mixed. Members of the Security Council have responded unevenly to man-made humanitarian crises, including ethnic cleansing and genocide. For example, after the Cold War, the Security Council authorized humanitarian intervention in Somalia and Bosnia-Herzegovina but then failed to halt genocide in Rwanda. Why were military humanitarian interventions to save lives in Kosovo or the Sudan not authorized by the Security Council – contexts where the scope and scale of mass killing was arguably as significant as other conflicts in which the use of force was undertaken, like in Sierra Leone? This dissertation seeks to answer the puzzle of why the Security Council intervenes militarily in defense of human rights in some places but fails to stop ethnic cleansing in others. It traces the emergence of what I will argue is a new norm of humanitarian intervention as well as the process of its evolution and the conditions of its

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<sup>4</sup> Annan, Kofi A. “Secretary General presents his Annual Report to the General Assembly” 20 September 1999, <http://www.un.org/News/press/docs/1999/19990919.sgsmr99.htm>

<sup>5</sup> Annan, Kofi A. “Secretary General presents his Annual Report to the General Assembly” 20 September 1999, <http://www.un.org/News/press/docs/1999/19990919.sgsmr99.htm>

use. I argue that the practice of humanitarian intervention becomes possible only when the majority of Security Council Members, including most of its permanent members, adopt an intentional causal story to explain the conflict and its human rights violations – an explanation that identifies specific perpetrators inflicting deliberate and systematic violence against clear victims. Humanitarian intervention also is more likely when its exercise complements rather than conflicts with the highly internalized norms of state sovereignty and non-intervention into domestic affairs.

Realist theory does not regard the Security Council's selective military response to ethnic cleansing as a puzzle; rather decisions to authorize humanitarian intervention are subject to the same power politics that govern state action in the international system. Instead of an emerging norm that is reflective of shared values, humanitarian intervention is understood, according to realist theory, as a practice that reflects the global balance of power. Western States, and particularly the United States, use military force to impose their values and advance their national interests on other weaker states. Humanitarian justifications for the use of military force disguise national interests and serve as ideological cover for non-humanitarian motives. The lack of consistency in the authorization of humanitarian intervention by the Security Council is explained by the national interests of its permanent five members, who only engage in humanitarian intervention when their national interests are at stake and not primarily for humanitarian reasons. For example, the failure of the Security Council to respond to genocide in Rwanda, despite explicit knowledge of its perpetration is the paradigmatic example of the power and national interest explanation for selective humanitarian intervention. No vital

interests were at stake for Security Council members in Rwanda. Humanitarian intervention then is explained according to traditional conceptions of vital national interests – the presence or perception of threat or actual or perceived opportunities to maximize power. While it is certainly true that power relationships and neighbor relationships operate in the Security Council, which is by design a political institution, the realist explanation does not account for the change in justifications for military intervention over time. Military interventions have been justified for humanitarian purposes in the 1990s whereas in the Cold War cases cited above, the use of force was defended in terms of *raison d'etat*, even when humanitarian motives were present. The principle problem with the power and national interest explanation for humanitarian intervention is that proponents largely define state interests based on state behavior and fail to recognize that state interests change over time and can be shaped by norms. A realist explanation fails to recognize the degree to which state action is circumscribed by normative discourse whether or not that discourse is used strategically or sincerely.<sup>6</sup>

The realist explanation is most effective at explaining cases of non-intervention like Rwanda, but it has difficulty explaining why powerful states undertake elective military intervention at all. Humanitarian intervention is “a costly moral action”.<sup>7</sup> Therefore, great power unilateralism is an unconvincing explanation for humanitarian intervention in Somalia and Sierra Leone where US vital interests were clearly lacking. Further, Western states were hesitant to intervene in *both* Bosnia-Herzegovina and

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<sup>6</sup> See Wheeler, *Saving Strangers*; Finnemore, *Purposes of Intervention*; Neta Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, Cambridge University Press, 2002).

<sup>7</sup> Chaim D. Kaufmann and Robert A. Pape, “Explaining Costly International Moral Action: Britain’s Sixty-Year Campaign against the Atlantic Slave Trade.” *International Organization* 53, no. 4 (1999): 631-68.

Rwanda but the Security Council ultimately authorized intervention in the former. In addition, non-Western states were the strongest and most consistent advocates for and participants in the humanitarian intervention in Bosnia-Herzegovina, disproving the argument that humanitarian intervention is only a tool of intervention by the strong against the weak. Realist theories are right that power is an important factor for explaining humanitarian intervention but they fail to differentiate between the power that emerges from materialist considerations and other forms of power like that emerging from the legitimacy of shared ideas and values.

Domestic interests and pressure explanations, which are typically associated with liberalism, suggest that the practice of humanitarian intervention can be explained by domestic agitation for ending atrocities by the publics of powerful democratic states. If domestic pressure explains humanitarian intervention we would expect to see high levels of domestic engagement or pressure exerted upon governments of Western great powers in cases where the Security Council has actively intervened or authorized humanitarian intervention. We would expect to see the influence, in particular, of domestic politics on US decisions regarding humanitarian intervention. And we would expect that in cases where humanitarian intervention does not occur there will be little domestic pressure to respond to mass killing. When applied to some cases where humanitarian intervention has not occurred, like Burundi and Democratic Republic of Congo in the early 1990s, these hypotheses seem to hold. The domestic publics of Western states have not rallied their governments to “do something”. But the domestic interests explanation cannot explain the absence of humanitarian intervention in cases where high domestic pressures

exists (early Bosnia-Herzegovina and Sudan) or cases where the domestic pressure for intervention was low but happened anyway (Sierra Leone and the US-led NATO intervention in Kosovo). Power and interest-based approaches share a commitment to rationalism and thus understand norms – *shared standards of, or expectations about appropriate behavior held by a community of actors* – as primarily regulative.<sup>8</sup> Norms constrain or order behavior. In the case of power approaches, norms reflect the values of powerful states that impose them on weaker states. In the case of interest based approaches like liberalism, norms guide behavior but do not shape actors. Alternatively, cognitive approaches, including both the English School and constructivism, understand norms as being regulative and constitutive – norms restrain but also enable actors and shape their identities and interests.

Nicholas Wheeler, a scholar of the English School tradition, also argues that “saving strangers” became possible beginning in the early 1990s because Western, democratic states, pressured by their domestic publics in turn pressured the Security Council to interpret its Chapter VII responsibilities to include military enforcement of human rights norms enshrined in the Charter of the United Nations, its declarations and treaties. He argues that domestic publics helped to create the permissive environment in which the Security Council could engage in humanitarian intervention and in which its behavior during that intervention would be circumscribed by humanitarian norms.<sup>9</sup> But

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<sup>8</sup> Peter J. Katzenstein. ed. *The Culture of National Security: Norms and Identity in World Politics* (New York: Colombia University Press, 1996). Alexander Wendt and James Fearon "Rationalism V. Constructivism: A Skeptical View." In *The Handbook of International Relations* ed. Walter Carlsnaes, Thomas Risse and Beth Simmons (Sage Publications, 2002): 61 on the regulative and constitutive functions of norms.

<sup>9</sup> Wheeler *Saving Strangers*, 289; 296.

unlike domestic pressure and interests arguments, Wheeler argues that structural changes at the international and institutional level, where the norm is shared, is also necessary for humanitarian intervention to become possible. According to the English School (or international society) approach, the self-binding character of international norms varies upon the degree of its legitimacy – the degree to which it conforms to standards of acceptable conduct set by the prevailing morality of international society.<sup>10</sup> Not only are state interests and preferences tightly bound up with ideas about legitimacy, states have interests that transcend state boundaries. Because of this “solidarity” among states, ‘international interests can be congruent with self-interest but cannot be reduced to them’ because statehood itself is dependent upon the existence of the international community, and not *a priori* to it.<sup>11</sup> Power and legitimacy are complementary, rather than antithetical.

Martha Finnemore drawing upon constructivism also emphasizes the importance of legitimacy but highlights how norms shape the identities and inform the actions of actors. National interests then, are not stable over time. Instead, understandings of what constitutes the nation and its interests are highly contested beliefs that evolve with the international and domestic normative context. States construct rules about when military intervention is legitimate and necessary. The legitimate use of military force and the justifications for its use change over time. Finnemore argues that the goals of military intervention have changed as human rights claims have become increasingly powerful and have been used by norm entrepreneurs and states to challenge the prevailing rules of

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<sup>10</sup> Wheeler, *Saving Strangers*, 10.

<sup>11</sup> Wheeler, *Saving Strangers*, 170-1.

sovereignty, self-determination, and non-intervention.<sup>12</sup> Both agent action and structural transformation are necessary to change the social purpose of intervention. Macro-historical changes like decolonization and the spread of human rights led to increased agent action as a result of collective identification and empathy; these beliefs (primarily Western and liberal in origin) were translated into political action by social movements and the creation of new laws and institutions transformed domestic normative beliefs into larger social structures like the United Nations. State interests are constituted by these institutions.<sup>13</sup> Changing beliefs about human rights at the domestic and international levels transformed what constitutes the legitimate use of military force. Indeed, since 1945 the United Nations Charter provides the normative framework in which contestation over humanitarian practices – their form and legality – have taken place.<sup>14</sup> It is only in the last two decades that humanitarian intervention has become a legitimate way for states, acting through the Security Council, to intervene to stop human rights violations reaching the gravity of genocide in sovereign states without their consent.

According to cognitive-based approaches to international relations, norms make similar behavioral claims on dissimilar actors; therefore, normative demands for humanitarian intervention must emerge at the international level and not just at the domestic level of liberal and democratic states. As a result, we should expect that demands for humanitarian intervention will emerge at the international level from both democratic and non-democratic, Western and non-Western, developing and developed states. Humanitarian intervention also should occur in places where the interveners do

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<sup>12</sup> Finnemore, *Purposes of Intervention*, 144.

<sup>13</sup> Finnemore, *Purposes of Intervention*, 144.

<sup>14</sup> *Ibid.*, 73.

not have vital interests as well as in places where humanitarian intervention has been defined specifically as a state interest by permanent members of the Security Council. Evidence from the cases examined in this dissertation demonstrate that less powerful state members of the United Nations from various geographic regions and levels of development have agitated for the use of humanitarian intervention in specific cases during formal meetings of the Security Council. Rwanda is one example. And although humanitarian intervention seldom happens when compared to the large number of cases where widespread and systematic violations of the right to bodily integrity occur, humanitarian interventions have been undertaken in places where permanent members of the Security Council have had national interests according to realist criteria (Bosnia-Herzegovina) and where they have not (Somalia). The most important contribution to the study of humanitarian intervention made by cognitive approaches to international relations, however, is that humanitarian intervention has become possible as human rights norms have become increasingly legitimate and widely held beliefs in international society.<sup>15</sup> These theories explain the creation of a permissive environment for humanitarian intervention in which the Security Council has authorized its practice but they leave unspecified why the Security Council authorizes humanitarian intervention in one place (Sierra Leone) but not in another similar case occurring at the same time (Kosovo).

My research principally builds upon constructivist and normative approaches to international politics but expands to engage rationalist explanations about power and interests. I contend that human rights norms matter during Security Council deliberations

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<sup>15</sup> Finnemore, *Purposes of Intervention*; Wheeler, *Saving Strangers*; Crawford, *Argument and Change*.

about the use of force but I build upon the current literature to theorize the mechanisms through which Security Council intervention decisions are made – why Council members intervene in one place and not another. I contend that there is a connection between the ways that Security Council members argue about and describe conflicts and their decisions to intervene to stop the violence. The argument is that for humanitarian intervention to become possible, most members of the United Nations Security Council, including most of its permanent members, must adopt a particular frame for understanding the conflict and its human rights violations – what I call an *intentional causal story* – with deliberate crimes directed at clear victims by identifiable perpetrators.<sup>16</sup> The Security Council, however, is a realm of contestation where multiple stories of causality are advanced by its members in relation to the conflicts on its agenda. The success of any particular causal story about conflict over another is mediated by the extent to which humanitarian intervention in a particular case would complement or conflict with the norm of state sovereignty, its adoption by powerful proponents on the Security Council like the United States, and its coherence with expert testimony, forensic evidence and media imagery.

My primary method for addressing the puzzle about the inconsistent authorization of humanitarian intervention by the Security Council is by examining its decisions about the authorization of force and their justifications using a series of comparative case studies. These case studies include both situations where the Security Council has authorized humanitarian intervention and situations on the Security Council agenda

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<sup>16</sup> I borrow the term intentional causal story from Deborah Stone *Policy Paradox: The Art of Political Decision-Making*. Revised ed. (New York: W. W. Norton & Co., 2002) and Deborah Stone. "Causal Stories and the Formation of Policy Agendas." *Political Science Quarterly* 104, no. 2 (1989): 281-300.

where the authorization of humanitarian intervention might be expected but does not occur. Examining both cases and non-cases of Security Council authorization may bring to light otherwise obscured or over-determined patterns of behavior that might emerge in a study that examines only the former. I use hypothesis testing to examine my claims about the conditions under which the Security Council will authorize humanitarian intervention as well as to evaluate alternative explanations. I also generate a theory of causal stories about humanitarian intervention which helps to explain why the Security Council authorizes the use of force to stop ethnic cleansing in one case and not another as well as how the relationship between humanitarian intervention and sovereignty impacts Security Council decision-making. In each chapter of the dissertation I examine the Security Council's decision whether or not to authorize the use of force as well as its justifications for its decision. This involves doing a textual analysis of the formal record of the meetings of the Security Council as well as examining the characteristics of the conflict and the Council's intervention behavior on the ground, where appropriate. It is through this analysis that I develop a theory about how causal stories of human rights and war operate in the Security Council, making humanitarian intervention more likely in cases that are described as having intentional perpetrators whose violent behavior can be interdicted by an external military force.

### **A Theory of Causal Stories about Security Council Humanitarian Intervention**

The Security Council is a place of "heated and unsystematic, but often principled debate about appropriate standards of international behavior and the extent and limits of

the Council's authority to regulate that behavior."<sup>17</sup> The Security Council is the primary venue in international society where authoritative decisions are made about what events constitute threats to international peace and security as well as appropriate responses to those threats.

...[D]iscourses are understood to work to define and to enable, and also to silence and exclude, for example by limiting and restricting authorities and experts to some groups, but not others, endorsing a certain common sense, but making other modes of categorizing and judging meaningless, impracticable, inadequate or otherwise disqualified."<sup>18</sup>

The discursive representation of conflict by Security Council members both creates and forecloses opportunities for military intervention to halt mass killing, ethnic cleansing and genocide. Classifying mass killing into categories like *ethnic cleansing* or *genocide* may make certain courses of action (such as humanitarian intervention) more possible than others like *gross human rights abuses*, *civil war* or *ethnic conflict*.<sup>19</sup> Research suggests that early decisions in the naming and framing of conflicts may determine the range of possible policy outcomes.<sup>20</sup> But frames or stories cannot simply be chosen by actors. Instead, stories must resonate with their target audience in order to be persuasive; and they can change over time.

Policy-maker decision-making can be best understood by examining the ways that decision-makers represent problems to the public, according to Sylvan and Pevehouse

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<sup>17</sup> Ian Johnstone "Security Council Deliberations: The Power of the Better Argument." *European Journal of International Law* 14, no. 3 (2003): 438.

<sup>18</sup> Jennifer Milliken, "The Study of Discourse in International Relations: A Critique of Research and Methods." *European Journal of International Relations* 5, no. 2 (1999): 229.

<sup>19</sup> See Roxanne Lynne Doty, *Imperial Encounters: The Politics of Representation in North-South Relations* (Minneapolis: University of Minnesota Press, 1996) on representational practices and Riika Kuusisto "Framing the Wars in the Gulf and in Bosnia: The Rhetorical Definitions of the Western Powers in Action." *Journal of Peace Research* 35, no. 5 (1998): 603-20 on storytelling and enemy discourse.

<sup>20</sup> Milliken, "The Study of Discourse", 604. Jon Western, *Selling Intervention and War: The Presidency, the Media, and the American Public* (Baltimore: The John Hopkins University Press, 2005).

(2002), Sylvan and Thomson (1992) and Sylvan and Voss (1998). Problem representation represents the sum of the views and constraints with regard to a particular situation. Similarly, Deborah Stone (1989) contends that difficult conditions only become problems to be solved in politics once they are seen as amenable to human action.<sup>21</sup> Stories are created by political actors in which problems are attributed to specific actors in order to create a claim for a government entity to stop the harm from occurring. Causal stories, as she calls them, are important because they “move situations intellectually from the realm of fate to the realm of human agency.”<sup>22</sup> Narrative and symbolic devices are used to portray a particular causal story as a statement of fact. In the case of humanitarian intervention, according to Sylvan and Pevehouse (2002), a primarily internal situation must be changed into a threat to international peace and security, what Griffiths, Levine and Weller (1995) call a semantic conversion. Keck and Sikkink (1998) argue that “frame alignment” makes events meaningful by organizing and guiding collective or individual action.<sup>23</sup> A frame’s resonance reflects its ability to influence public understanding of the issue. Some principled ideas are more easily framed, and resonate better, with domestic and international publics than others. For example, issues of bodily harm, particularly when there is a short and clear causal chain of responsibility between an identifiable and intentional perpetrator and his or her victim,

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<sup>21</sup> Stone, “Causal Stories”, 281.

<sup>22</sup> Stone, “Causal Stories”, 283.

<sup>23</sup> Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998): 17. See also David E. Snow et al., “Frame Alignment Processes, Micromobilization, and Movement Participation,” *American Sociological Review* 51 (1986): 464.

affect frame alignment and resonate positively in the human rights realm.<sup>24</sup> In short, human rights violations that involve bodily harm must have a convincing causal story.

Stone creates a framework for understanding how causal stories operate in politics. She makes two types of distinctions among stories – between actions and consequences and between purpose and the lack thereof.<sup>25</sup> She maps four different types of causal stories that are useful in politics – where actions are either unguided or purposeful and have intended or unintended consequences (see Table 1.1 below). She also identifies a fifth type of causal story – a complex causal story – however, stories of complex causation are ineffective at garnering political action because they lack “a single locus of control, a plausible candidate to take responsibility for a problem, or a point of leverage to fix a problem.”<sup>26</sup> Each type of causal story has varying degrees of effectiveness in terms of generating political action.

“Intentional causal stories” are the most effective for shifting perceptions of harm from the realm of fate to the realm of political agency because they identify a specific actor as responsible for willingly and knowingly causing harm to others. These stories take the form of narratives about oppressors and victims. There are 3 constituent elements of an intentional causal story: 1) identification of an intentional perpetrator; 2) characterization of the violence as intentional and naming it in a way that demonstrates this intentional character; and 3) identification of a targeted and identifiable victim group.

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<sup>24</sup> Keck and Sikkink, *Activists Beyond Borders*, 27.

<sup>25</sup> Stone, *Policy Paradox*, 190.

<sup>26</sup> Stone, *Policy Paradox*, 197.

**Table 1.1: Types of Causal Theories<sup>27</sup>**

	<i>Consequences</i>	
<i>Actions</i>	Intended	Unintended
Unguided	MECHANICAL CAUSE	ACCIDENTAL CAUSE
Guided	INTENTIONAL CAUSE	INADVERTENT CAUSE

Both genocide and ethnic cleansing display characteristics of what Stone identifies as an intentional causal story – identifiable perpetrators engaged in purposeful action to achieve intended outcomes – the extermination in whole or part of a clear victim group.<sup>28</sup> According to a senior UN official, support for humanitarian operations can be garnered in the Security Council if it can be clearly shown “that there is a good guy / bad guy situation”.<sup>29</sup> Ethnic cleansing and genocide on the ground however, may be described by actors as something as other than an intentional causal story.

**Figure 1.1: Constituent Elements of Intentional Causal Story**

1. intentional & identifiable perpetrator
2. character of the violence <ul style="list-style-type: none"> <li>a. conflict name</li> <li>b. intentionality of violence</li> </ul>
3. targeted & identifiable victim group

<sup>27</sup>This table is Deborah Stone’s table of types of causal theories minus her examples. Please see original table in Stone, “Causal Stories”, 285 and Stone, *Policy Paradox*, 191.

<sup>28</sup> According to Article 2 of the Convention on the Prevention and Punishment of Genocide, “genocide” is determined based on a purposeful actor’s intent to exterminate a group, in whole or in part, and the actions he or she undertakes to achieve this aim. “Ethnic cleansing”, despite its definitional association with the goal of territorial acquisition and its less than complete commitment to extermination, also qualifies for prosecution under the Genocide Convention.

<sup>29</sup> Senior UN official, interview by author, New York City, New York, June 2007.

Nonetheless, intentional causal stories by definition must tell a story of ethnic cleansing or genocide because by definition the outcome (extermination or removal from territory) is intended by purposeful actors. Inadvertent causal stories recount situations where purposeful action leads to unintended consequences. Harm can result from human carelessness, recklessness, or ignorance. Inadvertent causal stories can cover either the harmful side effects of a well-intentioned policy or the results of acts of omission on behalf of authorities.<sup>30</sup> The terms “ethnic conflict” and “civil war” frequently carry connotations of equal responsibility for actions by all sides in a conflict. According to the international relations literature on civil and ethnic conflict, these conflicts can be the result of purposeful actions of elite actors or they can be structural or mass-led.<sup>31</sup> The consequences of the actions of these actors can be intended or unintended. So for example, if a civil or ethnic conflict is state- or elite-led where leaders engage in purposeful actions but civilian victims are not targeted based on specific characteristics or are killed unintentionally, this would resemble an “inadvertent causal story.” An inadvertent causal story about war might also mean that the state is guilty of the failure to protect its population or for acts of omission with regards to crimes against the civilian population. It might also mean that citizens are killed in random violence or are

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<sup>30</sup> Stone, “Causal Stories”; Stone, *Policy Paradox*.

<sup>31</sup> Kalevi Holsti, *The State, War, and the State of War* Cambridge Studies in International Relations. (Cambridge: Cambridge University Press, 1996); Stuart Kaufman, *Modern Hatreds: The Symbolic Politics of Ethnic War* (Ithaca: Cornell University Press, 2001); Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford: Stanford University Press, 2001); V.P. Gagnon "Ethnic Nationalism and International Conflict: The Case of Serbia." *International Security* 19, no. 2 (1994): 130-66; James Fearon and David Laitin, "Ethnicity, Insurgency, and Civil War." *American Political Science Review* (2002); Rui de Figueiredo Jr. and Barry Weingast, "The Rationality of Fear: Political Opportunism and Ethnic Conflict." In *Civil Wars, Insecurity, and Intervention*, ed. Barbara Walter and Jack Snyder, (New York: Columbia University Press, 1999): 261-302; Robert Jervis and Jack Snyder, "Civil War and the Security Dilemma." In Walter and Snyder, *Civil Wars, Insecurity, and Intervention*, 15-37.; Michael E. Brown, *Ethnic Conflict and International Security* (Princeton: Princeton University Press, 2001).

“collateral damage” of the fighting with insurgents. While there are multiple formulations of an inadvertent causal explanation – all of these formulations share the characteristic that the resultant human rights violations are inadvertent, rather than intentional.

Accidental causal stories describe situations where unguided actions lead to unintended consequences.<sup>32</sup> Harmful things happen and no one is responsible. These stories are about accidents of nature – stories about occurrences rather than stories about actions. Finally, mechanical causal stories describe a structural and mechanistic story that depends upon an intervening agent. Thus, the very nature of human guidance and control is at issue – unguided actions lead to intended outcomes. For example, individuals may be mechanically carrying out the will of another. In these cases someone may act purposefully but their will is carried out by other agents or structures. Conflicts that are categorized as the result of ancient or tribal hatreds resemble a mechanical causal story. Although ancient hatreds explanations largely have been discredited by academic scholarship, they are frequently used to describe conflicts with mass human rights violations in the realm of politics, particularly when issues of ethnicity, culture or religion are defining features of the conflict and actors are hesitant to get involved.<sup>33</sup> Accidental stories and mechanical stories, because they lack guided actors are not amenable to Security Council action, let alone the use of military force. Conflicts that are characterized as accidental or mechanical are not candidates for humanitarian

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<sup>32</sup> Stone, “Causal Stories”, 285.

<sup>33</sup> Benedict Anderson, *Imagined Communities* (London: Verso, 1992); Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge: Cambridge University Press, 1996).

intervention; none of the conflicts examined in this dissertation have been characterized in a meaningful way by the Security Council as a mechanical or accidental causal story.

Complex causal stories describe multiple sources of causation or situations in which the causes are a result of complex systems of interaction or institutional or historical patterns.<sup>34</sup> Stories of complex causation are relatively ineffective for garnering political action because they lack “a single locus of control, a plausible candidate to take responsibility for a problem or a point of leverage to fix a problem”.<sup>35</sup> Rendering a cause complex is one of the most effective ways for actors to avoid action, blame or reform. Sylvan and Pevehouse agree that the complex interaction of more than one factor makes a problem more difficult to solve than situations that have a single cause.<sup>36</sup> Complex causal stories about conflict discourage Security Council members from engaging in robust political or military action.

Conflict situations that seem like chaos do not invite humanitarian intervention. Intervention needs a clear bad guy who is going to be stopped... While you could say at a certain point that even chaos deserves intervention, it is both politically and pragmatically more difficult. Politically, because it is easier to mobilize political support if there is a clear bad guy and you can stand up and say we are going to stop this bad guy. Practically, because no international body wants to be in the middle of chaos.<sup>37</sup>

Contestation between competing causal stories is quite common in politics.

Massive human rights violations on the ground may be presented by one set of actors as an intentional causal story about ethnic cleansing or genocide but as an inadvertent causal

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<sup>34</sup> Stone, *Policy Paradox*, 195-6.

<sup>35</sup> *Ibid.*, 197.

<sup>36</sup> Donald A Sylvan and Jon C. Pevehouse, “Deciding Whether to Intervene,” In *International Intervention: Sovereignty versus Responsibility*, ed. Michael Keren and Donald A. Sylvan (London: Frank Cass, 2002).

<sup>37</sup> Ken Roth, Executive Director of Human Rights Watch, interview with author, New York City, New York, May 2007.

story about the unintended consequences of a civil war by another set of actors. Problems are defined through the active manipulation of images within a political contest rather than emerging directly from political actors, bad conditions, or inherent characteristics of the issue itself.<sup>38</sup> Causal stories are neither right nor wrong – they are ideas about causation tied to arguments about control and responsibility and some resonate better than others because they more accurately reflect facts on the ground. Contestation can occur then, between competing narratives that explain the same violence. As a result, a particular conflict may move between categories over time. The boundaries between causal stories are fluid and not mutually exclusive.<sup>39</sup>

#### *Hypotheses about Causal stories and Security Council Authorized Intervention*

I contend that conflict complexity deters UN Security Council members from engaging in humanitarian intervention. Conflicts, or situations in which gross violations of the right to bodily integrity are being violated, that are portrayed as complex will correspond with Security Council decisions to not intervene militarily to save innocent lives. Alternatively, I propose that military interventions for human protection purposes only become possible when most permanent members of the Security Council, including the United States and other permanent members, articulate an intentional causal story about conflict – a story about ethnic cleansing or genocide in which the harm may be stopped by intervening between the identifiable perpetrator and its named victims. I suggest that inadvertent causal stories will be unlikely to lead to Security Council

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<sup>38</sup> Stone, “Causal Stories”, 299.

<sup>39</sup> See for example Stone, *Policy Paradox*, 19.

intervention either because there are multiple perpetrators or unspecified or unintended civilian victims. The appropriate United Nations response to an accidental causal story about conflict is more likely to be in the form of humanitarian assistance than forcible military intervention and in most cases beyond the purview of the Security Council. Similarly, a mechanical causal story will fail to garner support of international military intervention given its “natural cause.” Indeed, these conflicts should not even make it onto the Security Council agenda because they lack guided actors and the Security Council do not have agency over the realm of “nature”. For this reason, they are excluded from Table 1.2 on the Expectations of Security Council Intervention Behavior by Causal Story Type (below). Finally, in cases of contestation over the definition of the

*Table 1.2: Expectations of Security Council Intervention by Causal Story Type*

<b>Type of Causal Story</b>	<b>Expected Humanitarian Intervention</b>
Intentional Cause	Yes
Inadvertent Cause	No
Complex Cause	No

human rights violations or types of conflict, we should expect to see competing causal stories advanced by permanent members of the Security Council resulting in inaction – defined as failure to engage in humanitarian intervention. We can expect that the Council also will not intervene in cases of contestation where permanent members are united in an interpretation that is counter to an intentional causal story advanced by non-permanent members. In short, most permanent members of the Security Council, including the

United States, must articulate or assent to an intentional causal story as a permissive condition for humanitarian intervention.

*Hypotheses on Factors that Mediate the Success of a Causal Story*

Contestation between Security Council Members over the causal explanation of conflict is a barrier to Security Council authorization of the use of military force to stop mass killing. In the contest to convincingly frame a particular conflict, however, one causal story may win out over the others. I contend that four factors – intervening variables – external to the causal story itself affect the ability of a particular story to resonate more clearly with Security Council Members than others. First, humanitarian intervention is more likely in cases where the advancement of human rights norms complements rather than conflicts with the protection of state sovereignty. The success of any particular causal story over others will be mediated by the degree to which its adoption permits the simultaneous advancement of human rights and sovereignty norms. Second, the support of powerful and prominent proponents makes it more likely that a particular causal story will win out over others that lack the support of great power leadership. Causal stories that are articulated by permanent Security Council members and particularly by the United States are more likely to be successful in increasing Security Council support than stories that lack the backing of great powers. Third, causal explanations that are consistent with the testimony of experts, forensic evidence and the findings of media inquiry are more likely to succeed than causal explanations that conflict with the facts on the ground. Causal stories must both resonate with Security

Council members and sustain public scrutiny. The success of any particular causal story over another, then, is mediated by the degree of its coherence with expert testimony, forensic evidence and media imagery. Finally, I also expect that because the norm of humanitarian intervention is newly emergent and evolving, the sequence of conflicts and the historical and political context in which they occur also shapes the effectiveness of causal stories. Security Council actions in one conflict should shape its

*Figure 1.2: Intervening Variables in the Contestation between Causal Stories*

1. Coherence between the promotion of human rights norms and state sovereignty
2. Great Power leadership
3. Consistency with expert testimony, forensic evidence and media imagery
4. Sequencing / Historical Context

response to subsequent conflicts. The acceptance of an intentional causal story in one conflict that shares similar characteristics with another conflict should help the intentional causal story win out in the latter conflict as well. Similarly, the historical context should impact the success of a particular causal story. In the competition for Security Council attention and resources it matters when and where a conflict comes to the attention of the Security Council.<sup>40</sup>

### **Cases and Non-Cases of Security Council Authorized Humanitarian Intervention**

Political by design, the Security Council examines the question of humanitarian intervention on a case by case basis; its members maintain a strong resistance to standard

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<sup>40</sup> See the intervening factors introduced by Stone, “Causal Stories” and Stone, *Policy Paradox* as well for their consistency with the factors introduced in this study.

setting requirements.<sup>41</sup> Faced with a tension between legal and moral principles, then, political considerations *ought* to weigh heavily on members of the Security Council when making decisions about humanitarian intervention.<sup>42</sup> In order to examine the interaction of norms and politics on Security Council decision-making, I have created a data-set of all the cases where we would expect humanitarian intervention to occur given the severity of human rights abuses in that country. The severity of human rights abuse can be measured either in terms of its widespread character or the intensity of violence. In order to make the data-set as replicable as possible I have drawn on pre-existing data from the Political Terror Scale, which measures the level of political terror (including murder, disappearance, and torture) exercised by states against their domestic populations. A score of 5 on the Political Terror Scale, the most severe score, denotes one of two situations: 1) a situation of political terror where murders, disappearances and torture are a common part of life for the whole population and where leaders place no limits on the means or thoroughness with which they pursue their personal or ideological goals; or 2) a level of widespread terror so great that although it is only aimed at certain segments of the population it still constitutes a level 5 ranking.<sup>43</sup> Compiling the data on all the states between 1989 and 2004 that received a level 5 ranking of political terror for two or more consecutive years according to Political Terror Scale coding of Amnesty International reports resulted in 25 cases.<sup>44</sup> Because humanitarian intervention is an

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<sup>41</sup> Senior UN official, interview with author, New York City, New York, June 2007; senior researcher on the United Nations, interview with author, New York City, New York, June 1007.

<sup>42</sup> Donnelly, *Universal Human Rights*, 257.

<sup>43</sup> Mark Gibney and Matthew Dalton, "The Political Terror Scale." *Policy Studies and Developing Nations* 4 (1996):74; 79.

<sup>44</sup> 1989 marks the year when relations between the superpowers significantly changed at the United Nations making difficult military action possible by the Security Council and ending during the year that the United

elective use of force, interveners will not mount a military intervention against a nuclear state without its consent. Humanitarian intervention must have a reasonable prospect for success, thus states widely believed to possess nuclear weapons (Israel) were eliminated from the data-set. The final data set of possible cases of humanitarian intervention is comprised of 24 states: Afghanistan, Algeria, Angola, Bosnia-Herzegovina, Brazil, Burundi, Chad, Colombia, Congo, Democratic Republic of Congo, Ethiopia, India, Iraq, Liberia, Myanmar, Peru, Rwanda, South Africa, Sierra Leone, Somalia, Sri Lanka, Sudan, Turkey and Yugoslavia. Despite the increasing legitimacy of armed military responses to stop gross human rights violations, it is important to note the rarity of such actions. Out of the 24 cases where humanitarian intervention might have been justified by the Security Council, the Council authorized its use in only 3 cases: Bosnia-Herzegovina, Sierra Leone, and Somalia. My study also includes one case (Northern Iraq) in which the use of force for humanitarian purposes was not explicitly authorized and occurred within the context of a traditional framework for intervention – inter-state aggression. While military intervention for human protection purposes is a dramatic normative development in international society, it is also a highly contested and seldom utilized practice.<sup>45</sup>

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States declared the human rights situation in Darfur, Sudan “genocide.” Limiting the cases to those with two consecutive years of a level 5 ranking takes into account only the most severe crises where human rights abuses might raise the consciousness of members of international society and provide sufficient opportunity to generate an international response as well as to correct for the possibility of coding error or anomaly.

<sup>45</sup> Other potential cases have been addressed by the Security Council using means short of authorization of the use of force under Chapter VII of the Charter of the United Nations including Angola, Burundi, Democratic Republic of Congo/Zaire, Ethiopia, Liberia, South Africa and Sudan. The list also does not capture additional cases of humanitarian intervention in countries not captured by the political terror scale including Haiti and East Timor (Indonesia). Finally, the Security Council intervened in Rwanda but only after the genocide thus it is excluded according to the definition of humanitarian intervention used by the

The dissertation begins its examination of the question of Security Council authorized humanitarian intervention with the Council's landmark passage of resolution 688 (1991) within the context of its traditional military intervention against Iraq. Resolution 688 (1991) did not authorize a humanitarian intervention but it did define the cross-border effects of Iraqi repression of its citizens as a threat to international peace and security. Resolution 688 (1991) temporarily suspended Iraq's internal sovereignty by demanding access to its territory and people without its consent but only within the context of a wider war in which the international community had temporarily suspended Iraq's external sovereignty because of Iraq's own violation of sovereignty and non-intervention norms by invading Kuwait. This initial case is significant because of its humanitarian character which provides an important context for future Security Council humanitarian intervention decisions. On its own, however, the passage of resolution 688 (1991) did not mark the emergence of a new norm of humanitarian intervention.

Following the discussion of Iraq, I examine three cases of Security Council authorized humanitarian intervention (Somalia, Bosnia-Herzegovina and Sierra Leone) and three "non-cases" where humanitarian intervention might have been justified but was not authorized (Rwanda, Kosovo and Darfur, Sudan). The conflicts in Somalia, Bosnia-Herzegovina and Rwanda were occurring simultaneously and the practice of Security Council authorized humanitarian intervention first emerged during this period (1991-1995). The conflicts in Kosovo, Sierra Leone and Darfur, Sudan occurred between 1996 and 2004 – a time period marked by significant contestation among Security Council

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dissertation. It is also important to note that the Security Council did not authorize the NATO humanitarian intervention in Kosovo and does not constitute a case of Security Council authorized humanitarian intervention.

members over whether they had a responsibility to stop ethnic cleansing. The cases examined in the dissertation were selected for the following reasons. First, all of these states experienced human rights abuses of relatively equal severity during similar time frames but experienced different humanitarian intervention outcomes. In some of the conflicts that did not experience humanitarian intervention, the severity of human rights abuse was greater than in those where humanitarian intervention was authorized by the Security Council. Second, these cases are regionally representative of situations of conflict characterized by mass killing and provide variation along the independent variable. Due to the severity of human rights abuses involved, the cases where intervention did not occur, particularly Rwanda and Sudan, serve as hard test cases for a theory about the link between causal stories and humanitarian intervention.

### **Examining Security Council Member Discourse**

Formal meetings of the Security Council are the place where Council Members register publicly their position on whether or not a particular situation constitutes a threat to international peace and security and what the appropriate response of the Security Council should be. In particular, it is in the Security Council during the period 1989-2004 that State Members attempt to reconcile the increasing legitimacy of human rights norms with the established norms of state sovereignty and non-intervention. In its early decades, the formal meetings of the Council were also the principle forum in which Council Members deliberated and made their decisions about the use of force. However, as the relationship between permanent members improved at the end of the Cold War

they began to engage in more frequent “informal consultations” that typically did not involve elected members. In many cases, it is already decided how Security Council members will vote and the type of statements they will make in advance of the formal meetings.

This improved relationship between the permanent members also has translated into a dramatic decrease in the use of the veto. For example, between January 1990 and June 2003 there were only 12 vetoes on substantive resolutions compared to 193 during the first 45 years of the United Nations.<sup>46</sup> The decrease in the use of the veto can also be attributed to the new ethic among permanent members not to force other permanent members to veto a proposed resolution. Instead, resolutions are negotiated until the permanent members can either support them or are willing to abstain.<sup>47</sup> In many cases, proposed resolutions that do not have the support of, or acquiescence of, the permanent members never make it to the Council chamber. Despite these informal changes that have occurred in Security Council working methods since the end of the Cold War, the formal meetings continue to serve as the permanent and public record of Security Council decisions as well as justifications for those decisions directed toward each other, their domestic publics, interested parties and other members of the United Nations.

My research question then, requires analysis of the statements of Security Members during formal meetings in which they define which conflicts and human rights violations constitute a threat to international peace and security for each of the cases of

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<sup>46</sup> David M. Malone, “Introduction.” In *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David M. Malone (Boulder: Lynne Rienner Publishers, 2004): 7.

<sup>47</sup> Peter Wallensteen and Patrik Johansson, “Security Council Decisions in Perspective” In *UN Security Council*, 20.

the dissertation. I examine the content of Security Council documents including the formal Meeting Records of the United Nations Security Council and its presidential statements, votes, and resolutions. Where appropriate, I also examine the Reports of the Missions of the Security Council and Reports of the Secretary-General to the Security Council. I examine two types of evidence in these records, Security Council decisions about military intervention (state behavior) as well as debates about, and justifications for, humanitarian intervention (state justification for behavior) across the cases and non-cases of the dissertation.<sup>48</sup> In this way, I study how the discourse of Security Council members constructs the social reality that produces humanitarian intervention and in particular how Security Council debates frame conflicts enabling humanitarian intervention. The analysis also demonstrates how Security Council debates exclude other human rights violations and how members frame conflicts in ways that result in non-intervention. By illustrating how the practice of humanitarian intervention is produced in the Security Council – both in international practice and in justificatory discourse for that practice – we can see how that production structures and limits its members’ decisions about humanitarian intervention. Studying Security Council arguments and justifications for intervention behavior also tells us something about the normative context in which these decisions are made and the shared social purpose of the discussants.

When states justify their interventions, they draw on and articulate shared values and expectations that other decision makers and other publics in other states hold. Justification is literally an attempt to connect one’s actions with standards of

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<sup>48</sup> See Friedrich Kratochwil and John Gerard Ruggie, “International Organization: A State of the Art on an Art of the State,” *International Organization* 40 (1986): 5, 753-775; and Finnemore, *Purposes of Intervention* for a discussion of the importance of studying justificatory discourse for state behavior for understanding the normative context of international relations and the shared social purpose of its discussants.

justice, or perhaps more generically, with standards of appropriate and acceptable behavior.<sup>49</sup>

Similarly, by studying the causal stories about conflict situations and human rights violations advanced by members of the Security Council, we gain insight into the larger normative environment in which intervention decisions are made but also how and why states make the intervention decisions they do in a permissive normative environment.

Scholars have demonstrated that arguing has an impact on the practice of world politics and that the Security Council itself is a realm of argumentation.<sup>50</sup> The Security Council is a forum of justificatory discourse. Because the Security Council gains its authority through the legitimacy conferred upon it by other actors, the arguments and justifications that Council members make about the use of force matter.<sup>51</sup> The Security Council is an institution with dense patterns of interaction and expectations.<sup>52</sup> Its practices and decisions shape, and are shaped by, international norms. In fact, the Security Council has its own normative framework that structures the interactions between its members about international peace and security. As a result, some arguments are more acceptable and credible than others during Security Council debates.<sup>53</sup> Actors must frame their arguments according to the legal norms enshrined in the United Nations Charter or moral norms that are widely shared in international society in order to be persuasive. Arguments that appear prejudiced – generated purely by self-interest – are

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<sup>49</sup> Finnemore, *Purposes of Intervention*, 15.

<sup>50</sup> Thomas Risse, "Let's Argue: Communicative Action in World Politics." *International Organization* 54, no. 1 (2001): 4-5; Ian Johnstone, "Security Council Deliberations: The Power of the Better Argument." *European Journal of International Law* 14, no. 3 (2003): 453; Crawford, *Argument and Change*; Ian Hurd, "Legitimacy, Power, and the Symbolic Life of the UN Security Council." *Global Governance* 8 (2002)

<sup>51</sup> Ian Hurd, "Symbolic Life of UN Security Council", 47.

<sup>52</sup> Risse, "Communicative Action", 15.

<sup>53</sup> Johnstone, "Security Council Deliberations", 457.

viewed skeptically by other actors. Nonetheless, even if arguments are made by states hypocritically in order to conform to existing legal or moral norms, they can be trapped by their own arguments – what Thomas Risse describes as “argumentative self-entrapment”.<sup>54</sup>

Causal stories are discursive devices used by Security Council members to characterize violence – its causes, perpetrators and victims. Causal stories can be used strategically or sincerely by actors in the Security Council but they have an effect that is independent of the motivation of the speaker. By examining the causal stories that emerge during formal meetings of the Security Council, the dissertation evaluates what type of stories resonate more widely among members in specific cases as well as the relationship that emerges between different kinds of causal stories and Security Council decisions to authorize humanitarian intervention. By analyzing the emergence of, contestation between, and diffusion of causal stories, the dissertation provides insight into how new norms about the legitimate use of military force shape and are shaped by members of the Security Council. Finally, by tracking the emergence and diffusion processes of these causal stories, the dissertation also contributes to the theoretical debate between realist and constructivist IR scholars about the relationship between international norms and national interests.

Material and coercive power cannot be eliminated from Security Council deliberations about the use of force. The Security Council by design is a political institution. Its members are connected through both power relationships and neighbor relationships. Power asymmetries might affect what gets said and by whom and

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<sup>54</sup> Risse, “Communicative Action”, 32.

decisions are not only based on facts, analyses and principles but also on relationships with other states.<sup>55</sup> It makes a difference, for example, whether or not the United States is articulating a particular causal story. Indeed, former representative of Nigeria to the Security Council, Ambassador Ibrahim Gambari, describes the Security Council as “first and foremost a political institution that functions in concentric circles of interest and influence.”<sup>56</sup> At the center is the United States, the sole remaining super-power, often called the P-1 because it is considered “the principal driver of the Council’s agenda and decisions, passively and actively”.<sup>57</sup> Next is the circle of the P-3, the United States, the United Kingdom and France. The third circle consists of all the P-5 members, the United States, the United Kingdom, France, China and the Russian Federation. In the outer rings are the elected members of the Council. They are subdivided between those that are also members of the non-aligned movement who regularly harmonize their positions and strategize on how to influence the permanent members and those in the outermost circle who do not belong to the non-aligned movement.<sup>58</sup> It seems fair, then, to suggest that greater effort must be expended by a weak power (those with less material resources and in the outer concentric circles) than a permanent member to gain support for its argument in the Security Council.<sup>59</sup> The necessity for argumentation, however, gives elected members of the Council and other principled actors (including members of the Secretariat

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<sup>55</sup> Senior researcher on the working methods of the Security Council, senior political officials from the UK and New Zealand, and senior UN official, interviews with author, New York City, New York, May-June 2007.

<sup>56</sup> Ibrahim A. Gambari, “Rwanda: an African Perspective,” in *UN Security Council*, 519.

<sup>57</sup> Malone, “Introduction”, 8.

<sup>58</sup> If elected members have connections to NATO members, however, they may be included in informal meetings of the P-3 and have greater influence as a result. See Gambari, “Rwanda: an African Perspective”, 519.

<sup>59</sup> Risse, “Communicative Action”, 16.

and human rights organizations) who can claim expertise and/or moral authority the ability to influence the outcome of debate by making persuasive arguments. If we assume that materially more powerful actors do not necessarily have better arguments, arguing situations should disproportionately benefit weaker actors than situations in which material assets hold more sway. Principled actors and elected Council members should be more likely to “convince a skeptical public audience than actors who are suspected of promoting private interests”<sup>60</sup>.

Similarly, Ian Hurd contends that the Security Council is a legitimacy-conferring institution and thus a center of authority in international politics. He argues that the Security Council derives much of its power through symbols. This symbolic power allows even elected (non-permanent) members to appropriate the authority derived from the legitimacy of the Council. Despite the asymmetries of power in the Security Council, then, it exercises much of its power through symbols rather than solely relations of coercion and dominance. Permanent members, no matter how powerful, must share symbol-making power with other less powerful members. Symbols that emerge from the powerful members also can be appropriated, manipulated, and subverted in their meaning by weaker members. Thus, even small states can alter the path of the Council.<sup>61</sup> While relations of power structure the Security Council as an institution, it still provides a context in which weaker members can use non-material forms of power to advance their interests and shape international practice. By examining the emergence and diffusion of competing causal stories in the Security Council we can test whether material or non-

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<sup>60</sup> Risse, “Communicative Action”, 22.

<sup>61</sup> Hurd, “Symbolic Life of the UN Security Council”, 36.

material sources of power drive Council decisions on humanitarian intervention in particular cases.

What evidence can we expect to find if causal stories reflect normative principles rather than “objective” national interests defined by realist scholars; and how can we tell if causal stories diffuse among Security Council members because of the power of ideas (persuasion) rather than as the result of traditional power politics? If international norms are operating during Security Council debates on humanitarian intervention, we should expect to find evidence of dissimilar actors behaving similarly and Council members changing their minds about the character of conflicts without parallel changes in their underlying national interests. Successful causal stories should emerge from elected and permanent members of the Security Council alike. When causal stories emerge from elected members of the Council we should find evidence that it diffuses to other members including permanent members. If for example, an intentional causal story emerges from an elected member and is diffused such that permanent members adopt the intentional causal story, we should expect that persuasive argumentation has occurred, rather than a masking of great power interests with humanitarian rhetoric. Realism predicts that great powers are like units and will act similarly with regard to national interests. If permanent members articulate different causal stories despite shared national interests, we can expect that persuasion is operating in the Security Council. The successful diffusion of a causal story from an elected member to a permanent member, then, does not require adoption by multiple permanent members to prove that argument can lead to policy change. The norm explanation is further strengthened if there is not a strong convergence

between the national interests of a Council member and the causal story that he or she articulates – whether the member is an elected or permanent member of the Council. Successful causal stories also might emerge from permanent members of the Council and diffuse to elected members. If the story articulated by the permanent member contradicts what we would expect based on its strategic interests, we will have evidence of persuasion, despite the diffusion of the story from stronger to weaker member.

Alternatively, if the winning causal story regularly emerges from permanent members of the Security Council and diffuses to its weaker members there will be cause for realist skepticism that social learning is taking place. Similarly, if we find evidence of hierarchical assertions of material power by permanent members in the form of carrots and sticks to persuade other states to adopt their causal story, the realist explanation will be strengthened. Realists would expect that the winning causal stories would emerge from great powers like the United States and diffuse to other less powerful members who coalesce behind the story because of the power pressures of the United States – military, economic and perhaps even normative. If the causal story articulated by the United States fails to diffuse to other members, despite the exercise of material power, we can conclude that persuasion and norms are doing more work than power politics in the Security Council. If the causal stories articulated by Security Council members regularly reflect the *a priori* interests of the state, we expect that national interests is guiding humanitarian intervention decisions more than international norms. Finally, when actors are accused of violating norms of appropriate behavior – like in the case of Kosovo where intervention was undertaken by a sub-set of members without Security Council

authorization – if states justify their behavior based on the violated norm rather than dismissing the accusations, we also can see that a logic of argumentation at work rather than one of rhetoric or material power.<sup>62</sup>

Despite the effectiveness of these tests, however, skeptics still may argue that there is no evidence that causal stories reflect the beliefs of their proponents. Causal stories might be strategically employed by actors in the pursuit of interests rather than being a sincere articulation of an actor's policy position. It is certainly true that the same causal story can be advanced by a strategic actor and a sincere actor simultaneously. The dissertation does not rule out the possibility that causal stories can reflect the strategic cheap talk of interested actors; nor does it deny the possibility that causal stories are the sincere reflection of principled actors. Power, interests and norms powerfully interact within the Security Council. Members of the Security Council must reconcile the national interests of states with the normative aspirations of peoples.

The value of the United Nations Charter was that it enabled the balancing effect of a global community to be brought to bear so that the historical, cultural and local factors which sometimes were driving conflict ceased to be the only drivers – that you could counter-balance them with global principles and other players who had absolutely no vested interest.<sup>63</sup>

By tracing the emergence, contestation and diffusion processes of competing causal stories, the dissertation demonstrates when and where persuasion is doing more work than power or national interests with regard to Security Council decisions about humanitarian intervention. Nonetheless, the dissertation will further test the impact of

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<sup>62</sup> Risse, "Communicative Action", 19.

<sup>63</sup> Former representative to the Security Council, interview with author, New York City, New York, May 2007.

norms on Security Council decision-making by examining alternative explanations for humanitarian intervention in relation to the cases and non-cases.

### **Alternative Explanations**

To strengthen my argument about the influence of international norms on Security Council decision-making I will test the conventional realist explanation of humanitarian intervention as well as explanations of domestic interests. I will compare the security interests of intervening states with their decisions about intervention. Because most interventions are described *ex post facto* as in the intervener's national interests, I will start my analysis by applying an *a priori* definition of security interests to intervening states based on realist theory. Application of this definition to the cases will demonstrate the extent to which the national security interests of intervening states coincide with their intervention behavior. Realist theory also predicts that similar actors will act similarly in similar contexts. The intervention decisions of multiple great and mid-level powers will be compared to determine the extent to which like actors act similarly with regard to intervention.

The dissertation will examine the security interests of great power members of the Security Council and compare them to the set of 6 cases where humanitarian intervention was possible (1989-2004) examined in the dissertation. Realist theory predicts that humanitarian interventions will be in response to the vital national interests of the intervening states. Realist theory defines national interest in terms of security and power maximization. To test whether or not the members of the Security Council have national

interest in the target states for humanitarian intervention, I will apply to each case, a standard definition of geo-strategic or national interests comprised of two main components: 1) the presence or perception of threat to the intervening state; and 2) actual or perceived opportunities to maximize power

I expect that a humanitarian crisis will be perceived as threatening to great powers under any of the following conditions: 1) if the power projection capabilities of the target state threaten the survival of the potential intervener or a state whose stability is clearly in the intervener's interests; 2) the target state is geographically close to the potential intervener; 3) if refugee flows or spill-over effects threaten the stability of the region in which the intervener is located; and 4) if continued conflict threatens the economic interests of the intervener by disrupting key industries, trade routes, or market access. Alternatively, if we accept that states seek to maximize their relative power, permanent members of the Security Council will not intervene if the regional stability of a rival power is threatened unless doing so it increases the power of the intervener in the rival's region.<sup>64</sup>

I expect that great powers will intervene militarily in humanitarian crises if it creates opportunities for them to maximize their power, and thus, their security. For example, a great power will intervene if the target state: 1) possesses natural resources that are vital to the national interests of the intervening state (oil in the case of the United States) or if possession of natural resources can be exploited for the military or economic advantage of the intervener; 2) it enhances the economic prosperity of the citizens of the intervening state through increased market share and influence or the acquisition of

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<sup>64</sup> John Mearsheimer, *The Tragedy of Great Power Politics* (New York: W.W. Norton & Co., 2001).

valuable goods, resources, or services in absolute or relative terms; 3) if it will enhance its political, military, or economic power with regards to other states; 4) reinforce its global or regional hegemony; or 5) diminish the regional hegemony of a rival. Finally, if interventions are motivated by these interests, I expect that intervention behavior on the ground will include actions by the intervener to gain privileged access to, or control of, natural resources; secure privileged economic agreements; or build military installations on the occupied territory.

If the domestic interests of Security Council members states are doing the most work in influencing humanitarian intervention decisions, I will expect to find evidence that humanitarian intervention in a particular case has become a national interest due to the following factors: the presence of large or powerful diaspora communities; immense legislative pressure; special interest group pressure from NGOs or strong business and economic interests; and significant acts of public protest or outcry. The extent to which domestic interests help to answer the puzzle about humanitarian intervention will be determined by comparing the level of domestic pressure, or lack thereof, to Security Council intervention behavior, justifications for Security Council decisions, and the causal stories articulated by permanent members during formal meetings.

### **Human Rights Norms and Sovereignty Norms in the Security Council**

Sovereignty is considered to be the *grundnorm* of international society.<sup>65</sup> Not only is it one of the world's foremost institutions, it is a cornerstone of political modernity. Sovereignty is a historical, constitutional arrangement of political life. It is

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<sup>65</sup> Robert Jackson, *Sovereignty at the Millennium* (Oxford: Blackwell Publishers, 1999):10.

both a juridical idea and institution based on territoriality. According to Robert Jackson, sovereignty is “a legal institution that authenticates a political order based on independent states whose governments are the principal authorities both domestically and internationally”.<sup>66</sup> The core notion of sovereignty has been enduring according to Jackson, but its practices are “periodically renovated” to respond to historical changes in circumstances.<sup>67</sup> Similarly, Daniel Philpott (1999) conceptualizes sovereignty in terms of “revolutions” or periods of conceptual change where notions of authority are revised in significant ways, despite the permanence of the institution. Because sovereignty is a social construct rather than a material condition, it is the “subject of interpretation and re-interpretation by the participants in the nation-state system”.<sup>68</sup>

The Peace of Westphalia in 1648 marked the fundamental change in European political life that eventually led to the emergence of the institution of sovereignty and constituted the system of sovereign states in Europe. This sovereignty was an “imperial” form of sovereignty, however. It applied only within the bounds of Europe and not in Europe’s relations with the rest of the world.<sup>69</sup> The emergence of liberal political ideas about self-determination in the twentieth century, however, combined with the process of decolonization substantially revised sovereignty in a way that constituted a world-wide sovereign states-system.<sup>70</sup> Another substantial revision to sovereignty occurred with the emergence of minority treaties for the protection of minority populations within the

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<sup>66</sup> Jackson, *Sovereignty at the Millennium*, 10.

<sup>67</sup> *Ibid.*, 8, 12.

<sup>68</sup> Bruce Cronin, “Intervention and the International Community.” In *International Intervention: Sovereignty versus Responsibility*, ed. Michael Keren and Donald A. Sylvan, (London: Frank Cass Publishers, 2002): 150.

<sup>69</sup> Jackson, *Sovereignty at the Millennium*, 21.

<sup>70</sup> Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001): 156.

confines of the modern nation-state at the end of the nineteenth and beginning of the twentieth century. Sovereignty was understood to require a minimal amount of responsibility for the welfare of disadvantaged groups in society. For example, the League of Nations gained judicial and oversight functions over what constituted a “legitimate polity”. The League regulated the rules of sovereign recognition. States were required to establish minority agreements and were subject to League oversight of their behavior in relation to their treatment of their minority populations in exchange for recognition of their sovereignty.<sup>71</sup> While political sovereignty became an institutionalized norm in the twentieth century, in practice there remained a significant tension over whether sovereignty should be determined on a territorial basis – where historical borders are sacrosanct even when they do not match the demographic facts of the state within those borders – or based on the political desire for self-rule of a distinctive group of people.<sup>72</sup> Indeed this unresolved tension about what constitutes legitimate statehood is often a cause of the massive human rights violations that elicit humanitarian interventions. The response of international society to state-led ethnic cleansing in the form of internationally sanctioned military intervention represents yet another revision in sovereignty – perhaps one that demands more stringent guarantees of individual rights within the state.<sup>73</sup> While sovereignty has remained the grundnorm of international society, its substance has been revised.

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<sup>71</sup> Philpott, *Revolutions in Sovereignty*, 156.

<sup>72</sup> Jackson, *Sovereignty at the Millennium*, 22.

<sup>73</sup> Philpott, *Revolutions in Sovereignty*, 156. Another revolution in sovereignty identified by Philpott is the emergence of the European Union and the increasing influence of international law over traditionally internal domestic concerns of states. Interestingly while this revolution seems to be revising sovereignty away from the traditional notion of the nation-state, the simultaneously occurring revolution in sovereignty

Sovereignty is not independent from an international community of sovereign states; state sovereignty requires mutual recognition.

Sovereignty is the constitutive principle of the nation-state system, yet is also derivative of that system. This underlies the paradox of sovereignty: states are sovereign only within the context of a broader global system of states, and thus they can remain independent only by maintaining a system that imposes constraints on their independence”.<sup>74</sup>

Members of the broader global system of states have consistently placed constraints on sovereign independence. The revocation or temporary suspension of sovereignty rights represents more stability than change in the international system. According to Stephan Krasner despite the endurance of the principle of state sovereignty, in practice, states regularly have violated the institution of sovereignty, particularly when it has suited their national interests.<sup>75</sup> Krasner identifies “four modalities of compromise” or deviations from the norms and rules of sovereignty in the international states system. These include contracts, conventions, coercion and imposition. Contracts and conventions confirm international legal sovereignty – the practices of mutual recognition between juridically independent territories – at the same time that it violates or limits Westphalian sovereignty (political organization over a given territory that excludes external intervention in authority structures).<sup>76</sup> States agree to give up a portion of their sovereignty in exchange for other goods and benefits, but at the same time re-inscribe their sovereignty by exercising their authority to enter into contracts. Coercion and

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conceived as responsibility with regards to international intervention reemphasizes the nation-state as primary actor in international politics at the same time it problematizes its authority and borders.

<sup>74</sup> Cronin, “Intervention and the International Community”, 150, 156..

<sup>75</sup> Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).

<sup>76</sup> *Ibid.*, 4; 26.

imposition, on the other hand, violate both these forms of sovereignty. The debate over humanitarian intervention in the Security Council is in part a debate over whether intervention has been “invited” by contract or convention – the failure of the state to protect its population or respect its international agreements – or “coerced” by external powers pursuing national interests. Regardless of whether or not humanitarian intervention can be justified as a breach of contract, Krasner argues that the institutions of international legal sovereignty (external or juridical) and Westphalian sovereignty (internal or empirical) are institutions of “organized hypocrisy” in the system of states. In both cases, clear logics of appropriateness exist – their principles are enduring – but are regularly violated by states operating according to the logic of consequences.<sup>77</sup>

Sovereignty contains elements of both independence and responsibility which can come into conflict, however.<sup>78</sup> This tension is captured within the Charter system of the United Nations, which acquired the executive authority to regulate the rules of sovereignty in 1945. In contemporary international politics, the United Nations Charter provides the normative framework through which contestation over the legitimate use of force occurs. Current debates about the purpose and legitimacy of humanitarian intervention reflect the conflict between the legal and moral norms enshrined within the UN Charter itself, as well as between some of its covenants.<sup>79</sup> Within the UN Charter, the principles of non-intervention into the domestic affairs of states (Article 2,7), the prohibition of the threat or use of force against the territorial integrity of another state

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<sup>77</sup> Krasner, *Sovereignty: Organized Hypocrisy*, 40.

<sup>78</sup> Cronin, “Intervention and the International Community”, 150.

<sup>79</sup> See for example, the Convention on the Prevention and Punishment for the Crime of Genocide and the Declaration on the Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States.

(Article 2, 4), the encouragement of human rights and the dignity and worth of the human person (Preamble, Article 1), and the possibility of the use of force in the common interest (Preamble) or to suppress threats to the peace, breaches of the peace, or acts of aggression (Chapter VII; also Article 1) create competing obligations for UN member states: to promote and protect human rights and to suppress the use of force against, and to protect the sovereignty of member-states.<sup>80</sup> Interpretation of this inherent tension has evolved with the emergence and institutionalization of new human rights norms.

Contemporary human rights norms are generally accepted to be the rights of individuals that are codified within the Charter of the United Nations and its human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which together make up what is termed the International Bill of Human Rights. The Convention on the Prevention and Punishment for the Crime of Genocide (or the Genocide Convention) is also cited by members of the Security Council as providing both humanitarian and human rights justifications for the use of force. The human rights codified in these documents are a pledge to protect the rights of individuals against repressive states. But these guarantees run counter to the ban on intervention into the domestic affairs of sovereign states articulated in the Charter.<sup>81</sup> This tension elicits conflict among member states over which principles – human rights or sovereignty – should be prioritized. Nonetheless, despite violations of these rights by states and claims that culture exempts some states

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<sup>80</sup> The Charter of the United Nations can be found in the Appendix. See also Donnelly, *Universal Human Rights*, 242-3

<sup>81</sup> Iain Atack, “Ethical Objections to Humanitarian Intervention,” *Security Dialogue* 33 (2002), 272-292.

from recognizing particular rights, these documents reflect shared standards of behavior for members of the United Nations General Assembly and the Security Council as well as international legal obligation. The result is what Jack Donnelly has termed an “overlapping international consensus” with regards to human rights.<sup>82</sup>

Traditional practice within the Security Council has been not only to privilege state sovereignty and non-intervention in the domestic affairs of states above human rights violations but also to neglect the latter entirely. Council members have consistently argued that human rights concerns were beyond the purview of the Security Council. The only legitimate legal justification for suspending a state’s sovereignty through the use of force was in self-defense (whether individual or collective) or by decision of the Security Council. States that violated the sovereignty of another state justified the breach according to self-defense and vital interests. Humanitarian justifications for military intervention into the domestic affairs of other states was illegitimate and condemned by the Council as illustrated by the above cases of India’s intervention in Pakistan (1971), the Tanzania in Uganda (1979) and the Vietnam in Cambodia (1979). Beginning in the 1990s, the Security Council authorized non-consensual military intervention into sovereign states that violate human rights norms broadly shared in international society. It has done so by defining human rights violations as a threat to international order – peace and security. Arguably, there are multiple and contrasting notions of sovereignty that operate simultaneously within the UN system. Sovereignty is conceived of both as ‘a world of privacy with weak institutional authority’ and as a right or ‘international license’ granted by the collectivity

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<sup>82</sup> Donnelly, *Universal Human Rights*.

of states.<sup>83</sup> It was in the 1990s that the dialectic between these conceptualizations of sovereignty became starkly apparent: “the sovereignty of states obliged them to meet the norms of the international community but the norms of the international community were a product of the sovereignty of states”.<sup>84</sup> At the start of the twenty-first century, the Security Council has adopted a re-conceptualization of sovereignty in which states have a responsibility to protect their citizens, reflecting evolving international human rights norms.<sup>85</sup>

The renovations, renewals and reinterpretations of sovereignty display shifting emphasis on its different forms or interpretations. Sovereignty has been conceived in juridical or external terms. Here sovereignty is conferred upon states by the other states in international society and authority rests with international law. Sovereignty also has been conceptualized internally in relation to its ability to exercise control over its people and territory. Empirical sovereignty is determined by state capacity and not conferred by others. Finally, sovereignty has been conceived in relation to the legitimacy conferred upon the state by the peoples within its territory. Popular sovereignty identifies the state’s right to rule with its ability to protect the rights of its citizens.<sup>86</sup> So how do these different conceptualizations of sovereignty relate one to another? While each of these conceptualizations can be understood as privileging a different authority, they also can be understood as mutually reinforcing. For example, a state’s empirical sovereignty – the

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<sup>83</sup> Paul Taylor, “The United Nations in the 1990s: Proactive Cosmopolitanism and the Issue of Sovereignty,” in *Sovereignty at the Millennium* ed. Robert J. Jackson (Oxford: Blackwell Publishing, 1999):117.

<sup>84</sup> Taylor, “Proactive Cosmopolitanism,” 143.

<sup>85</sup> S/RES/1674 (2006) and S/RES/1706 (2006).

<sup>86</sup> See S.M. Makinda, “The Global Covenant as an Evolving Institution.” *The International Journal of Human Rights* 6, no. 1 (2002): 113-26.

ability to control a particular territory and people – is relatively meaningless if that sovereignty is not respected by other sovereign states. Further, it can be argued that a state's empirical sovereignty rests in part on its legitimacy with respect to its population. A state that lacks internal legitimacy because of repressive practices towards its people may have greater difficulty maintaining control over the means of violence, resources and territory. However, taken to the extreme, violence and repression of a population may assist a state in maintaining internal control. If popular conceptions of sovereignty were entirely consistent with the fact of empirical sovereignty then the international system of states would look significantly different than it does at the start of the twenty-first century. National minorities currently living within multi-nation states or spread across the borders of multiple nation-states, like the Kurds, would have their own states. Alternatively, repressive and dictatorial regimes would be replaced by states that would vest sovereignty in the will of the people.

Although historically all three of these conceptualizations of sovereignty – juridical, empirical, and popular – have co-existed in international society, international politics has privileged empirical and juridical forms over popular sovereignty. This is evidenced within the UN Charter itself, by the privileging of Article 2(7). Although all three conceptualizations of sovereignty are discussed, respect for human rights is found in the preamble whereas respect for sovereign equality and non-intervention are codified into Charter articles. The Charter itself is a contract between states on the terms of the relations between them and in particular the conditions under which sovereignty will be mutually respected. In the present historical period, however, as norms of democratic

governance and human rights are becoming increasingly salient, it can be reasonably argued that popular sovereignty carries significantly more weight in international politics than it did twenty years ago. It is a mistake to view the UN Charter as an unchanging document with a static view of sovereignty. At the founding of the United Nations, for example, US President Harry Truman gave a speech in which he discussed the need for a document like the UN Charter to be revised and be reinterpreted according to changed historical and political circumstance.

“This Charter, like our Constitution will be expanded and improved as time goes on. No one claims that it is now a final or a perfect instrument. It has not been poured into a fixed mold. Changing world conditions will require readjustments—but they will be readjustments of peace and not of war”.<sup>87</sup>

Kofi Annan, former Secretary-General to the United Nations in his annual report to the General Assembly in 1999, argued that the principles underlying popular sovereignty – human rights and fundamental freedoms – are enshrined in the Charter. He argued that the forces of globalization and international cooperation have redefined the meaning of sovereignty such that the state is becoming understood as the servant of its people rather than the reverse.<sup>88</sup> He also defended the UN Charter from attacks that in its present form it is ill-equipped to deal with the consequences of a world in which human rights are becoming understood as a necessary requirement of peace. Indeed, peace and human rights have come to be understood within the United Nations as inextricably linked with

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<sup>87</sup> President Harry Truman in Paul Gordon Lauren, *The Evolution of Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 2003): 197.

<sup>88</sup> Annan, “Report to the General Assembly”.

the observance of the latter as necessary to bring about the organization's purpose – peace and security to the state's system.<sup>89</sup>

“The Charter is a living document, whose high principles still define the aspirations of peoples everywhere for lives of peace, dignity and development. Nothing in this Charter precludes a recognition that there are rights beyond borders. Indeed, its very letter and spirit are the affirmation of those fundamental human rights. In short, it is not the deficiencies of the Charter which have brought us to this juncture, but our difficulties in applying its principles to a new era; an era when strictly traditional notions of sovereignty can no longer do justice to the aspirations of peoples everywhere to attain their fundamental freedoms”.<sup>90</sup>

The juncture that Annan refers to is the tension between respecting human rights and fundamental freedoms and respecting sovereignty and the non-intervention principle.

### **Organization of the Dissertation**

In Chapter 2 of the dissertation, I examine resolution 688 (1991), passed by the Security Council during the Gulf War, in which the Council demanded that Iraq stop repressing its Kurdish citizens and grant humanitarian organizations and international troops access to its territory to alleviate human suffering. The case of Iraq in 1991 is neither a case of humanitarian intervention nor non-case for the purpose of this dissertation. The use of force in defense of the Kurds and southern Shias was within the context of traditional Security Council practice which permits the Security Council to temporarily suspend sovereignty in circumstances of inter-state war and in its aftermath under Chapter VII of the Charter of the United Nations. Study of the humanitarian character of resolution 688 (1991) and the justifications for its passage provide an important historical context from which the subsequent cases of humanitarian

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<sup>89</sup> Lauren, *Evolution of Human Rights*, 197.

<sup>90</sup> Annan “Report to the General Assembly”.

intervention and non-cases of humanitarian intervention follow. Rather than marking a normative shift on the legitimate purposes of Security Council military intervention, humanitarian concerns in Iraq developed within the framework of inter-state aggression and Iraqi violations of the United Nations norms of sovereignty and non-intervention. Nonetheless, resolution 688 (1991) marked the first time that the Security Council determined that a humanitarian crisis was a threat to international peace and security because of its trans-border impact on neighbor states.

Chapters 3 through 8 examine six conflicts on the Security Council agenda between 1991 and 2004 that were characterized by gross and systematic violations of fundamental human rights. In three of these cases (Somalia, Bosnia-Herzegovina, and Sierra Leone) the Security Council authorized the use of military force for human protection purposes. In the three remaining cases (Rwanda, Kosovo and Darfur, Sudan), the Security Council did not authorize humanitarian intervention despite evidence of genocide or ethnic cleansing. Each of these chapters examine the importance of causal stories for explaining Security Council decision-making and analyzes the process of contestation between competing causal stories, identifying the intervening factors that explain the success of competing causal stories. In each country study, I test my hypotheses about causal stories against alternative explanations of Security Council selectivity with regards to humanitarian intervention. The conflicts are examined in chronological order in order to trace the emergence of a nascent norm of humanitarian intervention and how the conditions of its use change over time.

In Chapter 3, I examine the Security Council decision to authorize the use of military force during the Somalia conflict (1992-1995). The case of Somalia is notable because it represents the first time that the Security Council defined a humanitarian crisis in itself as a threat to international peace and security. I argue that Security Council intervention was possible in Somalia because Security Council members shared a causal story about the character of the conflict and because the use of humanitarian intervention in this case complemented rather than challenged the norm of sovereignty since Somalia lacked sovereignty authority.

Chapter 4 is on the conflict in Bosnia-Herzegovina (1992-1995). At stake in the debate over authorization for the use of force in Bosnia-Herzegovina was the Security Council's ability to respond to a case of contested sovereignty. In the case of Bosnia, disagreement among Security Council members on the cause of the conflict and the character of the violence stymied the efforts of the United States and most of the elected members to prompt early humanitarian intervention. The factors that helped the intentional causal story about inter-state aggression and ethnic cleansing win out over competing causal stories included the degree to which humanitarian intervention in this case complemented the exercise of state sovereignty, the support of a prominent permanent member of the Security Council and congruence between the intentional causal story and expert testimony, forensic evidence and media imagery of human rights violations. Humanitarian intervention happened in Bosnia-Herzegovina after most of the permanent members changed their minds about the character of the conflict and moved

from articulating an inadvertent causal story about civil war to an intentional one about ethnic cleansing.

Chapter 5 examines the failure of the Security Council to authorize the use of military force to stop the genocide in Rwanda. I argue that the Security Council failure in Rwanda demonstrates that there are limits to the costs that states are willing to incur to save strangers from genocide; however the evidence does not support the realist claim that states only engage in humanitarian intervention when their vital interests are at stake. Instead, I argue that it is significantly more difficult to unite Security Council members around an intentional causal story and to prompt humanitarian intervention when the state is the principle perpetrator of human rights abuse. Exercising the practice of humanitarian intervention in this case would bring human rights norms into tension with sovereignty and non-intervention norms. When competing norms come into conflict, the stronger, more internalized norm trumps the weaker and in the case newly emerging norm. National interests are an important but insufficient factor for explaining Security Council decisions about humanitarian intervention.

Chapter 6 looks at another non-case of Security Council authorized humanitarian intervention. In the case of Kosovo, irreconcilable differences among permanent members of the Security Council prevented the authorization of humanitarian intervention. States not only disagreed on the character of the violence, they fundamentally disagreed about what constituted the sovereign responsibilities of the state. The violence in Kosovo brought into sharp relief the tensions between the norms of domestic sovereignty and non-intervention with norms about the prevention of genocide

and the protection of human rights. The failure of the Security Council to authorize humanitarian intervention eventually led to an unauthorized humanitarian intervention by the North Atlantic Treaty Organization (NATO), which shared five members with the Security Council. The NATO intervention was illegal but largely considered legitimate by members of the United Nations. The legal crisis that ensued prompted the creation of an independent commission to reconceptualize sovereignty in a way that reconciled it with fundamental human rights. The threat to the Security Council's legitimacy and authority caused by its failure to authorize military force to stop ethnic cleansing in Kosovo and NATO's subsequent intervention without authorization is evidence of the increasing legitimacy of a new norm of humanitarian intervention.

In Chapter 7, I examine the increasing importance of human rights principles to Security Council discussions about the use of force to stop gross violations in Sierra Leone. In Sierra Leone, the government was not the perpetrator of human rights violations erasing the tension between the authorization of humanitarian intervention and the protection of traditional conceptions of state sovereignty. United behind an intentional causal story in which the Government of Sierra Leone and its people were the victim of rebel group atrocities, the Security Council authorized the use of military force to halt rebel atrocities and restore the democratically elected government to power. The lack of great power interests in Sierra Leone forcefully illustrates the increasing importance of human rights norms within the Security Council. In fact, the Security Council not only authorized humanitarian intervention, it mandated civilian protection and human rights training as a part of the mandate for the peace operation and it

established a hybrid tribunal to prosecute perpetrators of human rights abuse over-ruling a domestically negotiated amnesty provision.

Chapter 8 traces the emerging norm of the responsibility to protect and questions why its increasing acceptance among Security Council members has not resulted in humanitarian intervention in the Darfur region of Sudan. In this chapter I show how the movement to reconceptualize sovereignty has influenced Security Council decision-making. I argue that significant barriers stand in the way of humanitarian intervention in Darfur. The first is the lack of unity among permanent Security Council members behind a causal explanation for the conflict. Permanent members disagree about which party bears principle responsibility and whether the human rights violations are systematic. Further, because the Sudanese Government has been identified through expert testimony and forensic evidence as a perpetrator of massive human rights violations, the use of military force to protect its population without its consent brings the practice of humanitarian intervention into conflict with the traditional conception of state sovereignty. I argue that although the responsibility to protect seeks to ease the tension between human rights and non-intervention by reconceptualizing sovereignty to include civilian protection, its status as an emergent norm means that the principle is ahead of its practice, particularly when faced with geo-political realities that make the possibility of intervention less likely.

In the final chapter, I summarize the principle findings of the dissertation. First, I argue that humanitarian intervention becomes possible when Security Council members, including most of its permanent members, articulate an intentional causal story about the

conflict and the human rights abuses that characterize it. When contestation between rival causal stories happen, the success of any particular causal story over the others is mediated by the degree to which humanitarian intervention in that particular case would conflict with the highly internalized norms of sovereignty and non-intervention; the support of a powerful permanent member of the Security Council, like the United States; and a story's coherence with expert testimony, forensic evidence and media imagery on the cause and character of the conflict. In addition to summarizing the findings of each case study, I examine new evidence that shows that the responsibility to protect norm has been formally endorsed by the general membership of the United Nations and codified in the official documents of the Security Council. I also review the recent decisions of the Security Council on the continuing violence in Darfur as well as their justifications. This new evidence strengthens the findings of the dissertation and raises serious doubt about explanations of humanitarian intervention that rely on vital national interests without examining the way in which norms shape and alter national interests over time

## Chapter 2

### **Resolution 688 (1991) and repression of Kurds and Shias in Iraq: Setting a Precedent for Security Council Humanitarian Action?**

The end of the Cold War resulted in a key change in Security Council decision-making – the more frequent resort to enforcement measures including sanctions and the use of force under chapter VII of the Charter of the United Nations.<sup>1</sup> Ninety-three percent of all Chapter VII resolutions passed by the Security Council between 1946 and 2002 have been adopted since the end of the Cold War. Nearly 50% of all Chapter VII resolutions have concerned the post-Cold War conflicts in Iraq and territories of the former Yugoslavia.<sup>2</sup> It was the Security Council’s ability to respond effectively and in concert in 1991 to inter-state aggression by Iraq against Kuwait that ushered in a new era of optimism about the role of the Council in maintaining international peace and security. Security Council members made deliberate note in their formal remarks to the Council of the changed international climate of cooperation, “new political thinking”, and a “strong sense of harmony” among members.<sup>3</sup> Council members and observers believed that the Security Council was finally functioning as originally intended to maintain international peace and security and to protect the sovereignty, national independence and territorial integrity of weak states.<sup>4</sup> In this historical context of widespread Council unity and recent success, the Security Council had a political opportunity to re-examine the

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<sup>1</sup> Malone, “Introduction,” pp. 3-4.

<sup>2</sup> Wallensteen, Peter and Patrik Johansson. “Security Council Decisions in Perspective” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David E. Malone (Boulder: Lynne Rienner Publishers, 2004), p. 19.

<sup>3</sup> S/PV.2933 (USSR); S/PV.2938 (Colombia, USA, Canada).

<sup>4</sup> S/PV.2932 (Kuwait; USSR).

legitimate use of force in international politics, including the possibility of armed humanitarianism.<sup>5</sup>

Following the conclusion of the military operation to reverse Iraqi aggression, Iraq was racked by internal revolts against Saddam Hussein's rule in the northern and southern regions of the country. Hussein's brutal and disproportionate response resulted in a humanitarian crisis that threatened neighboring states. In April 1991 the Security Council departed from traditional practice when it condemned Iraqi violations of human rights and demanded international access to its population and territory. The passage of resolution 688 (1991) represents the first time that the Security Council defined a humanitarian crisis as a threat to international peace and security. It demonstrated that the Security Council was willing to define internal human rights violations as a threat when it had trans-border effects. The use of force by the United States, the United Kingdom and France to protect Iraqi Kurds was not a humanitarian intervention, however. It occurred within the context of a conventional war in which the sovereignty of the aggressor state had been temporarily suspended.<sup>6</sup> It did not represent a fundamental normative shift toward humanitarian intervention; nor was the use of force based solely on humanitarian motivation. Nonetheless, the decision to define human rights abuses as an international security threat reflected a change in what constituted national interests by members of the Security Council. The creation of safe zones in Iraq provided an opening for debate within the Security Council about the appropriateness of human rights considerations to deliberations on the maintenance of international peace

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<sup>5</sup> Robert Jackson, "Armed Humanitarianism," *International Journal* XLVIII (1993): 579-606.

<sup>6</sup> Jackson, "Armed Humanitarianism," 593.

and security. The case of Iraq, then, provides an important backdrop for future Security Council decisions about humanitarian intervention. Widespread agreement among Security Council members on the character of the violence, its perpetrator and its victims made it possible for Council debates to focus on the appropriate response to the humanitarian crisis, rather than its cause. Whether or not the members of the Security Council intended to create a precedent for the use of force in defense of human rights, its reaction to the repression of Kurds and Shias by the Iraqi Government was an important development for the future emergence of a new norm of humanitarian intervention. Careful examination of the discourse in formal meetings of the Security Council on the character of the threat in northern Iraq and the appropriate Security Council response demonstrates that the use of military force to protect at-risk populations in Iraq was a result of multiple factors including the pursuit of strategic interests, domestic pressure, and the promotion of human rights. Critically, however, definitions of national interests were shaped by increased acceptance of human rights principles. In Iraq, the Security Council demonstrated its willingness to define human rights violations as a threat to international peace and security when they threatened the sovereignty and territorial integrity of neighboring states.

### **Background to the Conflict**

In 1991 Kurds represented between 23 and 27% of the population of Iraq, between 19 and 24% of the population of Turkey and between 10 and 16% of the population of Iran. The Kurds are the fourth largest national group in the Middle East yet

they lack political independence and the protection of a sovereign nation-state.<sup>7</sup> At the end of World War I, following the Ottoman Empire's defeat, the Treaty of Sèvres (1920) was negotiated to create three Arab states – Hejaz (Saudi Arabia), Syria and Iraq – as well as an Armenian state and a Kurdish state. By 1923 however, the Treaty of Lausanne, superseded the Treaty of Sèvres redrawing the political and geographical map to include the creation of the three Arab states but rejecting the creation of the Armenian and Kurdish states. Instead, Iraq was extended northward to incorporate a predominantly Kurdish territory that was rich in oil.<sup>8</sup> Under the British mandate the Kurds in Iraq were guaranteed political representation and the use of their language. When the British mandate was terminated in 1930 however, the Anglo-Iraqi treaty pledges for the protection of Kurdish political or cultural rights diminished.<sup>9</sup>

Kurds have been disadvantaged relative to the majority ethnic groups in the states in which they live and they have agitated for greater autonomy and self-determination. Iraq and Turkey have worked together since the 1930s to suppress Kurdish dissent in their countries.<sup>10</sup> In Iraq, the relationship between the Iraqi government and its Kurdish minority has been tenuous. The Kurds represent Iraq's largest non-Arab minority (nearly

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<sup>7</sup> Peter Malanczuk, "The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War," *European Journal of International Law* 2 (1991): 115 citing H. Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (1986): 179.

<sup>8</sup> Malanczuk "The Kurdish Crisis and Allied Intervention," 116.

<sup>9</sup> Malanczuk "The Kurdish Crisis and Allied Intervention," 116.

<sup>10</sup> Middle East Watch, *Human Rights In Iraq* (New York: Yale University Press, 1990), 79. Lawrence Freedman and David Boren, " 'Safe Havens' for Kurds in Post-War Iraq" In *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights*, ed. Nigel S. Rodley (London: Brassey's, 1992): 44.

4 million). They were granted nominal autonomy in the 1970s.<sup>11</sup> Nonetheless, Iraqi Kurds have been frequent victims of government repression. During the 1980s in particular, Iraqi Government repression of the Kurdish minority was brutal. During the final years of the Iran-Iraq war, the Iraqi state destroyed thousands of Kurdish villages and forcibly relocated its inhabitants because of perceived disloyalty.<sup>12</sup> During what came to be known as the Anfal campaign, tens of thousands of Kurdish civilians disappeared, most of whom are believed to have been murdered based on forensic evidence found in mass graves.<sup>13</sup> Between Spring 1997 and Fall 1998, Iraq used chemical gas to attack Kurdish villages. It is estimated that in addition to killing tens of thousands of Kurds, every Kurdish village in Iraq was destroyed along with most of traditional Kurdish life. In a particularly egregious incident, 5,000 civilians living in Halabja near the Iranian border died following the chemical bombardment of the area by Iraqi armed forces in March 1988.<sup>14</sup> The brutality of these attacks and the genocidal intent of the Iraqi regime would make them a strong case for humanitarian intervention but they were not discussed in the Security Council at the time.

In February 1990, just months prior to Iraq's invasion of Kuwait, Middle East Watch published an extensive 164 page human rights report on the various violations of internationally recognized human rights perpetrated against civilians by the Iraqi state.

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<sup>11</sup> Jane Stromseth, "Iraq's Repression of Its Civilian Population: Collective Responses and Continuing Challenges," In *Enforcing Restraint: Collective Intervention in Internal Conflicts*, ed. Lori Fisler Damrosch (New York: Council on Foreign Relations Press, 1993), 81.

<sup>12</sup> Whitley, Andrew. "Human Rights in Iraq and Iraqi-Occupied Kuwait" *Middle East Watch*, House Foreign Affairs Committee, January 8, 1991. See also Freedman and Boren, "Safe Havens," 45.

<sup>13</sup> Middle East Watch & Physicians for Human Rights, *Unquiet Graves: The Search for the Disappeared in Iraqi Kurdistan* (New York: Middle East Watch, February 1992).

<sup>14</sup> Human Rights Watch, *Whatever Happened to the Iraqi Kurds?* March 11, 1991. See also Middle East Watch, *Human Rights in Iraq*, 83.

These violations included but were not limited to: arbitrary arrest, imprisonment and deportation; torture; disappearance; summary and political executions; and the use of chemical weapons against Kurds in the North. The report also criticized the United States' conscious disregard of "brutal and widespread Iraqi abuses."<sup>15</sup> A shift in US policy with regard to Iraqi human rights practices, however, coincided with the Persian Gulf War.

Iraq invaded and occupied Kuwait on 2 August 1990. Later that same day, the United Nations Security Council passed Resolution 660 (1990) condemning the Iraqi invasion of Kuwait and identifying it as a breach of international peace and security. The resolution demanded immediate and complete Iraqi withdrawal from the territory of Kuwait and was passed unanimously by the Security Council.<sup>16</sup> In total, the Security Council passed 12 resolutions between 2 August and 29 November 1990 affirming the sovereignty and territorial integrity of Kuwait and demanding that Iraq withdraw its armed forces from Kuwaiti territory.

The harmony and near unanimity of the Security Council with regard to its condemnation of Iraqi aggression and its defense of Kuwait were notable. Both permanent and elected members of the Security Council regarded its response as "historic" for the United Nations because the Security Council was "rediscovering its true mission, as conceived in San Francisco".<sup>17</sup> The events were deemed so important that the Security Council convened at the foreign ministerial level twice during debates about the

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<sup>15</sup> Middle East Watch, *Human Rights in Iraq*, ix.

<sup>16</sup> The vote in the Security Council was 14 in favor, 0 opposed, and 0 abstentions, however, Yemen did not participate in the voting. See S/PV.2932, 2 August 1990 and S/RES 660, 2 August 1990.

<sup>17</sup> S/PV.2938, 25 August 1990. See statements by the representatives of Colombia, the United States of America and Canada.

situation in Iraq bringing the total number of Security Council meetings at the foreign ministerial level to 4 times in its entire history.<sup>18</sup>

Security Council resolutions with regard to Iraq and Kuwait became increasingly punitive along with Iraqi non-compliance. In addition to condemning Iraqi violations of international law and demanding compliance with its resolutions, the Security Council created an economic, military and financial embargo (Resolution 661), froze Iraqi assets, established a naval blockade of Iraq (Resolution 665), and enacted a restrictive sanctions regime backed by force. On 29 November 1990, the Security Council passed Resolution 678 (1990) authorizing the use of military force to end the Iraqi occupation of Kuwait. The resolution passed with the approval of 12 Security Council members. Only Cuba and Yemen opposed the resolution while China abstained. The Chinese representative argued that China was opposed to the use of force to settle international disputes but because Iraq had acted forcefully against Kuwait that it would not vote against the resolution.<sup>19</sup> Resolution 678 (1990) authorized member-states of the United Nations cooperating with the Government of Kuwait “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area” unless Iraq fully implemented all foregoing resolutions by January 15 1991.<sup>20</sup>

Coalition Forces headed by the United States launched Operation Desert Storm to reverse Iraqi aggression against Kuwait on 17 January 1991 with a massive air assault. Weeks of intensive bombing was followed by a ground offensive that was launched on 24

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<sup>18</sup> S/PV.2963, 29 November 1990, p. 6, statement by the United States of America.

<sup>19</sup> Ibid., pp. 61-62, statement by China.

<sup>20</sup> S/RES/678 (1990), 29 November 1990.

February 1991. The ground war lasted 100 hours ending on February 28. The defeat of Iraqi President Saddam Hussein and his army was swift and definitive. Nonetheless, the Coalition did not enter Baghdad nor did it require the removal of Saddam Hussein as a condition of surrender. It had achieved its limited agenda of the removal of Iraqi forces from Kuwait. But the seemingly straight-forward military operation to reverse Iraqi aggression against neighboring Kuwait and the reaffirmation of the latter's sovereignty and territorial integrity in accordance with Charter Principles took a decidedly radical turn weeks later when the Security Council condemned Iraq for the ill treatment of its own citizens.

Saddam Hussein's rule was characterized by the political exclusion of the majority of Iraq's population. The civilian and military leaders of the Baath regime were disproportionately dominated by Sunni Muslims. Although Shia Muslims represented more than 50% of the population in Iraq at the beginning of the 1990s, the Shia historically have been politically and economically disadvantaged in Iraqi society and the target of significant political violence by Saddam Hussein's regime.<sup>21</sup> At the beginning of March 1991, just days after the defeat of Saddam Hussein and the Iraqi army by the Coalition Forces, Iraqi army deserters and local residents of the Southern Shia city of Basra revolted against Saddam Hussein's rule. Taking advantage of what they thought was a temporary vacuum of power during which the regime was vulnerable, opponents sought to attack the regime while it was still on the defensive and there was extensive dislocation remaining in Baghdad. Opponents also suspected that they would receive

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<sup>21</sup> H.C. Metz, *Iraq: A Country Study* (Washington, DC: Library of Congress, 1990), 63; 96-7 in Stromseth, "Iraq's Repression of its Civilian Population," 83.

support, if only covertly, from the coalition forces that had removed the Iraqi army from Kuwait.<sup>22</sup> The revolt spread quickly and spontaneously throughout the South of Iraq.<sup>23</sup> The revolts started almost immediately in Basra following the ceasefire and spread over the next few days to Karbala, Najaf, Hilla, Nasiriyya, and al-Amar. During the revolts, rebels were aided by civilians in removing government forces from their headquarters, prisons and barracks. According to Middle East Watch, there was some degree of planning for the revolts by opposition groups however these groups received spontaneous, outpouring support from civilians who were angry about government repression and the devastation of multiple wars fought by the regime.<sup>24</sup>

Saddam Hussein, however, remained both powerful and attentive to internal threats to his regime. Using his elite Republic guard and with support from the army, he re-gained control of Southern Iraq on 13 March 1991. Retribution was swift and harsh. Iraqi troops engaged in wide-scale atrocities against the civilian population. The violence was particularly heavy in the south marshes where the local Shia population had congregated rather than face extensive risks to escape in the flat, exposed terrain of the south.<sup>25</sup> Middle East Watch reports,

“Those who remained in the south were at the mercy of advancing government troops, who went through neighborhoods, firing indiscriminately and summarily executing hundreds of young men...Refugees alleged to Middle East Watch and others that Iraqi helicopters dropped a variety of ordnance on civilians, including napalm and phosphorus bombs, chemical agents and sulfuric acid.

Representatives of human rights and humanitarian organizations who saw

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<sup>22</sup> Freedman and Boren, “Safe Havens,” 45.

<sup>23</sup> Carol McQueen, *Humanitarian Intervention and Safety Zones: Iraq, Bosnia and Rwanda* (New York: Palgrave, 2005), 26.

<sup>24</sup> Human Rights Watch, 1992, *Iraq and Occupied Kuwait*, [www.hrw.org/reports/1992/WR92/MEW1-02.htm](http://www.hrw.org/reports/1992/WR92/MEW1-02.htm). 11/13/06, p. 6.

<sup>25</sup> Human Rights Watch. 1992, *Iraq and Occupied Kuwait*, [www.hrw.org/reports/1992/WR92/MEW1-02.htm](http://www.hrw.org/reports/1992/WR92/MEW1-02.htm). 11/13/06, p. 8.

refugees with burn injuries or photographs of such injuries were unable to confirm the source of these burns. However, doctors who examined wounded Iraqis said that some of their burns were consistent with the use of napalm.”<sup>26</sup>

At the same time that Saddam Hussein’s revolutionary guard was battling revolt in the South, Iraqi Kurds in the North staged an uprising that began on 5 March 1991. By 21 March Kurdish insurgents controlled every major city in its territory except for Mosul.<sup>27</sup> Although the Coalition had forced the Iraqi army back across the border with Kuwait, the army and Republican Guard largely remained loyal to Saddam Hussein. Military forces used helicopter gun-ships, tanks, and artillery to indiscriminately slaughter Kurds in the north. Within days hundreds of thousands of Kurds became stranded in the mountains between Iraq and Turkey as they sought to escape the repression. The refugees were without food, water or medicine. They began to die in the thousands daily, most of the first victims being children and elderly. The international media presence in the region was substantial due to their coverage of the Persian Gulf War. The live television images of the utter devastation of the Kurdish community was broadcast internationally and caused the domestic populations of coalition states to pressure their governments to respond to the crisis, in part because they believed the war was a cause of the rebellion.<sup>28</sup> Human rights organizations, in particular, criticized the Coalition forces and especially the United States for encouraging Iraqis to stage a coup but failing to come to their aid. According to Middle East Watch, “Many of those who

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<sup>26</sup> Human Rights Watch. 1992, *Iraq and Occupied Kuwait*, [www.hrw.org/reports/1992/WR92/MEW1-02.htm](http://www.hrw.org/reports/1992/WR92/MEW1-02.htm). 11/13/06, p. 8.

<sup>27</sup> Human Rights Watch. 1992, *Iraq and Occupied Kuwait*, [www.hrw.org/reports/1992/WR92/MEW1-02.htm](http://www.hrw.org/reports/1992/WR92/MEW1-02.htm). 11/13/06.

<sup>28</sup> See James Mayall, “Non-intervention, Self-Determination and the New World Order,” *International Affairs* 67 (1991): 3, 421-429.

took part [in the uprising] expected support from American troops who were stationed near the city outskirts, especially after President Bush's 15 February call on Iraqis to rise up and oust Saddam."<sup>29</sup>

The result of intensified fighting between Iraqi insurgents and the government of Saddam Hussein was a humanitarian catastrophe. According to Middle East Watch, over 1.5 million Iraqis escaped the attacks in the cities during the months of March and April. Yet many of the displaced were injured or died during their flight from Iraq due to poor conditions. At least 5,000 were killed by landmines as they attempted to cross the mined borders with Iraq and Turkey.<sup>30</sup> By the beginning of April, at least 400,000 Kurdish refugees were pushed into the mountains between Turkey and Iraq. The daily death toll for these refugees was estimated to be 1,000 a day. In addition to the Kurds who sought refuge in Turkey, up to 1 million Kurdish refugees crossed the border into Iran at the beginning of April. Iran also became host to an additional 70,000 Shia refugees.<sup>31</sup> The massive refugee flows, particularly of Kurds, threatened the stability and security of neighboring Iran and Turkey. The stability of Turkey, however, was a particular concern for at least three permanent members of the Security Council – France, the United Kingdom, and the United States – who were its NATO allies.

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<sup>29</sup> Human Rights Watch. 1992, *Iraq and Occupied Kuwait*, [www.hrw.org/reports/1992/WR92/MEW1-02.htm](http://www.hrw.org/reports/1992/WR92/MEW1-02.htm). 11/13/06. President George H. Bush made the following remarks to the American Academy for the Advancement of Science on 15 February: "But there's another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hand to force Saddam Hussein the dictator to step aside and to comply with the UN and then rejoin the family of peace-loving nations". *Financial Times* 16-17 February 1991.

<sup>30</sup> Human Rights Watch. 1992, *Iraq and Occupied Kuwait*, [www.hrw.org/reports/1992/WR92/MEW1-02.htm](http://www.hrw.org/reports/1992/WR92/MEW1-02.htm). 11/13/06, p. 7.

<sup>31</sup> Agency for International Development, *Iraq: Displaced Persons and Refugees*, 17 April 1991.

Also in March, Middle East Watch released an extensive report detailing Iraq’s past human rights violations against its own population. Specifically, the report focused on the Iraqi regime efforts in 1997 and 1998 to destroy the Kurdish way of life by

**Figure 2.1: Timeline of Key Events Iraq (1990-1992)**

2 August 1990	Iraq invades Kuwait
2 August 1990	Security Council passes resolution 660 (1990 demanding Iraqi withdrawal from Kuwait
29 November 1990	Resolution 678 (1990) authorizes the use of all necessary means to enforce resolution 660 (1990)
17 January 1991	Coalition forces launch Operation Desert Storm with air attacks
15 February 1991	President Bush speech encouraging domestic removal of Saddam Hussein
24 February 1991	Ground war begins
28 February 1991	Operation Desert Storm ends
March 1991	Shia uprisings begins in southern Iraq
5 March 1991	Kurdish uprising begins
11 March 1991	Iraq regains control of southern Iraq – repression is brutal; Middle East Watch releases report on Iraqi chemical weapon attacks against Kurds in 1997 and 1998
21 March 1991	Kurds control every major city in their territory except Mosul
2 April 1991	French draft resolution to protect Iraqi Kurds rejected by the Security Council
5 April 1991	Resolution 688 (1991) passed by Security Council; defines effects of Iraqi repression a threat to international peace and security and demands humanitarian access to Iraqi territory
	France, UK, USA establish no-fly zone above 36 <sup>th</sup> parallel to protect Kurds in northern Iraq
June 1992	Middle East Watch releases its report, “Endless Torment: Disappeared in Iraq in the aftermath of the 1991 Uprising”
11 August 1992	Special Representative for Human Rights details Iraqi non-compliance with resolution 688 (1991)
26 August 1992	No-fly zone established below 32 <sup>nd</sup> parallel to protect Shias in southern Iraq

attacking civilians using chemical weapons and destroying all Kurdish villages.<sup>32</sup> At the very moment that the military of Saddam Hussein was indiscriminately attacking Iraqi Kurds in northern Iraq, Middle East Watch presented compelling evidence to the Security Council and its member states of past far-reaching and systematic efforts to destroy the Kurdish minority in Iraq. The report chastised the allied powers and in particular the United States for failing to assist the Kurds of *Halabja* or to punish the Iraqi regime until years later *after* it had invaded Kuwait.<sup>33</sup> Middle East Watch exacted pressure on Western states and particularly the United States for its past failures to prevent or punish human rights abuses against the Kurds in Iraq at the same time that it was pressuring the US and its allies to stop or punish the Iraqi regime for abuses against the Kurds in the present.

### **National Interests, Human Rights and the Passage of Resolution 688 (1991)**

Turkey and Iran with the support of France requested that the refugee crisis be addressed by the Security Council. Nonetheless, France's initial effort to gain Security Council support for the protection of the Kurds in Iraq failed. On 2 April, a draft resolution to provide protection for the Kurds was opposed by China, the USSR and the United States who feared the creation of a precedent for Security Council involvement in domestic affairs.<sup>34</sup> The United States Government also was reluctant to involve US troops in what it viewed as a longstanding civil conflict. A new draft resolution was

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<sup>32</sup> Human Rights Watch, *Whatever Happened to the Iraqi Kurds?* March 11, 1991.

<sup>33</sup> Human Rights Watch, *Whatever Happened to the Iraqi Kurds?* March 11, 1991.

<sup>34</sup> Malanczuk, "The Kurdish Crisis and Allied Intervention," 119 citing Keesing's Record of World Events, Vol. 37 (1991) 38, 127 (News Digest for April 1991).

circulated in advance of the 5 April meeting of the Security Council on the situation in Iraq. This draft was sponsored by Belgium and France and co-sponsored by the UK and the US. In addition to the 5 permanent and 10 elected members of the Security Council, sixteen additional member-states of the United Nations requested to participate in the deliberations on how to respond to the humanitarian crisis.<sup>35</sup> During the meeting, Turkey informed the Council that in total nearly 1 million Iraqis could be heading toward the Iraqi-Turkish border and that no single country could cope with such a massive influx of destitute people. Turkey described the mounting humanitarian crisis as a “grave threat to the peace and security of the region” both because of “the scale of the human tragedy” and because Iraqi mortar shells were landing on the Turkish side of the border.<sup>36</sup> The representative of the Islamic Republic of Iran stated that it expected to receive a half million Iraqi refugees in the following days. Echoing the concerns of Turkey, Iran argued that the crisis inside of Iraq had international dimensions because it threatened the security of neighbor countries with the potential of further destabilizing the entire region. Iran urged the Security Council to deal “both with the causes of the crisis and with its immediate symptoms.”<sup>37</sup>

On 5 April the Security Council did something it had never done before. It defined the effects of Iraqi repression against its civilian population as a threat to international peace and security. Resolution 688 (1991) demanded that the Iraqi

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<sup>35</sup> The ten elected members of the Security Council at this time were Belgium (President), Austria, Cote d'Ivoire, Cuba, Ecuador, India, Romania, Yemen, Zaire, and Zimbabwe. The sixteen non-voting member-states were Canada, Denmark, Germany, Greece, the Islamic Republic of Iran, Iraq, Ireland, Italy, Luxembourg, the Netherlands, Norway, Pakistan, Portugal, Spain, Sweden, and Turkey.

<sup>36</sup> Statement by Turkey in S/PV.2982, 5 April 1991, pp. 4-6.

<sup>37</sup> Statement by Iran in S/PV.2982, 5 April, 1991, pp.13-15,

Government cease violating human rights and international humanitarian law and open its sovereign territory to humanitarian relief organizations and military observers. Of all the Security Council resolutions passed with regard to the situation between Iraq and Kuwait, however, resolution 688 (1991) was the most divisive. It received fewer votes of support than previous resolutions and nearly all of the participants in the debate, including those who supported the resolution, reiterated their support for the principle of non-interference in the domestic affairs of states. Resolution 688 (1991) was passed with 10 states in favor, 3 states opposed (Cuba, Yemen and Zimbabwe) and 2 state abstentions (China and India).

In part, Resolution 688 states,

“The Security Council,

Mindful of its duties and responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

Recalling Article 2, paragraph 7, of the Charter of the United Nations,

Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region,

Deeply disturbed by the magnitude of human suffering involved,...

1. Condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, *the consequences of which threaten international peace and security in the region*; [emphasis added]
2. Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression and expresses the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;

3. Insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations;

Although the resolution was unprecedented for redefining regional and international security interests to include the protection of human rights, it is important to note that it also reaffirmed the principle of non-interference in the internal affairs of member-states (Article 2, paragraph 7), despite demanding immediate and unfettered access to Iraq's sovereign territory and the end to human rights violations against its citizens.

Several representatives described in great detail how repression by Iraqi regime and the peril faced by displaced Iraqis threatened regional and international security interests. Their statements indicate that human rights norms were shaping how they described their national and international interests. The representative of USSR described the "alarming situation" that constituted a regional threat to international peace and security,

Hundreds of thousands of peaceful inhabitants, including women, the elderly and children, barefoot and hungry, are fleeing from Iraq along snow-covered mountain paths under artillery fire and bombardments, trying to save their lives.<sup>38</sup>

The representative from Germany described it as "absolutely shocking and contrary to the norms of international law" that Iraqi soldiers were "firing upon innocent and defenceless civilians, destroying homes and hospitals and harassing and attacking fleeing populations".<sup>39</sup> The representative of Spain noted the degree to which the humanitarian catastrophe along the borders of Iraq had shocked the consciousness of individuals around the world.

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<sup>38</sup> Statement by USSR in S/PV.2982, 5 April 1991, pp. 59-60.

<sup>39</sup> Statement of Germany in S/PV. 2982,5 April 1991, p. 73.

In addition to the enormous magnitude of suffering and the loss of human life, this repression has created a problem of displaced persons and refugees of epic proportions, has deeply moved the public opinion of the world, and of Spain in particular...<sup>40</sup>

Remarkably, there was little debate about the nature of the atrocities being committed, the depth of the humanitarian disaster or those culpable for the rights violations. There was widespread agreement among Security Council members that indiscriminate and violent attacks by the Iraqi regime against civilian populations in the north and south were the cause of the humanitarian catastrophe. The Security Council members articulated an intentional causal story about Iraqi repression. Debate in the Security Council instead centered on whether or not those violations constituted a threat to international peace and security and whether the Security Council was legitimately authorized to make demands on Iraq's behavior with regards to its civilian population. Further, they debated whether making demands on Iraqi domestic behavior challenged the norm of non-intervention in the sovereign, domestic affairs of states enshrined in Article 2, paragraph 7 of the Charter.

In total 18 of the 31 states participating in the debate described Iraqi repression and the resultant human rights tragedy as a threat to regional or international peace and security.<sup>41</sup> The dominant justification for this position was the trans-border impact of refugee flows. Ten of these eighteen states, however, at the same time reaffirmed their strong support for article 2, paragraph 7 of the UN Charter which protects the domestic jurisdiction of states from external interference. The prevailing view in the Council was

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<sup>40</sup> Statement by Spain, in S/PV. 2982, 5 April 1991, p. 81.

<sup>41</sup> These states were Canada, Germany, Netherlands, Luxembourg, Denmark, Sweden, Turkey, Pakistan, Iran, Ecuador, Belgium, Zimbabwe, UK, USSR, Cote d'Ivoire, France, Austria and USA.

that it was the extraordinary nature of the Iraqi situation that justified Security Council action to address the root cause of regional instability within the borders of Iraq rather than a transformation in the normative standing of the non-intervention principle. For example, the representative from Belgium summed it up this way,

As far as Belgium is concerned, such support is in this case justified by the very specific considerations arising from an exceptionally serious situation which threatens peace and security in the region.<sup>42</sup>

Only 3 of the voting members of the Security Council (Cuba, Yemen and Zimbabwe) argued that it was not within the competence of the Security Council to address the humanitarian crisis.

The Security Council simply has no right to violate the principle of non-intervention. It has no right to intervene unduly in the internal affairs of any State. It has no right to intervene unduly in matters within the competence of other organs of the United Nations.<sup>43</sup>

The representative of Yemen argued that the resolution also politicized a humanitarian issue by focusing on only a segment of the affected Iraqi population (the Iraqi Kurds). India, which abstained, took a more nuanced view arguing that while the crisis warranted international attention, other organs of the UN were better suited to address humanitarian needs. China stated that the question was one of “great complexity” because both the internal affairs of a country and the stability of its neighboring states were involved. China affirmed its support of Article 2, paragraph 7 and simply stated that international aspects of the question “should be settled through the appropriate channels”.<sup>44</sup>

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<sup>42</sup> statement by Belgium in S/PV.2982, 5 April 1991, p. 67.

<sup>43</sup> Statement by Cuba, S/PV.2982, 5 April 1991, p. 46.

<sup>44</sup> S/PV. 2982, 5 April 1991, p. 56.

At the other end of the spectrum, the statements by the representatives of France, Germany, the United Kingdom, and Norway were exceptional because they argued that Security Council interference was justified by the nature of the atrocities alone, independent of the trans-border security impact. The UK argued that the protection of civilians mandated by the Geneva Conventions was sufficient justification for Security Council action.<sup>45</sup> Nonetheless, the representative of the UK also indicated that there were more conventional grounds for responding to the Iraq crisis.

It has been argued in our debates that this action is in some way outside the scope of the Security Council, that it is an entirely internal matter. My delegation cannot accept that, and I am glad the resolution makes clear that it is not so. For one thing, Article 2, paragraph 7, an essential part of the Charter, does not apply to matters which, under the Charter, are not essentially domestic...<sup>46</sup>

The representative from Norway argued that Iraqi actions contravened ‘internationally accepted human rights standards and norms of behavior’.<sup>47</sup> France argued that the human rights violations being observed assumed “the dimension of a crime against humanity” but also noted that the influx of refugees continued fighting in border areas and massacres were threatening international peace and security in the region.<sup>48</sup> Germany also noted the threat to international peace and security but likened the crimes to genocide.

The brutal use of weapons and other agents of destruction against the Kurdish minority and other parts of the Iraqi population, and the mass exodus it has precipitated, harbour the danger of genocide.<sup>49</sup>

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<sup>45</sup> S/PV.2982, 5 April 1991, pp. 64-5

<sup>46</sup> S/PV.2982, 5 April 1991, pp. 64-5.

<sup>47</sup> S/PV.2982, 5 April 1991, statement by UK on page 66, statement by Norway on page 88.

<sup>48</sup> S/PV.2982, 5 April 1991, p. 53.

<sup>49</sup> S/PV.2982, 5 April 1991, p. 71.

Germany argued that the Security Council could only be successful in returning peace and security to the region if domestic peace was assured within Iraq, drawing an explicit link between human rights and international peace.

It is the legitimate right of the international community to call for respect for human rights. This means that no ethnic or religious group may be persecuted or discriminated against.<sup>50</sup>

No matter how striking these statements are from a human rights perspective, they represented a minority opinion among the 31 participants in the Security Council meeting, the vast majority of which argued that internal human rights issues were relevant only to the extent that they had international effects. Ecuador drew attention to the inherent tension between two relevant principles in the Charter: the unrestricted respect for human rights and non-intervention in the internal affairs of other states. Citing the relevant portions of the Charter, Ecuador advanced a lengthy legal analysis of the Iraqi situation ultimately concluding that because the human rights situation extended beyond the borders of Iraq it moved beyond the sphere of the internal affairs of the Iraq, justifying an international response.<sup>51</sup> According to most Security Council members and participating UN member-states, Resolution 688 (1991) reaffirmed the national jurisdiction of states but that the human rights situation caused by Iraq was no longer an internal matter of the Iraqi state.

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<sup>50</sup> S/PV. 2982, 5 April 1991, p. 72

<sup>51</sup> S/PV.2982 5 April 1991, pp. 32-7.

**Table 2.1: Security Council Support for Key Resolutions on Iraq**

<b>Resolution</b>	<b>Subject</b>	<b>Votes in Favor</b>	<b>Abstentions</b>	<b>Votes Against</b>
<b>660 (1990)</b>	Condemned Iraqi invasion of Kuwait; demanded immediate withdrawal of Iraq from Kuwait	Canada, China, Colombia, Côte D'Ivoire, Cuba, Ethiopia, Finland, France, Malaysia, Romania, USSR, UK, USA, Yemen		
<b>678 (1990)</b>	Authorizes use of all necessary means under Chapter VII to reverse Iraqi aggression against Kuwait	Canada, Colombia, Côte D'Ivoire, Ethiopia, Finland, France, Malaysia, Romania, USSR, UK, USA, Zaire	China	Cuba, Yemen
<b>688 (1991)</b>	Condemns repression of Iraqi civilian population including Kurds; demands Iraq end repression; insists that Iraq allow immediate access by humanitarian organizations to its territory	Austria, Belgium, Côte D'Ivoire, Ecuador, France, Romania, USSR, UK, USA, Zaire	China, India	Cuba, Yemen, Zimbabwe

On 10 April 1991, France, the UK and the USA declared a “no-fly” zone in northern Iraq above the 36<sup>th</sup> parallel where Iraqi Kurds would be protected from air attack by Iraqi military forces, and coalition forces and humanitarian aid agencies could establish and protect refugee camps on Iraqi territory. Operation Provide Comfort was launched to establish and protect this safety zone which covered almost 10,000 square km of Iraqi territory and which was non-accessible to Iraqi forces.<sup>52</sup> International ground troops entered the safety zone on 19 April 1991.<sup>53</sup> Much less attention was given to the

<sup>52</sup> Malanczuk, “Kurdish Crisis and Allied Intervention,” 121 citing *The Economist* 11 May 1995, p. 5.

<sup>53</sup> Robert C. DiPrizio, *Armed Humanitarians: US Interventions from Northern Iraq to Kosovo* (Baltimore: The Johns Hopkins University Press, 2002), 27.

humanitarian crisis in the south, however. By June, Iraqi forces had encircled between 500,000 and 850,000 Shias in the southern marshlands.<sup>54</sup> On 12 June, the British Foreign Office indicated that Iraqi government action against the Shias would violate the terms of Resolution 688 (1991) and would trigger serious consequences.<sup>55</sup> However, the Security Council did not directly address the human rights catastrophe in the south until August 1992, notably later than when it acted to address the humanitarian crisis in the north.

Despite the increase in attention given to the relationship between human rights and security by some members of the Security Council, the very legitimacy of Security Council discussions on the subject of human rights continued to be debated by its members following the passage of resolution 688 (1991). On 11 August 1992, the Security Council met to discuss Iraqi non-compliance with Security Council resolutions and particularly resolution 688 (1991), Iraq's economic blockade of north and south Iraq, the renewal of UN humanitarian programs in Iraq, and to discuss Iraqi repression in the southern marshes. The meeting was notable because of the debate surrounding whether or not Max van der Stoep, the Special Rapporteur of the Commission on Human Rights in Iraq, could be invited to speak to the Security Council about the human rights situation in Iraq. Citing rule 39 of the provisional rules of procedure of the Council, the Permanent missions of Belgium, France, the United Kingdom and the United States invited Mr. Van

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<sup>54</sup> Freedman and Boren, "Safe Havens," 69.

<sup>55</sup> Freedman and Boren, "Safe Havens", 70 citing Frances Williams, *The Independent*, 14 June 1991.

der Stoel to update the Council on recent human rights developments in Iraq.<sup>56</sup> However, anticipating the potential negative response to such a drastic change in status quo operations of the Council, the co-sponsors argued that the Security Council would not be meeting to receive Mr. van der Stoel as the rapporteur on Iraq appointed by the Commission on Human Rights, but rather would receive him in his personal capacity. The Security Council approved Mr. van der Stoel's participation but India and China noted their strong reservations, arguing that matters pertaining to human rights should appropriately be discussed in the Commission on Human Rights.<sup>57</sup>

It is the consistent position of the Indian delegation that the various organs and bodies of the United Nations should restrict their deliberations and actions within their respective spheres of competence as defined in the Charter...The Council can focus its legitimate attention on the threat or likely threat to peace and stability in the region but it cannot discuss human rights situations *per se* or make recommendations on matters outside its competence [emphasis original].<sup>58</sup>

Ecuador and Zimbabwe similarly argued that it would be inappropriate for the Security Council to examine the human rights report written by Mr. van der Stoel or take a stand on it because it would undermine the division of responsibility within the UN system. But both states also noted that since the Council passed resolution 688 (1991), information that would help the Council execute its mandate was within the purview of

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<sup>56</sup> Rule 39 of the provisional rules of procedure of the Security Council reads, "The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence."

<sup>57</sup> Statement by China, S/PV.3105, 11 August 1992, p. 12.

<sup>58</sup> S/PV.3105, 11 August 1992, p. 7.

the Security Council. Ecuador and Zimbabwe consented based on their understanding that Mr. van der Stoel would be speaking in a personal capacity.<sup>59</sup>

Mr. van der Stoel testified that Iraq had enacted a strict embargo against the populations of the marshes in the south and against the autonomous governorates in the north severely cutting food supplies and petroleum to these areas. With regards to the north, Mr. van der Stoel argued that hunger was threatening a new humanitarian catastrophe in the north. He noted that human tragedies elsewhere in the world might explain why so little international attention has been focused on the fate of the Kurds but argued that the Council “cannot afford to forget that in the Kurdish area of Iraq, too, thousands of human lives are at stake”.<sup>60</sup> Mr. van der Stoel also testified that humanitarian relief to the southern marshes was restricted by the Iraqi government in violation of paragraph 3 of resolution 688 (1991) which demands immediate access to all Iraqis in need of humanitarian assistance and in clear violation of the Covenant on Economic, Social, and Cultural Rights, to which Iraq is a party.<sup>61</sup> He also told the Council that the government of Iraq was starting a major military effort within the southern marshes that included artillery bombardments and attacks against civilians by fixed-wing aircraft. He reminded the Council of the international passivity in the late 1980s when Iraq exterminated part of the Iraqi Kurd population and urged the Council to

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<sup>59</sup> Statement by Ecuador, S/PV.3105, 11 August 1992, pp.7-10; statement by Zimbabwe, S/PV.3105, 11 August 1992, pp. 11-12.

<sup>60</sup> At the time of Mr. van der Stoel’s testimony, the Security Council was similarly discussing the humanitarian tragedies in Somalia and the regions of the former Yugoslavia. See S/PV.3105, 11 August 1992, p. 18.

<sup>61</sup> S/PV.3105, 11 August 1992, p. 18.

avoid repeating that tragedy by ignoring current Iraqi government repression against Shias and Kurds.<sup>62</sup>

Like during the meeting preceding the passage of resolution 688 (1991) the year before, the debate that followed Mr. van der Stoel's briefing to the Security Council in August was not about the cause and character of the violence in Iraq and its resultant human rights abuses, but rather about whether or not the Security Council had a responsibility to respond. There was no serious alternative conceptualization to the intentional causal story advanced by Mr. van der Stoel whereby the Iraqi government was engaged in a systematic attempt to repress and kill large portions of the southern Shia and northern Kurdish populations<sup>63</sup> Instead, the discussion in the Security Council was notable for its central focus on human rights concerns and debate over their linkage to the maintenance of international peace and security. The representative from Hungary:

Our delegation considers the participation of Mr. van der Stoel in this meeting of the Council as an important contribution towards enhancing the awareness of the link that exists between the way a Government treats its own citizens and the way it acts in the international arena, as well as the link between enforcing respect for human rights and maintaining international peace and security. Resolution 688 (1991) of the Council and the Presidential statement of 11 March 1992 have clearly recognized this relationship by keeping the question of repression in Iraq under review by the Security Council.<sup>64</sup>

Austria also noted the link between respect for human rights, minority rights and international security. Quoting from a previous statement made to the Council by

Austria's Federal Chancellor, Austria noted,

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<sup>62</sup> S/PV.3105, 11 August 1992, p. 22.

<sup>63</sup> Only Iraq advanced an alternative explanation. According to the Iraqi government subversive elements from other countries were conducting raids against the marsh Arabs such that Government forces must carry out raids to arrest these foreign elements and cannot always "function effectively to provide safety and protection to innocent civilians." S/PV.3105, 11 August 1992, p. 32. This story had no further support in the Council.

<sup>64</sup> S/PV.3105, 11 August 1992, p. 57.

The protection of human rights and, in particular, of the rights of ethnic minorities too, has had an important impact on the development of peaceful relations between states. There is a direct connection between democratic processes within countries and the evolution of a political culture which is conducive to the peaceful settlement of disputes. From our own history, we know that peace was most threatened when human rights were abolished and minorities persecuted and when democratic processes gave way to totalitarian practices. Human rights, minority rights and democracy, are, therefore, important cornerstones of our common endeavour.”<sup>65</sup>

The representative of Austria then echoed Mr. van der Stoel’s concern that the Council respond equally to humanitarian questions that affect peace and stability in all parts of the world. Specifically, Austria suggested an equal degree of attention and determination be devoted to the Iraqi case in 1992 as those of Bosnia-Herzegovina and Somalia.<sup>66</sup>

The five permanent members also discussed human rights but only Russia articulated the tight link between domestic repression and threats to international peace and security that was advanced by Hungary and Austria.<sup>67</sup> China, as noted above, remained silent other than to take strong exception to Mr. van der Stoel’s participation and the discussion of human rights in Security Council deliberations in the first place. The remaining 3 permanent members focused their attention more specifically on the human rights abuses endured by the Shia in the south. The US gave a strongly worded and personal accusation regarding the failure of Saddam Hussein to abide by the terms of resolution 688 (1991) and other Security Council resolutions. The UK noted that the situation in south had come to resemble the crisis in the north that prompted resolution 688 (1991). And France, speaking about the southern marsh Arabs, argued that Council

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<sup>65</sup> S/PV.3105, 11 August 1992, p. 47 and S/PV.3046, 31 January 1992, p. 66.

<sup>66</sup> Ibid., p. 51.

<sup>67</sup> See Ibid., pp. 42-3.

members “must do everything possible to prevent massive violations of human rights from continuing and to prevent an exodus”.<sup>68</sup> Operation Southern Watch was initiated on 26 August 1992 shortly after the August meeting of the Security Council and after much criticism from the Secretariat and the domestic populations of France, UK and the USA for the Security Council’s neglect of Iraqi repression in the south.<sup>69</sup> These three states imposed a “no-fly” zone in southern Iraq below the 32<sup>nd</sup> parallel to protect the Shias from further aerial attacks as it had previously with the Kurds in April 1991. Examination of the documentary record of the Security Council shows that during its deliberations on the situation in Iraq, Security Council members articulated an intentional causal story about the violence in Iraq. According to this narrative, the Iraqi Government was deliberately and indiscriminately bombing Shia and Kurdish civilians in southern and northern Iraq, respectively. Council members argued that regional and international security interests included respect for fundamental human rights and identified the effects of Iraqi government repression as a threat to international peace and security.

Skeptics of the humanitarian explanation for the passage of resolution 688 (1991) and the establishment of safety zones in Iraq might argue that Security Council members were acting according to geo-strategic calculations and in response to domestic and international pressure, rather than in accordance with humanitarian motives. In the case of Iraq, however, the evidence shows the important interplay of traditional security concerns, domestic interests and ideational commitments. For example, humanitarian concerns had an independent effect but also shaped state conceptions of national interests

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<sup>68</sup> S/PV.3105, 11 August 1992, 53.

<sup>69</sup> Ibid.

and provoked the domestic and international pressure for the Security Council to respond to humanitarian tragedy. Security Council members were initially reluctant to respond to the developing humanitarian crisis in Iraq. This initial reluctance to address the refugee crisis and the Security Council preoccupation with the plight of Kurdish refugees in the north along the border with Turkey might suggest that humanitarian action by the Security Council was largely motivated by traditional national security interests. At the start of the repression the Bush administration argued that the repression of Kurds and Shias was an internal affair of Iraq and that did not justify intervention.<sup>70</sup> This initial response was consistent with long-standing US administration policy that maintenance of a strong central state in Iraq was necessary to stability in the Middle East and particularly as a “counter-weight” to Iran.<sup>71</sup> Yet within one month of the start of the repression, the United States changed its position without a parallel change in its underlying national interests. Statements by the United States in the Security Council and the rhetoric of the Bush administration to its domestic population support the humanitarian explanation.<sup>72</sup> The limited goals of Operation Provide Comfort, its activities on the ground, force structure, rules of engagement and patterns of interaction with Iraqi forces all were consistent with the stated humanitarian purpose of the operation.<sup>73</sup>

With regards to the Security Council, the justifications for the use of military force to protect Iraqi civilians were significantly different than Security Council practice during the Cold War when military interventions, even those with a humanitarian purpose

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<sup>70</sup> Stromseth, “Iraq’s Repression,” 78 citing Devroy and Smith.

<sup>71</sup> Freedman and Boren, “Safe Havens,” 47; Stromseth, “Iraq’s Repression,” 82.

<sup>72</sup> See DiPrizio, *Armed Humanitarians* for evidence on the humanitarian motivations of the Bush administration.

<sup>73</sup> DiPrizio, *Armed Humanitarians*, 146.

like in Pakistan, Uganda, and Cambodia, were justified according to traditional normative standards of appropriateness – national interests in protecting sovereignty. Not only did Security Council members articulate humanitarian motivations as justification for the passage of resolution 688 (1991), evidence of humanitarian concern was present in Security Council discussions prior to Iraq's repression of the Kurds and Shias after the uprising. Resolution 688 (1991) was passed in the context of a new but broader pattern of discussions within the Security Council on the situation of Iraq in which members debated the relevance and appropriateness of human rights concerns to the maintenance of international peace and security. The first significant reference to humanitarian violations of the laws of war was contained in Security Council Resolution 670 (1990) which was passed by the Council on 25 September 1990. This resolution reminded Iraq of its obligations under the Geneva Convention relative to the Protection of Civilian Persons in the Time of War. The preamble specifically condemned the treatment of Kuwaiti nationals by Iraqi forces. By the end of October, the Security Council was increasingly concerned with Iraqi army violations of the body of international humanitarian law in relation to its occupation of Kuwait. Resolution 674 (1990) expanded that realm of concern to include third-state nationals and Iraqi nationals who were identified as victims of atrocities along with Kuwaitis. By the end of November 1990, it was clear that the Security Council had an explicit understanding of the types of violations that were occurring within Kuwait. In addition to the evidence brought to the Council by the representative from Kuwait, the representatives of Bahrain, the United Kingdom, and the United States extensively quoted reports from the human rights

organizations Middle East Watch and Amnesty International about Iraqi human rights abuses in occupied Kuwait.<sup>74</sup> These abuses included executions without trial, arbitrary arrest, ill-treatment and torture during interrogation, denial of medical care, rape, and mass extrajudicial executions (including of children). The specific discourse of human rights began to enter Council deliberations on the situation of Iraq and Kuwait in late November 1990. Perhaps most notably, the representative of Bahrain stated when referring to the acts perpetrated by Iraq's occupation forces in Kuwait,

It is certain that these practices are completely at variance with the norms of international law and the Universal Declaration of Human Rights.<sup>75</sup>

The United States also made references to Iraqi repression of civilians and violations of human rights, but its statements belied multiple concerns including a principle concern with regional stability.

A dangerous man committed a blatant act of aggression in a vital region at a very critical moment in history. Saddam Hussein's actions, the vast arms he possesses and the weapons of mass destruction he seeks indicate clearly that Kuwait was not only not the first but probably not the last target on his list. If he should win this struggle, then there will be no peace in the Middle East: only the prospect of more conflict and a far wider war. If he should come to dominate the resources of the Gulf, his ambitions will threaten all of us here and the economic well-being of all nations...<sup>76</sup>

Iraqi domestic human rights practices came under Security Council scrutiny only when their effects threatened neighbor states, however. Human rights considerations were not separate from geo-strategic calculations and were considered to the extent that they impacted the principle duty of the Security Council – the maintenance of international

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<sup>74</sup> See S/PV.2959, 27 November 1990 (Kuwait); S/PV.2960, 27 November 1990 (Bahrain) and S/PV.2962, 28 November 1990 (UK and USA).

<sup>75</sup> Statement by Bahrain, S/PV.2960, 27 November 1990, p. 22.

<sup>76</sup> Statement by the United States, S/PV.2963, 29 November 1990, p. 102.

peace and security which included the protection of the sovereignty rights of member states.

In 1990, Middle East Watch criticized the United States in particular, and the international community more broadly for taking a “low-key approach to human rights abuses in this region” and for regularly privileging “geo-strategic interests” and “long-term alliances” over human rights.<sup>77</sup> In 1991, Middle East Watch questioned the timing of US interest in Iraq’s human rights abuses. The organization argued that despite international outcry, the US was virtually silent about the Iraqi Government’s genocidal gas attacks against the Kurds in the late 1980s. The Iraqi Government went unpunished by the United States and the Security Council for these gross human rights violations of human rights until after Saddam Hussein invaded Kuwait. After the start of the Gulf War, however, the attacks in Halabja were used as one of the rationales for the war, suggesting that human rights justifications were being used instrumentally. It is important to note however that two factors of significance had changed between Iraqi ethnic cleansing in 1988-1989 and Iraqi repression in 1991-1992: 1) the end of the Cold War; and 2) Iraq’s violation of Kuwait’s sovereignty in 1990 which resulted in the temporary suspension of Iraq’s sovereignty. The unprecedented action of the Security Council – defining the effects of internal human rights violations as a threat to international peace and security and then responding to protect them – would not have been possible in the late 1980s when the gassing of the Kurds took place.

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<sup>77</sup> Middle East Watch 1990, *Middle East Watch Overview*, <http://www.hrw.org/reports/1990/WR90/MIDEAST.BOU.htm>.

Unlike the abuses of the late 1980s, the effects of Iraq's human rights abuses in 1991 threatened the stability and territorial integrity of neighboring states. It was the threat to the sovereignty and territorial integrity of neighboring states that was articulated as justification by the Security Council for its adoption of resolution 688 (1991). The Security Council was particularly concerned with the stability of Turkey, a NATO member and ally of 3 permanent Council members, France, the United Kingdom and the United States. Because Turkey's significant Kurdish population lived in the southern region directly bordering the Kurdish north of Iraq, the repression of Iraqi Kurds in Iraq threatened the stability of the entire region as well as the sanctity of Turkey's territorial borders. Turkey also occupies a strategically sensitive region for the United States and its European allies.<sup>78</sup> In sum, the US and its allies were only willing to assist Kurds after they crossed over Iraq's borders into the territory of an important strategic ally.<sup>79</sup> Statements by members of the Security Council clearly indicate that geo-strategic considerations and traditional international security concerns were central to the passage of resolution 688 (1991). However, these traditional security concerns were shaped by ideas about human rights. For example, after touring south-east Turkey to observe the humanitarian relief effort in late March 1991 prior to the passage of resolution 688 (1991), US Secretary of State James Baker commented on the humanitarian aspects of the crisis. He stated that he had 'witnessed the suffering and desperation of the Iraqi people and that their experiences of cruelty and human anguish defied description'.<sup>80</sup> The

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<sup>78</sup> DiPrizio, *Armed Humanitarians*, 146.

<sup>79</sup> Freedman and Boren, "Safe Havens," 48.

<sup>80</sup> Nigel Rodley, *To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights* (London: Brassy's Ltd, 1994), 52.

character of the military intervention also illustrates that both strategic and humanitarian considerations shaped the military response. If the Security Council had been solely concerned with Turkish sovereignty and stability, it would have been sufficient to seal the Iraqi border in order to protect its neighbors from the negative effects of Iraq's repression. It was not necessary to undertake a far-reaching humanitarian relief effort deep within the borders of Iraq. It also would have been unnecessary for the members of the Security Council to extend their protection to the Shias living in the southern marshes who at that time did not pose a cross-border security threat to Turkey. Rather, the character of the military intervention and the justifications for it show a change in the articulation of national interests by states whereby the protection of human rights in part constitutes national interests.

France, the United Kingdom and the United States also came under immense pressure from the media, human rights organizations and their domestic publics to respond to the humanitarian catastrophe, in part because Operation Desert Storm was seen to be the cause of the armed rebellions.<sup>81</sup> James Mayall argues that the US was motivated to respond because the public outrage garnered by media attention threatened the political gains of the war.<sup>82</sup> In short, the humanitarian crisis threatened US national interests by detracting from its accomplishments in the Gulf. Robert DiPrizio argues in contrast that although media coverage and popular opinion added to the pressure and urgency for the United States to act in response, "the president declared his intention to

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<sup>81</sup> Mayall, "New World Order,"; DiPrizio, *Armed Humanitarians*.

<sup>82</sup> Mayall, "New World Order," 426. Stromseth, "Iraq's Repression," 84.

intervene before the public could find its voice”.<sup>83</sup> Further, at the time that Security Council members decided to extend their protection to southern Shias, albeit belatedly, in August 1992, relative to other humanitarian tragedies like those occurring in Somalia and Bosnia-Herzegovina, there was little international attention on the continuing problems for the Kurds in the north or the plight of the unprotected Shias in the South. Domestic pressure and international media attention were not significant factors in the decision by France, the UK and the US to extend the no fly zone in 1992 but they did so anyway. The problem with arguments that national interests alone explain the adoption of resolution 688 (1991) and the subsequent military intervention to protect Iraqi citizens is that they fail to recognize the way that ideas about human rights shaped the traditional security interests of the members of the Security Council and the United States.

## **Conclusions**

There are three fundamental factors that explain how the passage of resolution 688 (1991) became possible and why the Security Council determined that the human rights violations occurring inside Iraq against its citizens constituted a threat to international peace and security. The first factor is the changed historical context. During the Cold War such a resolution would not have been possible. Indeed, the entire Security Council action to reverse Iraqi state aggression against Kuwait might not have been possible. But at the end of the Cold War, a new spirit of cooperation among permanent members of the Security Council emerged. Security Council unity made the use of military force to reverse Iraqi aggression possible. It was this previous invasion of

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<sup>83</sup> DiPrizio, *Armed Humanitarians*, 147.

Iraq that is the second factor explaining why intervention in defense of non-citizens became possible for the coalition partners. The Gulf War was important for several reasons. Iraq had violated the norms of state sovereignty and territorial integrity when it invaded Kuwait. It was widely viewed in all quarters of the international community as a pariah state. In consequence, Iraqi sovereignty had been temporarily suspended by the passage of resolution 678 (1991) authorizing the use of all necessary means under Chapter VII of the Charter of the United Nations to reverse Iraqi aggression. It was the previous Chapter VII authorization that the United States, France and the United Kingdom argued combined with the passage of resolution 688 (1991) that gave them the legal authority to use any necessary means to halt the repression of Iraqi civilians by the Government. Though this legal authority to resort to force was disputed by some members of the Security Council, France, the UK and the USA were neither prevented nor punished for using military force to enforce resolution 688 (1991) on Iraq. It also was easier to break with precedent and launch a humanitarian protection operation in Iraq than in other places where mass human rights violations were occurring because the existing military presence on the ground meant that it would be a low cost intervention. Members of the Security Council also expressed a sense of responsibility for the effects of their common action – in many respects the Iraqi civilian uprising was a byproduct of the Security Council authorized war against Iraq. Finally, since Iraqi sovereignty had already been suspended it was easier to garner political support in the Security Council for an expansion of mission for humanitarian purposes. In this sense, the promotion and protection of human rights was no longer in conflict with the sovereignty and non-

intervention norms so deeply revered by the Council. The humanitarian intervention did not violate sovereignty but at the same time protected human rights. The intervention protected the sovereignty and territorial integrity of both Turkey and Iran and the mode of intervention protected the immutability of Iraq's territorial borders.

The third important factor was the cross-border impact of the Iraq Government's human rights violations. While there was a select few Security Council members who suggested the Iraq's human rights violations in itself might justify Security Council action, namely France and the United Kingdom, the eight remaining Security Council Members who voted in favor of resolution 688 (1991) including the United States were willing to act because of the effect of those human rights violations on neighboring states. At the time of the passage of resolution 688 (1991), five members of the Security Council considered the human rights situation a strictly domestic or internal matter.<sup>84</sup> Without the justification of regional spill-over threatening the entire region, passage of resolution 688 (1991) would not have been possible. At the same time, while it was a largely instrumental understanding of human rights – its importance for the maintenance of international peace and security – that motivated the intervention on behalf of the Kurds and Shias, the nature of the intervention itself pushed beyond simply protecting Iraq's neighbors at the borders and moved to the interior regions of the country, illustrating the increasing importance of human rights norms for a majority of the Security Council members. In sum, it was Iraq's status as a common enemy, the previous suspension of its sovereignty, the existing military and media presence and the existence of a cross-border threat that made military intervention for a humanitarian cause possible in Iraq when it

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<sup>84</sup> Stromseth, "Iraq's Repression," 97.

was not possible in other places similarly plagued by systematic human rights abuse by the state. What appeared to be a momentary fragile coalition made possible by historical contingency, however, marked a fundamental shift in international politics: the Security Council could identify a humanitarian or human rights crisis a threat to international peace and security and gain access to the state's population and territory without its consent.

According to Thomas Pickering, the United States' representative to the Security Council at that time,

The response to the plight of the Kurds suggests a shift in world opinion towards a re-balancing of the claims of sovereignty and those of extreme humanitarian need. This is good news since it means we are moving closer to deterring genocide and aiding its victims. However, it also means we have much careful thinking to do about the nature of, and the limitations upon, intervention to carry out humanitarian assistance programs where States refuse, in pursuit of 'policies of repression' to give permission to such assistance.<sup>85</sup>

UN Secretary-General Perez de Cuellar wrote in his Report of the Secretary-General on the Work of the Organization in 1991,

It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity.

Finally, the move by the Security Council to allow expert testimony on human rights violations in August 1992 lends support to the argument that a humanitarian shift with regards to the workings of the Security Council occurred with its monumental response to the humanitarian crisis caused by Iraq in 1991<sup>86</sup>.

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<sup>85</sup> Thomas Pickering speech to the US Council on Foreign Relations in May 1991 in Freedman and Boren "Safe Havens," 82.

<sup>86</sup> S/PV.3105, 11 August 1992.

It is notable that these concerns with Iraqi human rights violations were in relation to Iraq's treatment of non-citizens and not its domestic population. The international community paid little international attention to Iraq's domestic human rights practices prior to its annexation of Kuwait in 1990. Only after Iraq had crossed international borders and violated the sovereignty of a neighboring state, did the Security Council begin to discuss Iraq's treatment of its own citizens. Discussions about human rights violations in Iraq followed from discussions about Iraqi human rights abuses perpetrated in Kuwait against non-Iraqis. The 1990 context of the Gulf War is important for understanding the later decisions of the Security Council to discuss and then interfere in what were traditionally understood to be Iraqi domestic governance issues. Because of Iraq's recent violation of international peace and security and blatant disregard for the rules of sovereignty and non-intervention, it was easy to motivate international opinion against the Iraqi regime of Saddam Hussein, a common enemy. And it was only when the *effects* of Iraq's human rights abuses began to negatively affect its neighbors, that the Security Council crafted a deliberate and far-reaching response to Iraqi repression, rather than the human rights violations themselves. Resolution 688 (1991) demanded an end to Iraqi repression of its citizens, and particularly the Kurds, and required immediate humanitarian access to Iraqi territory. It did so only because human rights violations in this case were defined as a threat to international peace and security. Security Council deliberations made it clear that had refugees not crossed the borders into Turkey and Iran, Iraqi repression would not be a subject of discussion or action for the Security Council.

The passage of resolution 688 (1991) by the Security Council was a significant development in international politics. Never before had the Security Council defined humanitarian crisis as a regional threat to international peace and security. Never before had the Security Council dictated to a UN member-state how it should treat its domestic population nor had it required immediate and unfettered access to a member-state's territory for humanitarian purposes. Resolution 688 (1991) demonstrated that the Security Council was willing to define internal human rights violations as a threat to international peace and security when it had trans-border effects. Notably, however, the Security Council chose to address the repression of the Kurds as a humanitarian issue rather than an issue of national self-determination. In this way, even though the Security Council temporarily suspended Iraq's right to non-intervention, it reinforced status-quo conceptualizations of sovereignty.

Nonetheless, despite the presence of traditional security interests and domestic pressure on democratic member states, members of the Security Council also were motivated by humanitarian concerns. Indeed, human rights principles began to shape the national interests of Security Council member states. Evidence of humanitarian motivation can be found in the justifications of Security Council members for passing resolution 688 (1991) and by examining the character of the intervention. Council members did not simply seal off the Turkish border and leave the Kurdish refugees to their fates. Rather, they provided humanitarian relief and military protection inside the borders of Iraq – unnecessary steps if the motive was solely the protection of Turkish sovereignty – and eventually expanded protection to the Shias in the south. Finally,

careful examination Security Council statements on the situation in Iraq show that Security Council members shared an intentional causal story about the crisis and that humanitarian concern was a principle, albeit not the only, motivation for military action in defense of Iraqi refugees.

## **Chapter 3:**

### **State Collapse in Somalia & the Emerging Norm of Humanitarian Intervention**

When the Security Council first met to discuss the humanitarian crisis and civil war in Somalia in January of 1992, it was engaged in multiple conflict situations, most of which were intra-state conflicts. Indeed, the early post-Cold war era quickly became characterized by new threats to international peace and security originating from conflicts that were raging within states rather than between them. During Security Council formal meetings, members argued that these conflicts were a fundamental challenge to the establishment of the new international order they collectively desired and expected following the end of the Cold War rivalry that stymied Security Council action. Optimism was high in the Security Council about its ability to stop aggression following the successful conclusion of the Gulf War. Resolution 688 (1991), which defined the humanitarian catastrophe in northern Iraq as a threat to international peace and security, and the relative success of the Security Council in responding to that tragedy was also fresh in the minds of Council members. In particular, three cases of this study – Somalia, Bosnia-Herzegovina, and Rwanda – simultaneously were embroiled in intra-state conflicts and were the sites of mass human rights violations. Each was added to the agenda of the Security Council, albeit at different times with varying degrees of attention and types of response from Security Council Members. For example, the Security Council met formally to discuss the conflict in Bosnia-Herzegovina 131 times for more

than 100 hours. The Council had 34 formal meetings on Rwanda totaling more than 20 hours of discussion and met 18 times to discuss the situation in Somalia for less than 15 hours total.

Conflicts in other States, including those in Angola, Cambodia, El Salvador, Liberia, South Africa, and Western Sahara, were also on the Security Council agenda; whereas crises in Algeria, Burundi, Chad, Myanmar, Sri Lanka, and Sudan were ongoing but did not garner the attention of the Security Council despite having human rights violations as grave as those that characterized the conflicts in Somalia and Bosnia-Herzegovina. It is in this broader political and military context of the period, that the Somalia conflict came to be understood by Council members as an important and opportune case for demonstrating the resolve of the international community to respond to these new security threats. The decision to authorize the use of military force for a humanitarian cause in December 1992 significantly altered the way that Security Council members justified the legitimate use of force and led to the emergence of a new norm of humanitarian intervention.

The case of Somalia marked an important advance in the emerging idea at the end of the Cold War that the international community in general, and the Security Council in particular, had a responsibility to respond to humanitarian crises caused by conflict in order to end human suffering. The Security Council was not only being called upon to observe and monitor peace agreements after conflict ended, it was now being asked to create the political conditions necessary to end conflict. Yet it was exactly because the characteristics of the Somalia crisis were sufficiently different from other internal

conflicts, that the Security Council was able to undertake early forcible military action there in defense of humanitarian principles. While some members of the Security Council, particularly India and China, emphasized that the conditions in Somalia were *sui generis*, warranting an exceptional and non-precedent setting response from the Security Council, other members of the Security Council intended the Somalia case to both set new standards of response for the international community and serve as a warning to perpetrators in other places.

The Somalia intervention, its successes and failures, helped to delineate the conditions under which the emerging norm of humanitarian intervention would and would not become possible in future conflicts. The most prominent of these factors include: the importance of widespread agreement among Council Members on the causal story of the conflict; the degree to which new ideas about humanitarian intervention brought human rights norms into conflict with the highly internalized norm of state sovereignty; the importance of great power leadership; and the necessity of expert evidence of mass human tragedy for garnering political will. It is also important, however, to take particular note of the sequencing of Security Council decisions about humanitarian intervention. In the early stages of norm emergence, the factors required to trigger the application of a new norm against prevailing path dependent behavior may be more numerous and significant than the conditions that are necessary when the norm has become more developed. As Finnemore and Sikkink (1998) write, “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 interest”.<sup>1</sup> When norm entrepreneurs seek to promote a new norm, they must do so within the standards of appropriateness that have been defined by the existing norms, even when those standards are exactly the behavior that is being contested.<sup>2</sup> In Somalia, humanitarian intervention was possible because exercise of the emerging norm did not significantly challenge the existing norms. Because Somalia lacked a legitimate government, norm entrepreneurs were able to defend a new practice – humanitarian intervention – as appropriate because it did not violate state sovereignty.

### **Background to the Somalia Crisis**

The people of Somalia share the same ethnicity, language, religion and culture but are distinguished by clan affiliation - that is, by their lineage and family custom. Somalia is characterized by five principle clan families: the Hawiye, Darod, Isaaq, Dir and Rahanwein. Each of these clans is divided into smaller clans that are further divided into sub-clans.<sup>3</sup> Clan and sub-clan loyalties are important to Somali identity and politics and their manipulation by power-seeking leaders has been a source of political and social instability in Somalia. The Republic of Somalia acquired its independence in 1960. It survived nine years as a unified and independent state with a democratic and civilian government. In 1969 however, Military General Mohamed Siad Barre overthrew the

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<sup>1</sup> Martha Finnemore and Kathryn Sikkink, “Norm Dynamics and Political Change,” in *Exploration and Contestation in the Study of World Politics* ed. Peter Katzenstein, Robert Keohane and Stephen Krasner (Cambridge: The MIT Press, 1998), 897.

<sup>2</sup> Finnemore and Sikkink, “Norm Dynamics,” 897-898.

<sup>3</sup> John L. Hirsch and Robert B. Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping* (Washington, DC: United States Institution for Peace, 1995), 3.

government and instituted a military dictatorship. Siad Barre maintained his dictatorial rule for twenty-one years by manipulating clan loyalties and fostering rivalries among them, outlawing opposition parties, suppressing civil society, and destroying all independent institutions.<sup>4</sup> Most prominent though was his use of divide and rule tactics between clans to maintain his power. He favored the members of his own clan but he also attempted to suppress the clan identity of his rivals by outlawing clan gatherings. Despite his firm grip on power, his rule was threatened by armed uprisings and guerilla groups including a coup attempt led by military officers from the Majerten clan in 1978 and war with a guerrilla force called the Somali National Movement (SNM) supported by the Isaaq clan in 1988. In 1989, a rebel group composed of members of the Hawiye clan, the United Somali Congress (USC), formed. The USC forced Siad Barre to flee Mogadishu in January 1991, ending his twenty-one year dictatorship.

Despite Siad Barre's removal from office, fighting continued in Somalia as different rebel groups vied for political control of the various regions of the country. Each rebel group drew support from different clans or sub-clans, thus continuing the bitter history of inter-clan rivalry in Somalia. The USC, which controlled Mogadishu, splintered into two rival factions following the fall of Barre from power. One faction was headed by Ali Mahdi Mohamed, a wealthy Somali businessman who declared himself the interim president of Somalia. Its rival was headed by General Mohamed Farah Aideed, the main military commander of the USC and Mahdi's competitor for political power. Each faction represented a different sub-clan of the Hawiye. By mid-November 1991,

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<sup>4</sup> Africa Watch, "Somalia: Beyond the Warlords: The Need for a Verdict on Human Rights Abuses," *Human Rights Watch Reports V* (1993): 2, 4.

full scale war between the Mahdi and Aideed forces had erupted in Mogadishu, primarily over which group would control the presidency and the territory that included Mogadishu. The fighting that occurred between rival factions throughout Somalia was characterized by scorched earth tactics, looting, and violent attacks against members of rival clans including the rape of women and the killing of the elderly and children. According to the humanitarian NGOs on the ground, civilians were at risk of random death caused by hostilities but also by the food scarcity that resulted from the combination of years of fighting compounded by drought. In March 1992, Africa Watch and Physicians for Human Rights issued a joint report on the human cost of conflict in Mogadishu. The report described a humanitarian disaster characterized by failures by all sides to abide by “minimum standards of international humanitarian law” and chronic hunger.<sup>5</sup> The report states,

Mogadishu has become a place of unpredictable death, with no one in authority and no one capable of enforcing a social commitment to order. Everyone appears armed. Whoever draws first carries the day, since there is no civil authority to punish someone who robs or kills. Many people are short-tempered, stressed by hunger and fear and many men – and boys – are consuming too much qat (a widely used mild stimulant that comes as a chewable green leaf) which is more powerful when eaten on a hungry stomach. In this climate of marginally contained chaos, the ICRC and NGO community working in Mogadishu are stretched to the limits of their own endurance and institutional integrity.<sup>6</sup>

Other NGOs reported similarly disastrous conditions. The World Food Program described the situation in Somalia as “an unparalleled disaster”.<sup>7</sup> The organization estimated that half the population of the south-central region had died by the middle of

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<sup>5</sup> Africa Watch and Physicians for Human Rights, *Somalia: No Mercy in Mogadishu: The Human Cost of Conflict and the Struggle for Relief* (New York: Africa Watch, 1992), 2.

<sup>6</sup> Africa Watch and Physicians for Human Rights, *Somalia: No Mercy in Mogadishu*, 3.

<sup>7</sup> Hirsch and Oakley, *Operation Restore Hope*, 7.

1992.<sup>8</sup> An August 1992 report from the International Committee of the Red Cross (ICRC) estimated that between 65%-75% of Somalia's population suffered from severe malnutrition and disease.<sup>9</sup> Relief organizations had a difficult time delivering basic humanitarian aid and services because warlords obstructed their freedom of movement, the looting of food and relief supplies by armed gangs, and the chronic insecurity caused by the fighting throughout the country. Somalia was undergoing famine and civil war simultaneously, each reinforcing the negative effects of the other. Human rights organizations, humanitarian relief NGOs, and the media questioned the lack of attention given to the crisis by the United Nations and powerful countries who were involved in humanitarian operations elsewhere, most notably in the former Yugoslavia. Members of African states, bolstered by the media images of starving Somalis being broadcast worldwide, accused the United Nations and the Western States on the Security Council of racism and double-standards. They were joined by a powerful ally, Secretary-General Boutros Boutros-Ghali. They called upon the UN to take an active role in the country. Media attention to the plight of starving Somalis directed international attention on the Somali crisis, shaming Members of the Security Council. In 1992, a prominent news director of NBC-TV in New York stated publicly that "the public is shocked by pictures coming out of Bosnia because white people are starving" also indicating that the public was fatigued by pictures of suffering Africans.<sup>10</sup> The feeling of unequal treatment between African and European concerns continued even after the Security Council

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<sup>8</sup> Jeffrey Clark, "Debate in Somalia: Failure of the Collective Response," 1993 and Oliver Ramsbothan and Tom Woodhouse, "Humanitarian Intervention in Somalia," In *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge: Polity Press, 1996), 198.

<sup>9</sup> Hirsch and Oakley, *Operation Restore Hope*.

<sup>10</sup> Djibril Diallo, "The Bosnia Syndrome," *African Recovery* Vol. 6 (November 1992): 3.

became engaged with Somalia. For example, the representative of Nigeria speaking on behalf of the Organization of African Unity stated, “Africa deserves the same qualitative and quantitative attention which has been paid to other regions – and perhaps much more because of its economic base. There is a need to have a strong and visible presence in the conflict areas of Africa.”<sup>11</sup>

**Security Council response to Somalia:  
Emergence of a norm of humanitarian intervention**

*Phase I: non-military humanitarian response*

The Security Council response to Somalia can be described as having three phases. The first phase began in January 1992 with the first Security Council resolution on Somalia establishing an arms embargo and was characterized by a non-military response to the conflict. Even following the establishment of the United Nations Operation in Somalia (UNOSOM) by resolution 751 (1992) in April 1992, the intervention was classified as a traditional peacekeeping operation with primarily humanitarian ends. The Security Council response changed from a traditional peacekeeping mandate to a forcible military intervention under Chapter VII of the Charter of the United Nations in December 1992 with the passage of resolution 794 (1992) establishing the US-led United Task Force (UNITAF). UNITAF transferred authority back to the United Nations in March 1993 with the passage of resolution 814 (1993) which expanded the size of the force and its mandate denoted by the revised name of the mission, UNOSOM II. The use of forcible measures continued under UNOSOM II

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<sup>11</sup> S/PV.3060, 17 March 1992, pp. 12-13.

including a particular emphasis on the coercive disarmament of Somali factions. The third phase of the United Nations involvement in Somalia was characterized by a dramatic reversal in policy when in February 1994 the Security Council revised the UNOSOM II mandate reducing its military functions, transitioning back to more traditional peacekeeping. In November 1994, the Council, led by the United States, voted to extend the mission for a final time until March 31, 1995 at which point the UN would withdraw completely from Somalia, despite the persistence of war.

While the most marked contribution toward an emerging norm of humanitarian intervention occurred with the passage of resolution 794 (1992) establishing UNITAF, the United Nations involvement in Somalia in early 1992 illustrates the evolution of thinking in the Security Council regarding the relationship between human rights and international security as well as the conditions under which the Security Council should become involved in internal conflicts. In March 1992, the Security Council approved the recommendation by the Secretary General to dispatch a technical team to Somalia to develop a plan for establishing unimpeded delivery of humanitarian assistance (resolution 746). Security Council records of the debate preceding the vote on resolution 746 (1992) indicate that Members pressed for an active UN presence in Somalia despite the failure of parties to the conflict to abide by a cease-fire and the absence of formal consent. The reasons articulated by the Council included: 1) the magnitude of the humanitarian tragedy; 2) the implications of continued fighting and famine for neighboring states; 3) the unconventional nature of the conflict; 4) and an appeal for equity in UN dealings with Africa.

Members of the Security Council were concerned with the humanitarian tragedy unfolding within the borders of Somalia. They highlighted human suffering in Somalia and its implications for the Somalis and for neighboring states. The United States described the human suffering in Somalia as “a tragedy of heartbreaking magnitude”<sup>12</sup> with Belgium, Zimbabwe, and Ecuador similarly noting its tragic character. Belgium described the increasing numbers of dead, injured and displaced persons and noted with concern the impending famine.<sup>13</sup> The human rights tragedy was the result of both fighting and famine in Somalia. Hungary noted its concern over “the magnitude of the human suffering brought about by the conflict” and stated that “the continuation of this tragic and alarming situation constitutes a threat to international peace and security.”<sup>14</sup> The Kenyan representative, speaking on behalf of the African group, specifically called attention to an Africa Watch report that “graphically illustrates the vicious coexistence of war and famine in Somalia,” noting that he usually does “not find much common ground with Africa Watch.”<sup>15</sup> It is clear from the debate that although the humanitarian tragedy had captured the attention of Council Members, they were likewise concerned with the potential regional impact of the conflict. Nigeria noted that refugees from Somalia have “consequential implications for neighboring states” while France, Australia, India, and Zimbabwe argued that that both the ongoing violence and its impact on civilians threatened peace and stability in the entire region.<sup>16</sup> Despite this expressed concern about regional impact, however, resolution 746 (1992) defined the continuation of the *internal*

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<sup>12</sup> S/PV.3060, 17 March 1992, 48.

<sup>13</sup> Ibid., 38.

<sup>14</sup> Ibid., 54.

<sup>15</sup> Ibid., 16-7.

<sup>16</sup> Ibid., 9-10; 44; 46; and especially 41.

humanitarian crisis in Somalia a threat to international peace and security, rather than its cross-border effects.

*Deeply disturbed* by the magnitude of the human suffering caused by the conflict and concerned that the continuation of the situation in Somalia constitutes a threat to international peace and security,<sup>17</sup>

The same humanitarian language was repeated in resolution 751 (1992) which established the United Nations Operation in Somalia (UNOSOM) on 24 April 1992.

There were no formal references made by the Security Council to inter-state dimensions of the Somalia conflict including trans-border refugee flows or the risk of spillover of the conflict into the region. Instead, non-traditional conceptions of security – that international security is impacted by the violation of human rights – shaped initial Security Council action to the conflict.

There was agreement among Council members that the unusual character of the conflict – the simultaneous tragedy of fighting and famine in the absence of legitimate government authority -- demanded examining “new and innovative methods” of response. States, including Belgium, Hungary, India and Japan, used the word “complex” to describe the political and military situation in Somalia and characterized the combined military and humanitarian tragedy as “unconventional.” Secretary-General Boutros-Ghali, in both his report to the Council and in a statement to the press, argued “Somalia presented a special challenge, as an extraordinarily complex, tragic situation that had so far eluded conventional solutions.<sup>18</sup>” It was exactly the non-state character of

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<sup>17</sup> S/RES/746 (1992), 17 March 1992.

<sup>18</sup> See the Secretary General’s report to the Security Council on the Situation in Somalia, S/23693 and UN Chronicle, Vol. XXIX, no. 2, 23.

Somalia that made the use of military force in response to an internal crisis possible because it was easier to reconcile the intervention with sovereignty since the need for consent was eliminated.

Finally, at least three states, Nigeria, India, and Zimbabwe, with the support of the Secretary-General, argued that because of the attention devoted by the Council to Yugoslavia, the crisis in Somalia warranted at least an equal response. In fact, India described Somalia as a situation of “crisis proportions, with five times as many casualties as have taken place in Yugoslavia.<sup>19</sup>” Zimbabwe contrasted the Security Council response to Yugoslavia and Cambodia, which its representative described as “effective and appropriate” with the lack of response to the tragedy of Somalia which “for almost a year has been unraveling before our eyes.<sup>20</sup>” The disparity in attention given to the three conflicts – Somalia, Bosnia-Herzegovina, and Rwanda – by the Security Council is vividly displayed in Table I. However, it is notable that the establishment of UNOSOM in April 1992 preceded the United Nation’s formal involvement Bosnia and Herzegovina. A UN peacekeeping operation (the United Nations Protection Force – UNPROFOR) had been established in Croatia in February 1992 however its mandate was strictly to observe the cease-fire between Serbia and Croatia and did not include a mandate with regard to Bosnia-Herzegovina. And despite the notable preoccupation with the conflicts in the former Yugoslavia, forcible humanitarian intervention occurred in Somalia well before the first joint UN-NATO military action occurred in Bosnia-Herzegovina. The reason for this was that in the case of Somalia there was widespread agreement among Security

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<sup>19</sup> S/PV.3060, 17 March 1992, 33.

<sup>20</sup> Ibid., 46-7.

Council members on the cause and character of the conflict. Further, as noted above, the absence of state authority removed the tensions with existing norms that limited the use of force. In contrast, Security Council members were divided over the causal story about Bosnia-Herzegovina where sovereignty was disputed rather than absent. The use of military force for a humanitarian purpose in Somalia, however, made the eventual use of force in Bosnia-Herzegovina possible by promoting an emerging norm of humanitarian intervention.

*Phase II: Forcible Humanitarian Intervention*

The second phase of UN involvement in Somalia marked another historic shift in Security Council action with regard to intra-state conflicts. In both resolution 794 (1992) and resolution 814 (1993), the Security Council authorized the use of all necessary means to create the conditions necessary to ensure the delivery of humanitarian aid and to foster political reconciliation in Somalia. The authorization of the use of force under Chapter VII of the Charter of the United Nations marked an important step in the emergence of new norm of humanitarian intervention. For the first time in its history, the United Nations authorized armed intervention for a strictly humanitarian cause.<sup>21</sup> Unlike resolution 688 (1991) which authorized UN protection for Kurds living in Northern Iraq because of the trans-border impact of internal human rights violations, resolution 794 (1992) argued that the internal humanitarian crisis in itself was a threat to international

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<sup>21</sup> Roy Laishley, "Building on the Fragile Peace in Somalia" *Africa Recovery* 16 (December 1992-February 1993): 4, 12.

peace and security.<sup>22</sup> This move in support of an evolving humanitarian intervention norm became possible because of a high degree of unity in the Security Council around a causal story of conflict in Somalia and because the use of coercive force in this case posed little threat to established and highly internalized norms of state sovereignty and territorial integrity. Precisely because of its extraordinary character, however, it is contested whether the Somalia intervention decision was intended to be precedent for future Security Council action. In this section, I will examine the causal narrative advanced by Security Council Members about the Somali conflict as well as how changes in that shared narrative led to important policy and military changes on the ground. Next, I will argue that the very unity of the Members of the Security Council around the causal story that prompted radical international action in Somalia fractured with regard to how this action should be interpreted. Though the Security Council was divided over its desire to advance a new standard for the appropriate use of military force, the Somalia case significantly shaped the conditions under which future military action in defense of human rights would become possible.

Two causal stories about the conflict in Somalia were articulated in the Security Council. The first story was an inadvertent causal story about civil war. Proponents of the inadvertent causal story described the situation in Somalia as “internecine civil war” and a “fratricidal conflict”.<sup>23</sup> According to this inadvertent story, multiple factions within Somalia were engaged in combat with one another for political control of the country. The victims of the conflict were “innocent men, women and children” or the Somali

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<sup>22</sup> See also Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press, 1996), 78.

<sup>23</sup> S/PV.3060, 17 March 1992, 9-11; 21; S/PV.3145, 3 December, 6.

people at large. The suffering of the people was brought on by the fighting and compounded by drought; yet in this formulation of the causal story the perpetrators lacked intentionality with regards to their actions. Nigeria and Kenya most clearly articulated the inadvertent causal story but neither was an elected member of the Security Council. Morocco and Zimbabwe also used the language of “fratricidal tragedy” and “internecine conflict” to describe the situation in Somalia but both of these states also described the situation as “chaotic” and “complex” respectively. The stories that they articulated indicated both complexity and inadvertent action. Ecuador described a situation in which people were dying off “while the political factions at war in the country – sometimes recognizable, and in other cases so fragmented as to constitute unled and uncontrolled bandits – have been blocking the international humanitarian assistance...”<sup>24</sup> The reference to “unled and uncontrolled bandits” demonstrates how easily the Security Council members that articulated the discourse of civil war moved between the inadvertent causal story and the second, more widely articulated interpretation of the conflict as a complex causal story.

The Secretary-General and nearly two thirds of Security Council members articulated a complex causal story to describe the situation in Somalia. Proponents of the complex causal story emphasized the complex interplay of multiple factors in causing the humanitarian crisis in Somalia. The extraordinary and unconventional nature of the “complex” and “chaotic” situation, as it was frequently described by Security Council members, meant that it eluded conventional solutions. India argued,

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<sup>24</sup> S/PV.3145, 3 December 1992, 11.

The Secretary-General's report on Somalia...graphically depicts the complexity of the situation. The fighting in Mogadishu between two factions of the same Somali movement is compounded many-fold by hostility between political factions and movements in other parts of Somalia, fractures and struggles within these movements themselves, secessionist movements in the north and uncontrolled armed elements on the rampage everywhere.<sup>25</sup>

The United States argued that the situation in Somalia was characteristic of the political disorder and complexity of the post-Cold War world.<sup>26</sup> China, Morocco and the Russian Federation described Somalia as a situation of “total chaos” characterized by terror, blackmail, banditry and devastation.<sup>27</sup> The complex causal story was articulated in resolution 794 (1992) which authorized the use of all necessary means to create a safe environment for the delivery of humanitarian relief in Somalia.

Recognizing the unique character of the present situation in Somalia and mindful of its deteriorating, complex, and extraordinary nature, requiring an immediate and exceptional response,<sup>28</sup>

Resolution 794 (1992) was unanimously passed by the Security Council. Even when five new elected members joined the Security Council at the start of 1993, the complex causal story maintained its dominance in the Security Council. Prior to the passage of resolution 814 (1993), which transferred authority from the US-led UNITAF to a United Nations operation with an expanded force and mandate, for example, Djibouti argued that Somalia was beset by “ever-deepening anarchy” while Brazil described the complex situation as unique.<sup>29</sup>

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<sup>25</sup> S/PV.3060, 17 March 1992, 31.

<sup>26</sup> S/PV.3145, 3 December 1992, 36.

<sup>27</sup> Ibid., 16-17; 26; 46.

<sup>28</sup> S/RES/794 (1992), 3 December 1992; 2nd paragraph in preamble.

<sup>29</sup> S/PV.3188, 26 March 1993, p. 7; 28.

In the narrative of complexity and chaos, it is extremely difficult to identify an intentional perpetrator(s). Although perpetrators were described as warlords, armed gangs, and bandits, they were only deemed partially responsible for the humanitarian crisis in Somalia. Their harmful actions were described as being as much obstructionist as they were intentional. It is difficult to interdict a crisis without a single point of leverage or locus of control. Cape Verde captured the difficulty for the international community of stopping atrocities in a context where the perpetrators cannot be clearly connected to their crimes.

We are bound to admit that we have now reached a situation in which the law of the jungle is tending to prevail over the action of the international community.<sup>30</sup>

Despite the lack of intentional causality or a single locus of control to subvert, however, Security Council members were united in their belief that the very survival of the Somali state and the Somali people were at risk, constituting a threat to international peace and security. It was the magnitude of the human catastrophe which “defies words and imagination” and the lack of legitimate authority within the country, that propelled the Security Council to take radical new action – the use of military force to interrupt the “total chaos” and create safe conditions for humanitarian relief.<sup>31</sup>

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<sup>30</sup> S/PV.3145, 3 December 1992, p. 18.

<sup>31</sup> Ibid., p. 32 (Austria); see also Belgium p. 23; Russian Federation p. 26.

*Table 3.1: Security Council Support for Resolutions on Somalia*

<b>Resolution</b>	<b>Subject</b>	<b>Votes in Favor</b>	<b>Abstentions</b>	<b>Votes Against</b>
<b>746 (1992)</b>	Expresses its concern that the continuation of human suffering in Somalia constitutes a threat to international peace and security	Austria, Belgium, Cape Verde, <b>China</b> , Ecuador, <b>France</b> , Hungary, India, Japan, Morocco, <b>Russian Federation</b> , <b>UK</b> , <b>USA</b> , Venezuela, Zimbabwe	None	None
<b>794 (1992)</b>	Authorizes the use of all necessary means under Chapter VII of the Charter to establish a safe environment for humanitarian relief operations in Somalia; establishes US-led UNITAF	Austria, Belgium, Cape Verde, <b>China</b> , Ecuador, <b>France</b> , Hungary, India, Japan, Morocco, <b>Russian Federation</b> , <b>UK</b> , <b>USA</b> , Venezuela, Zimbabwe	None	None
<b>814 (1993)</b>	Expands the peacekeeping mandate under Chapter VII of the Charter to include disarmament; transfers authority from UNITAF to UNOSOM II	Brazil, Cape Verde, <b>China</b> , Djibouti, <b>France</b> , Hungary, Japan, Morocco, New Zealand, Pakistan, <b>Russian Federation</b> , Spain, <b>UK</b> , <b>USA</b> , Venezuela	None	None

Given the disproportionate amount of attention the Security Council devoted to the simultaneously occurring conflict in Bosnia-Herzegovina, it is notable that forcible military action was authorized first in the case of Somalia. Two factors account for this outcome. First, Council Members were largely unified in their interpretation of the conflict – its causes, character and victims – allowing them to act in concert. Secondly, the Somalia case was different than either Bosnia-Herzegovina in which the Security Council was heavily engaged or Rwanda in which it was significantly less active,

precisely because Somalia lacked a legitimate government. In the case of Somalia, its very viability as a state was in serious question. Djibouti remarked in March 1992 that Somalia was “a non-State” in key respects<sup>32</sup>. States as geographically and politically diverse as Djibouti, Ecuador, China, Belgium, India and Morocco all cited Somalia’s lack of government as an “extraordinary situation” requiring an “exceptional response”<sup>33</sup>. This type of agreement among Security Council Members was not possible over the conflict in Bosnia-Herzegovina where the Council was divided over whether Bosnia was a victim of external aggression or embroiled in a civil war. This distinction – the status of existing government authority – is an important one because new norms are more likely to become strengthened when they are consistent with existing internalized norms, rather than when they are in conflict with them. Coercive humanitarian intervention in the case of Somalia does not raise the sovereignty concerns for Council Members that forcible intervention does in a case where legitimate state authority exists, even if it is contested. During this early stage of norm emergence, humanitarian intervention was possible because it did not pose a significant challenge to existing standards of what constituted appropriate use of military force. While military force had not been authorized by the Security Council in response to an internal crisis previously, doing so in the case of Somalia complemented rather than threatened the existing sovereignty norm. In fact, the Security Council response to Somalia shows that ‘statelessness itself was acknowledged as a threat to the international society of sovereign states’.<sup>34</sup>

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<sup>32</sup> S/PV.3188, 26 March 1993, p. 7.

<sup>33</sup> S/PV.3145, 3 December 1992, p. 46

<sup>34</sup> Ioan Lewis and James Mayall, “Somalia,” in *United Nations Interventionism, 1991-2004* ed. Mats Berdal and Spyros Economides (Cambridge: Cambridge University Press, 2007) 108.

Although the Security Council unanimously adopted resolution 794 (1992) establishing UNITAF with a mandate that allowed the use of military force and later transferred that robust military authority to UNOSOM II in resolution 814 (1993), the Council was divided over whether its actions in Somalia should expand the standards of what constitutes the appropriate use of military force – whether it established precedent for Security Council responses to future conflicts. First, it is important to note that two innovations in the use of military force were authorized by the Security Council in Somalia. Resolution 794 (1992) was unique because it established for the first time that a strictly internal humanitarian catastrophe constituted a threat to international peace and security and it authorized a coalition led by a Security Council member to use force to address the humanitarian crisis. Resolution 814 (1993) represents further advancement, rather than simple continuation, because UNOSOM II became the first peacekeeping mission authorized to take enforcement action under Chapter VII of the UN Charter. Most Security Council members considered these moves to be “historic” but not all members argued that it should constitute precedent.

Both China and India are strong defenders of state sovereignty and strive to carefully uphold the principle of non-interference in the internal affairs of sovereign states. China, in explaining its vote on resolution 794 (1992), stated that it would support the resolution because of the chaos engulfing Somalia as a result of its lack of government and because it had sympathy for the Somali people. China also indicated that the strong and united requests of African countries and the Secretary-General influenced its decision. China stated clearly, however, that it viewed the situation in

Somalia as “unique” prompting “exceptional action” to create a secure environment for the delivery of humanitarian relief.<sup>35</sup> According to China, the Chapter VII authorization for Somalia should not alter current standards for the appropriate use of military force. China explained its affirmative vote on resolution 814 (1993) authorizing the use of force for UNOSOM II this way,

It is our understanding that this authorization is based on the needs of the unique situation in Somalia and should not constitute a precedent for United Nations peace-keeping operations.<sup>36</sup>

India concurred. During its explanation of its affirmative vote on 794 (1992) India specifically emphasized the “uniqueness of the Somali crisis” relative to other conflicts by arguing that “the rapidly deteriorating complex and extraordinary situation, with no Government in control, demands an immediate and exceptional response from the international community”.<sup>37</sup> India was unequivocal in its position that the Somalia case on its own did not constitute precedent. The emphasis for India, however, seemed to be that each situation presented to the Council be evaluated on its independent merit. India seemed to be adverse to Security Council resolutions creating precedent for the Security Council in general and not necessarily opposed to precedent only in specific regard to humanitarian intervention.

The present action should not, however, set a precedent for the future. We would expect that, should situations arise in the future requiring action under Chapter VII, it would be carried out in full conformity with the Charter provisions and in the spirit of the Secretary-General’s report “An Agenda for Peace”.<sup>38</sup>

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<sup>35</sup> S/PV.3145, 3 December 1992, pp. 16-17.

<sup>36</sup> S/PV.3188, 26 March 1993, p. 22.

<sup>37</sup> S/PV.3145, 3 December 1992, p. 49

<sup>38</sup> Ibid., p. 51.

Ecuador was also cautious about the Security Council response in Somalia, noting that the crisis was exceptional requiring fresh political and legal analysis.<sup>39</sup> Speaking before the vote on resolution 794 (1992), Ecuador stated,

In Somalia there is no Government that can be interlocutor of the United Nations for the purpose of agreeing upon a humanitarian-assistance operation. But the Somali people – solely sovereign in the respect of its destiny – is our interlocutor, and we are heeding its call.<sup>40</sup>

Ecuador argued that the decision to use force was “unquestionably an important one” but “commensurate to the complex and sui generis situation that besets Somalia” (emphasis original).<sup>41</sup> Ecuador’s statements exhibited caution about setting precedent but they also exhibited a partiality toward a conception of state sovereignty that is consonant with state responsibility for the protection of the individuals for whom the state exists by recognizing the legitimate authority of the people.

At least six Security Council members verbally indicated that they intended their affirmative votes on resolution 794 (1992) and 814 (1993) to build precedent for future Security Council actions. Zimbabwe, while recognizing that Somalia was a “unique situation that warrants a unique approach,” was clear that the case should constitute precedent.

However, any unique situation and the unique solution adopted create of necessity a precedent against which future, similar situations will be measured.<sup>42</sup>

Cape Verde stated that the crisis in Somalia “represents one of the most serious challenges to the full establishment of a new international order on Earth within which

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<sup>39</sup> S/PV.3145, 3 December 1992, p. 12.

<sup>40</sup> Ibid., p. 13.

<sup>41</sup> Ibid., p. 14.

<sup>42</sup> Ibid., p. 11.

the United Nations has a role of capital importance to play.” Cape Verde argued that United Nations Charter responsibilities demand that the Security Council fulfill its role as guarantor of peace and international security and maintain its credibility as capable of doing so. Thus, according to Cape Verde, the case of Somalia offered,

a golden opportunity to prove our determination, and this, moreover, besides helping solve the calamitous situation in which the Somali people find themselves, would contribute to giving fresh impetus to United Nations activities in maintaining international peace and security.<sup>43</sup>

Cape Verde’s statement indicated that the response might become a model for new and innovative Security Council responses to ferocious national conflicts. Spain, explained after its vote on resolution 814 (1993) that it understood the gravity of authorizing an operation without precedent but remarked that the objectives of the Somali operation were “as laudable as they are ambitious”.<sup>44</sup> Austria argued that by passing resolution 794 (1992) the Security Council was fulfilling its responsibility to the people of Somalia. Austria stated that the resolution represented a bold new step by the Security Council but one that further developed steps recently taken by the Council including resolution 688 (1991) on Iraq.<sup>45</sup> Austria indicated that it was supportive of efforts to look more closely into the “fine print” of possible enforcement action under the auspices of the United Nations. Austria also used the opportunity to respond directly to criticism from the Secretary-General and others that the Security Council had been too concerned with Yugoslav problems to address “equally cruel and dangerous conflicts elsewhere, e.g. in

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<sup>43</sup> S/PV.3145, 3 December 1992, p. 21.

<sup>44</sup> S/PV.3188, 26 March 1993, p. 26.

<sup>45</sup> S/PV.3145, 3 December 1992, p. 31.

Somalia”.<sup>46</sup> Austria commended the Somali decision but also suggested that similar action ought to be taken in Bosnia-Herzegovina. Austria stated that the Security Council response to Somalia proved that the Council could “muster the necessary political will and the resources required to deal with humanitarian disasters” but argued that the need for the secure delivery of humanitarian assistance in Bosnia-Herzegovina remained ongoing and was increasing. “It is our fervent hope” Austria stated, “that it will soon be addressed effectively as well”.<sup>47</sup> Both the United States and Hungary made explicit statements about their hope for future forcible actions by the Security Council to stop humanitarian crises. The United States commended the international community for “taking an important step in developing a strategy for dealing with the political disorder and conflicts of the post-cold war world”.<sup>48</sup> This strategy included using military forces when necessary but required examination on a case-by-case basis in response to future Somalias. Finally, Hungary stated,

...In adopting this resolution, the United Nations can take pride in action that might provide inspiration and guidelines to be followed in the future as well. In the light of the operation in Somalia upon which we are about to embark, it seems to tell us that it will be even more difficult, confronted with world public opinion, for the international community to avoid its responsibility to meet the challenges arising in hotbeds of crisis as serious as the one that is continuing to tear Somalia apart.<sup>49</sup>

The lack of unity on the Council over whether or not Somalia should be deemed precedent for future forcible humanitarian action by the Council resulted in Security Council resolutions that both expanded conventional practice (by authorizing the use of

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<sup>46</sup> S/24333, para 13 in S/PV.3145, 3 December 1992, p. 32

<sup>47</sup> S/PV.3145, 3 December 1992, p. 32

<sup>48</sup> Ibid., p. 38.

<sup>49</sup> Ibid., p. 48.

all necessary means under Chapter VII to establish the conditions for humanitarian assistance) and emphasized the unique character of the expanded response. The second clause of the preamble of resolution 794 (1992), reprinted below, reflects this compromise.

Recognizing the unique character of the present situation in Somalia and mindful of its deteriorating, complex, and extraordinary nature, requiring an immediate and exceptional response,<sup>50</sup>” (emphasis original)

Clearly, despite widespread agreement in the Security Council on the complex causal story of conflict, the Council was divided over whether its historical decision to authorize military intervention in defense of humanitarian principles should be a basis for future Security Council action. Norm entrepreneurs on the Council, including the United States, articulated an interest in advancing a new standard of appropriate military action to deal with intra-state conflicts – humanitarian intervention. Other members, most notably China and India, stated their willingness for an exceptional Chapter VII authorization in the case of Somalia but rejected efforts by other members to alter existing normative standards for the use of force.

The complex causal story was contested in the Security Council for the first time in June 1993. Following a particularly deadly attack on a Pakistani contingent of UN peacekeepers by an armed faction in Mogadishu, unity of the Security Council members around the causal story of conflict broke down, leading to eventual United Nations withdrawal from Somalia in absence of a completed mission. In executing its expanded and robust mandate, UNOSOM II became more and more involved in coercive disarmament activities, as Somali factions continued to obstruct humanitarian convoys

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<sup>50</sup> S/RES/794, 3 December 1992.

and continued to undermine efforts toward peace. In particular, tension increased dramatically between General Aideed, head of the renamed SNA who increasingly became concerned of being marginalized and the United Nations. Shortly after the transfer of authority from UNITAF to UNOSOM II, Aideed began offensive operations against the UN personnel. Fighting between Aideed's forces and peacekeepers started on 5 June 1993 following an inspection of a weapons storage facility of the SNA at Radio Mogadishu. Supported by, and hiding behind, angry crowds of supporters, SNA militia confronted Pakistani peacekeepers. After hours of fighting, American and Italian armored units succeeded in breaking off the confrontation.<sup>51</sup> However, twenty-four Pakistani peacekeepers were killed and 56 more were injured, making this the heaviest single incident of UN casualties in a peace-keeping operation.<sup>52</sup> The Security Council was outraged and called an emergency meeting of the Council one day later on 6 June 1993. At this point, a new causal story emerged in the Council – an intentional causal story but one in which the victims expanded beyond the Somali civilians to include the United Nations. The change in the language of Security Council Members about the causal story of conflict and human rights abuses in Somalia paralleled altered behavior on the ground.

Resolution 794 (1992) labeled the conflict in Somalia as “complex” and a “tragedy”. It identified perpetrators in only the broadest of terms as “all parties, movements and factions in Somalia” and condemned their “deliberate impeding of the delivery of food and medical supplies essential for the survival of the civilian

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<sup>51</sup> Hirsch and Oakley, *Somalia and Operation Restore Hope*, 118.

<sup>52</sup> S/PV.3229, 6 June 1993, p. 6.

population”.<sup>53</sup> But in Security Council resolution 837 (1993), the SNA faction of the United Somali Congress led by General Aideed, was specifically named as purported intentional perpetrators of “premeditated armed attacks” against UNOSOM II.<sup>54</sup> In the formal debate preceding the vote on resolution 837 (1993), Pakistan described the perpetrators in Somalia as “petty warlords”, “dictators,” and “international thugs.”<sup>55</sup> Djibouti described the perpetrators as “uncivilized” and “criminal elements.”<sup>56</sup> France, the United Kingdom, and Venezuela were more specific identifying the Somali National Assembly, the Somali National Congress and General Aideed as the perpetrators of the crime against the United Nations.<sup>57</sup> Venezuela identified Aideed as “nationally and internationally recognized as primarily responsible for the destruction of Somalia and for thousands upon thousands of crimes against his people”.<sup>58</sup> The victims of the conflict remained “the Somali people” for some Members of the Security Council but the overwhelming emphasis of the debate preceding the passage of resolution 837 (1993) was on the Security Council (representing the international community), the United Nations, and its peacekeepers as the primary victims of Aideed’s and the SNA’s intentional actions. In total, ten Security Council members specifically called for the authors of the crime (some by name) against the Pakistani peacekeepers to be punished by the United Nations for this transgression. Resolution 837 (1993) classified the attacks against

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<sup>53</sup> S/RES/794 (1992), 3 December 1992.

<sup>54</sup> S/RES/837 (1993), 6 June 1993.

<sup>55</sup> S/PV.3229, 6 June 1993, p. 6.

<sup>56</sup> *Ibid.*, p. 12.

<sup>57</sup> *Ibid.*, p. 19 (France); p. 22 (United Kingdom); p. 16 (Venezuela).

<sup>58</sup> *Ibid.*, p. 16.

UNOSOM II personnel as “premeditated” and twice identified the USC/SNA as the perpetrators.

The introduction of a new story of causality into Security Council deliberations resulted in a change in mission emphasis. Statements in the formal meeting emphasized the need to punish the perpetrators and bring them to justice, rather than maintaining the focus on addressing the humanitarian crisis and settling the political dispute.<sup>59</sup> Pakistan called for the Security Council to act swiftly to bring the perpetrators to justice for their “murderous defiance of the Council’s authority”<sup>60</sup>. The United States was a strong advocate for a renewed focus on “the disarming and detention of persons posing a threat to United Nations forces or obstructing their operations”.<sup>61</sup> Resolution 837 (1993) authorized UNOSOM II forces “to confront and deter armed attacks” against UN personnel and reaffirmed its authorization to take “all necessary measures against all those responsible for the attacks” on the Pakistani peacekeepers.<sup>62</sup> The resolution also called for the neutralization of radio broadcasts calling for attacks against peacekeepers and demanded that all parties and factions abide by the Addis Ababa peace agreement. Finally, the resolution

Urges Member States to contribute on an emergency basis, military support and transportation, including armoured personnel carriers, tanks and attack helicopters, to provide UNOSOM II the capability appropriately to confront and deter armed attacks directed against it in the accomplishment of its mandate;<sup>63</sup>

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<sup>59</sup> To see examples of the use of the language of punishment see the statements by Cape Verde, p. 9; Djibouti p. 12; Venezuela, p. 17; New Zealand, p. 18; United States, p. 8; Pakistan, p. 7; in S/PV.3229, 6 June 1993, p. 9 (Cape Verde).

<sup>60</sup> S/PV.3229, 6 June 1993, p. 7.

<sup>61</sup> Ibid., p. 8.

<sup>62</sup> S/RES/837 (1993), 6 June 1993.

<sup>63</sup> S/RES/837 (1993), 6 June 1993, operative clause 8.

What happened on the ground over the next several months was an increasingly aggressive focus by United Nations personnel on the coercive disarmament of factions and a particular emphasis on the capture of Aideed and the political isolation of the USC/SNA. Increasingly, the United Nations came to be seen as a party to the conflict rather than its mediator. Under violent attack from Aideed's forces, peacekeepers were drawn into frequent gun battles with the SNA on the streets of Mogadishu and suffered many more casualties. Security Council members indicated that UN efforts toward disarmament and the removal of General Aideed from influence was now part of its overall effort to restore peace, order and security to Somalia.

During the formal meeting of 22 September 1993 in which the Security Council passed resolution 865 (1993), members defended the Council's emphasis on bringing the perpetrators of criminal acts against UNOSOM II to justice. Members also argued that evidence of increasing strife in Mogadishu should not overshadow UN progress in other areas of the country and on its primary objective of reversing the humanitarian crisis. Djibouti, Hungary, New Zealand, Pakistan, Spain and the United Kingdom specifically condemned attacks against UN personnel and argued that the capacity of the perpetrators must be diminished. Many of these states specifically identified Aideed as a barrier to the reconciliation process. Pakistan described Aideed as a "ruthless warlord" and argued that his supporters targeted UN peacekeepers because Aideed "expects to lose ground in a democratic and stable Somalia".<sup>64</sup> Despite these statements which articulated an intentional causal story in which the Aideed and the SNA were intentionally targeting civilians and the United Nations peacekeepers, Council members also continued to

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<sup>64</sup> Pakistan in S/PV.3280, 22 September 1993, p. 12.

describe the conflict in Somalia as complex and the United Nations' response as multi-faceted.

Disunity in the Council around the causal story of the conflict and the appropriate response increased with the increasing exchange of violence between General Aideed and UN personnel. In October 1993, US rangers used coercive force in an attempt to capture Aideed. The mission took a fateful turn for the worse when full-scale fighting erupted between SNA supporters and the US military. American attack helicopters were shot down and sixteen US soldiers were killed in the fighting. The bodies of some of the American soldiers were mutilated by angry Somalis in full view of television cameras and dragged through the streets of Mogadishu. The gruesome images were broadcast internationally. Within days, and acting under significant domestic pressure, the Clinton administration announced that it would temporarily increase forces in Somalia but that the United States would withdraw completely from the Somalia operation within six months. The Clinton administration decided that the continuation of the mission was too costly to justify its continued intervention yet it wanted to withdraw with honor.<sup>65</sup>

By November 1993, responsibility for the tragic situation in Somalia seemed to shift once again but this time to the Somali people themselves. "The future," according to the United Kingdom, "lies in their own hands... the people of Somalia bear the ultimate responsibility for national reconciliation and the reconstruction of their country. We can help but we cannot do it for them".<sup>66</sup> This sentiment similarly was voiced by representatives from the United States, Pakistan, New Zealand and Cape Verde. Earlier

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<sup>65</sup> Lewis and Mayall, "Somalia,"131.

<sup>66</sup> S/PV.3317, 18 November 1993, pp. 22-23.

resolutions also had included a statement in the preamble that indicated that the people of Somalia bore the ultimate responsibility for national reconciliation, but unlike during the formal meetings in which these earlier resolutions were passed blame for the crisis seemed to lay squarely with the factions in Somalia but also with the general population. Resolution 886 (1993) extended UNOSOM II's mandate for an additional six months but called for a fundamental review of that mandate. The fifth clause of the preamble put the Somalis on notice. "... the people of Somalia bear the ultimate responsibility for national reconciliation and reconstruction of their own country".<sup>67</sup> On 4 November 1994, the Security Council unanimously decided to terminate the United Nations Operation in Somalia noting they had achieved their humanitarian purpose but not their political one. Changes in the causal story of conflict articulated in the Security Council paralleled changes in policy on the ground. Widespread agreement among Security Council members on the complex causal story of conflict combined with the lack of governmental authority in Somalia made the use of military force for humanitarian purposes possible in Somalia. Conversely, disunity in the Security Council over the evolving character of the conflict and the appropriate response made the continued use of military force unsustainable.

*Phase III: Reversal of Mandate and Withdrawal:  
The Limits of Humanitarian Intervention*

Phase III of the United Nations involvement in Somalia was characterized by the increasingly difficult military situation on the ground, the reversal of its policy on

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<sup>67</sup> S/RES/886 (1993), 18 November 1993.

coercive disarmament , reduction to traditional peacekeeping functions (resolution 897) and eventual withdrawal (resolution 954). Security Council meetings and resolutions throughout 1994 illustrated the importance of strong leadership for the success of military humanitarian intervention. In the absence of strong leadership, unity on mission direction in the Council is difficult to maintain and capacity for the use of force dramatically diminishes. Once the United States withdrew from its leadership role in the Somalia operation, UNOSOM II began to unravel, losing legitimacy, political support and the capacity to respond to violence. The limiting effect that capacity has on the realization of the principle of humanitarian intervention is particularly notable. The Czech Republic noted in February 1994 that the United Nations “no longer has the wherewithal to disarm even the worst thugs and bandits”. It described the Security Council decision to maintain the mission despite its increasing inability to meet its mandate as “trying to square a circle”.<sup>68</sup> The evolution of UN policy in phase III also demonstrated that lack of unity precludes active use of coercive force. Once Security Council Members were no longer agreed on whether the mission should continue, the use of military force became untenable, even before the official change in mandate. By September 1994 the United States actively advocated for a complete UN withdrawal of the Somali mission arguing that “UNOSOM is draining away scarce human and financial resources that would be better used by the international community elsewhere”.<sup>69</sup> Oman similarly argued for the discontinuation of the Somali mission but suggested that the financial resources allocated

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<sup>68</sup> S/PV.3334, 4 February 1994, p. 42.

<sup>69</sup> S/PV.3432, 30 September 1994, p. 4.

to the military presence could be “channeled to humanitarian purposes in that country”.<sup>70</sup> Without any constructive partners on the ground to work with in reconstructing the state of Somalia and the continuation of what Council members again described as a situation of “complexity” and “chaos”, the Somali conflict also established important limits with regard to future interventions. Complexity is not amenable to political solution because in a situation of chaos both the perpetrators and potential strategic partners are not clearly identifiable. Further, in the absence of a government with which to negotiate, the Security Council must decide whether to appease actors that have the power on the ground or to oppose them with force.<sup>71</sup>

The Security Council learned that conflicts characterized by multiple factions with fissures within and between groups, like in Somalia, were not good candidates for humanitarian intervention unless the intervention is undertaken as part of an imperial or long-term nation-building project. One of the lessons of Somalia is that for humanitarian intervention to be effective a remnant of a modern nation-state must exist that can be rebuilt with outside help. Otherwise to adopt humanitarian intervention in such a case is to accept imperialism – the very charge that the norm entrepreneurs who advocate for the use of force to stop gross human rights violations seek to avoid and disprove.<sup>72</sup>

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<sup>70</sup> S/PV.3334, 30 September 1994, p. 3.

<sup>71</sup> Lewis and Mayall, “Somalia”.

<sup>72</sup> Ibid.

**Figure 3.1: Timeline of Key Events for Somalia (1991-1995)**

January 1991	Siad Barre overthrown by USC
November 1991	Civil War erupts in Mogadishu
January 1992	Somalia discussed at Security Council
April 1992	UNOSOM established
December 1992	S/RES/794 establishes UNITAF; authorizes use of force; first ever Chapter VII authorization for humanitarian intervention
March 1993	S/RES/814 establishes UNOSOM II; authorizes use of force
May 1993	UNOSOM II takes over from UNITAF
June 1993	Pakistani peacekeepers killed; Security Council passes S/RES/837 authorizes use of force against perpetrators (Aideed and SNA) of attacks against peacekeepers
October 1993	US forces killed and mutilated on TV; Clinton announces US future withdrawal from Somalia; hunt for Aideed ends
February 1994	S/RES/897 reduces UNOSOM II mandate; use of force no longer authorized; mission reduced to traditional peacekeeping mission
March 1994	US withdraws all forces from Somalia
November 1994	Security Council votes to end UNOSOM II and withdraw peacekeeping forces;
March 1995	UNOSOM II withdraws completely ending Security Council involvement in Somalia
April 1995	Security Council issues statement that UN will continue to provide humanitarian assistance to Somalia

## **Conclusions**

I contend that the experience of the Somalia humanitarian intervention demonstrate that lack of unity on a causal story – contestation over the actual perpetrators, victims, and character of the conflict – obstruct consensus on humanitarian intervention. Said differently, when there are no clear good guys to partner with in bringing peace and security to the State in question and when perpetrators cannot be clearly identified and are unable to be linked to the harm inflicted on war’s victims, humanitarian intervention will not be sustainable. No future humanitarian interventions

would be approved by the Security Council where the conflicts were simultaneously described as “chaotic” or “complex” or conversely, in the absence of an identifiable and intentional perpetration with a clear victim – an intentional causal story.

The intention of norm entrepreneurs on the Security Council to establish a new standard for the appropriate use of military force is further illustrated by the statements made by Council members during its debate on how to respond to premeditated attacks on UN personnel in June 1993. Cape Verde, Pakistan, Spain, the United Kingdom and Venezuela each stated that the Security Council’s determined response to attacks against UN personnel communicated a message to perpetrators of attacks against the United Nations in other places, notably in Bosnia-Herzegovina and Cambodia. Pakistan argued that “monstrous regional thug dictators” were beginning to not only repress their own people but to challenge the international community and identified both Bosnia and Somalia as examples in which this was occurring.<sup>73</sup> Cape Verde and Venezuela similarly compared the actions of the SNA with attacks on UN personnel in other conflict situations including Bosnia-Herzegovina and Cambodia. Venezuela remarked that resolution 837 (1993) should serve as a warning to forces in Cambodia and the former Yugoslavia that they will also be held responsible for their crimes against the international community. The United Kingdom contended that the resolution demonstrated that “the United Nations will not be diverted from its purpose in Somalia, any more than in other theatres in which United Nations peace-keeping forces are currently committed”.<sup>74</sup> Finally, Spain argued for the immediate and effective

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<sup>73</sup> S/PV.3229, 6 June 1993, pp. 6-7.

<sup>74</sup> *Ibid.*, p. 22.

implementation of resolution 837 (1994) to serve “as a warning to all those who threaten or harass the peace-keeping forces of the United Nations in any part of the world”.<sup>75</sup> This discussion clearly shows that many Council members intended that their decisions in one conflict situation (Somalia) to serve as an example (or precedent) of the type of action that could be expected by perpetrators in other similar contexts. The multiple references to various conflicts on the Security Council agenda during the formal meetings on Somalia illustrates that Security Council members make links to and connections between conflicts, despite the commitment of some members to examination of individual conflicts on a case by case basis. The repeated references to the former Yugoslavia and Cambodia in response to the murder of peacekeepers in Somalia illustrates that the Security Council response in one case is directly linked to its actions in other cases. Resolution 837 (1993) was clearly intended by many of its authors to serve as a warning to perpetrators elsewhere. Argentina, in November 1994, also warned of the negative impact that withdrawal of the peacekeeping mission would have on peacekeeping operations in other places.<sup>76</sup> These examples support the argument presented above that many Council Members did in fact intend for forcible humanitarian intervention in Somalia to be a precedent for future UN humanitarian action.

My analysis also shows that the observance of human rights was viewed by many Council Members as an important part of international security. In addition to the references to atrocities and violations of international humanitarian law cited above, resolution 794 (1992) made clear references to the importance of respect for international

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<sup>75</sup> S/PV.3229, 6 June 1993, p. 24.

<sup>76</sup> S/PV.3447, 4 November 1993, p. 12.

humanitarian law to achieving security. The second paragraph of the preamble of resolution 794 (1992) defined the magnitude of the human tragedy caused by conflict and the obstacles to the distribution of humanitarian assistance as a threat to international peace and security. The eighth paragraph of the preamble of that same resolution reads,

Expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring in Somalia, including reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities; deliberate attacks on non-combatants, relief consignments and vehicles, and medical and relief facilities; and impeding the delivery of food and medical supplies essential for the survival of the civilian population, (emphasis original).<sup>77</sup>

These references to the humanitarian basis of the threat to international peace and security were repeated in subsequent Security Council resolutions on Somalia.

Finally, repeated references by Security Council Members to the impact of the media for bringing human rights abuses to the attention of Council Members and their domestic publics seems to demonstrate the importance of this mechanism for garnering or undermining political support for humanitarian intervention by the Security Council. The existence of expert opinion and media imagery helped to provoke international interest in Somalia leading to UN intervention but it also provoked international outrage toward the ill treatment of peacekeepers which eventually led to UN withdrawal. Ecuador noted in late 1992 that the tragedy of Somalia was broadcast daily on the television screens of Council Members. Ecuador implied that these images evoked principles of solidarity and interdependence among viewers making it difficult to remain impassive “in the face of

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<sup>77</sup> S/RES/794, 3 December 1992.

human tragedy”.<sup>78</sup> Venezuela credited the world media for preventing the international community from watching “unresponsively to the slow death of the Somali people”.

Thanks to the sensitivity and concern of the world’s media, the plight of the Somali people has always weighed heavily on the conscience of mankind, which today is acting through the Security Council.<sup>79</sup>

In March 1993, Morocco explained the historic passage of resolution 794 (1993) as appropriate to the situation in Somalia. The Moroccan representative stated, “The impact of the horrifying images has mobilized international solidarity to put an end to the chaos and anarchy”.<sup>80</sup> In September 1993, the representative of New Zealand argued that media preoccupation with clashes in southern Mogadishu should not overshadow the successes of the Somalia operation elsewhere. He contended that those who hold the view that the Council has lost its way and should revise the mandate away from the use of force are “unduly influenced by images on television screens” and do not take into consideration that the primary objective of UNOSOM has been the humanitarian and not the political mission.<sup>81</sup>

Statements made by members of the Security Council indicate that national and international security interests are shaped by human rights considerations – whether because of the influence of ideas or as the result of domestic pressure to address them. As this chapter has shown, the decision to engage in humanitarian intervention was justified by the Security Council solely based on the internal humanitarian crisis caused by conflict and famine within the borders of Somalia, with few casual and no formal

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<sup>78</sup> S/PV.3145, 3 December 1992, p. 11

<sup>79</sup> Ibid., p. 42

<sup>80</sup> S/PV.3188, 26 March 1993 p. 10

<sup>81</sup> S/PV.3280, 22 September 1993, p. 32.

reference to its impact on the national interests of neighbor states. By way of example, New Zealand in November 1994 argued that it was not security interests that motivated its interest in bringing security to Somalia. Rather, New Zealand based its support for humanitarian intervention on the belief that collective security mechanisms of the UN should be “equally available for the benefit of the small and underprivileged as they are for the larger and more powerful”.<sup>82</sup> Finally, the structure, goals, rules of engagement and mode of implementation of UNITAF and then UNOSOM II were consistent with the stated motivation of humanitarian concern.<sup>83</sup>

Even if we discount the ideational justifications offered by Security Council members for their action in Somalia and apply an a priori definition of state interests, the humanitarian intervention in Somalia cannot be explained by realism and its traditional conceptions of power and static definition of national interest. Using the definition of strategic interests from chapter 1, it is clear that the internal crisis in Somalia posed neither a threat to vital interests nor an opportunity for power maximization for Security Council members. Although Somalia might have held some strategic importance for the United States during the Cold War, with its end Somalia lost its position of value to the United State or the Russian Federation. Examining the situation in Somalia in comparison with the a prior interests of the permanent five Council members, we can find no evidence that the situation in Somalia threatened them or a strategic ally, it was not in the geographic region of the permanent members nor did the flow of refugees threaten them or allies of strategic importance. In terms of opportunity, Somalia did not possess

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<sup>82</sup> S/PV. 3447, 4 November 1994, p. 4

<sup>83</sup> DiPrizio, *Armed Humanitarians*, 147-8.

natural resources of vital interest to the permanent members nor did intervention in this case enhance the economic prosperity or political or military power of intervening states in either absolute or relative terms. Intervening in Somalia was what Kaufmann and Pape call a “costly moral action”.<sup>84</sup>

Arguably, withdrawal from Somalia when intervention became too costly (such as the US decision to withdraw from the operation following the death of sixteen of its soldiers) might lend support to a realist explanation. Just three days after the tragic incident in question, however, the United States voted in favor of establishing a United Nations Assistance Mission in Rwanda (UNAMIR), albeit reluctantly and without US ground troops. What the withdrawal of the United Nations Operation in Somalia shows is that there are limits to the conditions under which the Security Council will consider military action appropriate. The reversal of humanitarian intervention helps to define the conditions of its appropriate use, not that the use of military force was not motivated by humanitarian considerations.

The reversal of the United Nations on the use of military force in Somalia does offer some support for a domestic interest argument – where the impact of media imagery mobilizes domestic publics with regard to international action. For example, the US withdrawal announcement followed almost immediately after images of the mutilated bodies of US soldiers being dragged through the streets of Mogadishu by an angry mob of Somalis was broadcast by the media to its US audience. The Bush administration resisted domestic and media pressures to intervene in Bosnia, Somalia and Haiti during

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<sup>84</sup> Chaim D. Kauffman and Robert A. Pape, “Explaining Costly International Moral Action: Britain’s Sixty-Year Campaign Against the Atlantic Slave Trade,” *International Organization* 53 (1999): 4, 631-668.

his 1992 presidential campaign, however. President Bush decided to intervene in Somalia only after he had lost his reelection, suggesting that humanitarian concern rather than external forces motivated his decision.<sup>85</sup> The decisions of the Security Council occur at the international level where states are confronted with a constellation of interests, including but not limited to those held dearly by their domestic constituents. Research has shown that policy makers have as much impact on the decisions made by the media on what conflicts to report on as media reporting has on policy maker responses to conflict.<sup>86</sup> Evidence from the forthcoming chapters on Bosnia-Herzegovina, Kosovo and Sudan demonstrate that there is not a direct link between public mobilization in powerful democratic states and affirmative decisions to engage in humanitarian intervention. Further, in the case of Somalia the permanent members of the Security Council were not influenced by powerful diaspora communities of Somalis living within their borders, did not face significant legislative pressure to respond and public protest and outcry were present but marginal. Nonetheless, the ideational commitment of much of the domestic public in the democratic states of France, the UK and the USA, to human rights principles means that the domestic publics of those states expect the Security Council to respond to intra-state conflicts where massive and systematic human rights abuses are occurring.<sup>87</sup>

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<sup>85</sup> DiPrizio, *Armed Humanitarianism*, 148.

<sup>86</sup> Jonathon Mermin, "Television News and American Intervention in Somalia: The Myth of a Media-Driven Foreign Policy" *Political Science Quarterly* 112, no. 3 (1997): 385-403. DiPrizio, *Armed Humanitarianism*.

<sup>87</sup> Wheeler *Saving Strangers*.

### *Summary of Findings*

There was widespread agreement among Security Council members on the causal story of conflict in Somalia. The Security Council principally characterized the conflict as a situation of complexity and chaos. The absence of state authority in Somalia removed the need for consent for military force, lifting the barrier to humanitarian intervention. Two notable developments in Security Council practice happened in Somalia between 1992 and 1995. The Security Council for the first time defined a humanitarian crisis in itself a threat to international peace and security. The Security Council also authorized its first Chapter VII peace operation in which UN peacekeepers were authorized to use force to create the conditions necessary for the delivery of humanitarian aid. Failures on the ground however, led to Security Council learning about the conditions necessary for the successful use of military force in defense of humanitarian principles. In Somalia, Security Council members learned that complexity is not amenable to political solution by use of force. In absence of a clearly identifiable perpetrator whose behavior could be interdicted to stop the crisis or a strategic partner (state in the making) to work with on building a political solution, the Security Council could decrease the humanitarian crisis but was unable to solve the political one.

The case of Somalia illustrates the importance of US support for humanitarian intervention. The extensive US military support in Somalia through UNITAF saved the faltering mission in early 1993. When the US withdrew its support for the operation after the death of 16 of its peacekeepers, the UNOSOM II mission began to collapse in terms of both political and military support from other members of the Security Council.

Divisions began to emerge within the Council over the causal responsibility for the violence and the mission became militarily untenable without US support and in absence of a strategic partner on the ground.

The media imagery of the humanitarian crisis in Somalia influenced Security Council members and their constituents, helping to create the humanitarian motives for the intervention. Yet states were not forced into the intervention by their domestic interests. Similarly, media imagery led to domestic outrage in the US when pictures of US soldiers being dragged through the streets of Mogadishu by their killers were broadcast live around the world. In absence of other domestic pressures and concerns about UN peacekeeping, media imagery alone would not have caused US withdrawal.

The Security Council action in Somalia was motivated by humanitarian concern. Council members justified their humanitarian intervention by referencing the humanitarian catastrophe – the dual threats of war and famine – that the Somalis faced in absence of their assistance. Permanent members of the Security Council had no vital interests in Somalia. Since the end of the Cold War, Somalia no longer held strategic value for great powers. Intervening states could expect no military or economic gains from their intervention. In fact, the use of military force and the provision of humanitarian assistance were costly and optional for the interveners. Although the Security Council was united in support of humanitarian intervention in Somalia in 1992, its members were divided between those who supported military action in Somalia based on exceptional and unique circumstances and those who sought to create a precedent for future forceful humanitarian action in other places. During the Somalia humanitarian

intervention, norm entrepreneurs on the Security Council actively promoted the creation of a new standard for the appropriate use of military force. It is in the case of Somalia that the emerging norm of humanitarian intervention first emerged and began to be shaped.

## **Chapter 4**

### **From Non-Intervention to Humanitarian Intervention in Bosnia-Herzegovina**

Of all the internal conflicts that threatened the peace and security of entire regions of Africa, Asia and Europe in the post Cold War period, none concerned members of the international community more than the regional and international implications of the dissolution of the Socialist Federal Republic of Yugoslavia. The break-up of the Yugoslav state raised important questions about the conflicting principles of the protection of human rights and the non-interference in internal state affairs as well as what constitutes legitimate statehood, the practical meaning of self-determination and the appropriate purpose for the use of military force. The outcome of these debates had important implications for most states and formal meetings of the Security Council on the crisis attracted unprecedented levels of interest among non-elected members to the Council who participated regularly in formal meetings without voting (see Figure I and Figure II). But the Security Council response to Bosnia-Herzegovina, despite the disproportionate attention it received when compared to similar ongoing conflicts, was marked by incredible ambiguity and inconsistency over time. Careful examination of the formal record of the Security Council demonstrates that disunity between Security Council Members over the cause and nature of the Bosnian conflict complicated United Nations efforts to stop ethnic cleansing. Members of the Council disagreed on whether to authorize humanitarian intervention because they disagreed on the sovereign authority with regard to Bosnia-Herzegovina and whether the conflict was a civil war, an external

aggression, or some combination of both. Contestation among Security Council members over the causal story of conflict in Bosnia-Herzegovina prevented the early use of military force in defense of humanitarian principles like that which occurred in Somalia. But when the Security Council converged around an intentional causal story about Bosnia-Herzegovina in which the state was a victim of an external aggression, humanitarian intervention became possible.

United Nations action in Bosnia-Herzegovina, like that in Somalia before it, marked an important evolution for the emerging norm of humanitarian intervention. In both cases, widespread agreement among Council Members around a causal story was important. In Somalia, however, the Security Council learned that complexity was not amenable to the use of force. In Bosnia-Herzegovina, the use of military force in defense of Bosnian civilians became possible only after widespread agreement among Council members around an intentional causal story. The degree to which the use of force in a particular case conflicts with other highly internalized norms of state sovereignty and territorial integrity and the necessity of media imagery of mass human tragedy for garnering and undermining political will also were important factors in explaining Security Council decisions about humanitarian intervention.

However, the Bosnian case illustrates not only the importance of, but also the limits to, great power leadership on the Council in absence of a strong coalition of permanent members in support of an intentional causal story. Active support for a causal story by the most powerful permanent member of the Security Council (the United States) was not sufficient for that causal story to win out over others. Instead, other

permanent members adopted the intentional causal story only after significant changes on the ground and with regard to their national interests made continued articulation of the inadvertent causal story untenable.

The case of Bosnia-Herzegovina also pushed the emerging humanitarian intervention norm beyond the limits established by the Somalia intervention. It now became possible to intervene militarily in a case of contested statehood and not only in the absence of legitimate state authority. Further, the use of military force could be deployed by a regional organization acting on behalf of the Security Council. Finally, Security Council action emphasized the important link between the protection of human rights and international security by establishing with its authority under Chapter VII of the Charter an international criminal tribunal for the prosecution of violations of international humanitarian law. But the Bosnia case also illustrates that humanitarian intervention is limited by conventional interpretations of the sovereignty norm and in absence of great power strategic interests.

### **Background to the Bosnian Crisis**

Multiple wars were fought in the various regions of the former Yugoslavia during the early 1990s as the Yugoslav state disintegrated. Conflicts occurred both within and between the constituent republics of Yugoslavia: Serbia and the autonomous region of Kosovo (1989-1999); Serbia and Slovenia (1991); Croatia and its minority Serb population backed by Serbia (1991-1993); and in the territory of Bosnia-Herzegovina<sup>1</sup>

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<sup>1</sup> The proper name 'Bosnia-Herzegovina' represents the two distinct regions of 'Bosnia' and 'Herzegovina'. For simplicity, when this paper refers to the territory of 'Bosnia' and the identity marker 'Bosnian' it

(1992-1995). In Bosnia-Herzegovina, conflict occurred in multiple stages beginning with a Serbian incursion followed by a Bosnian Serb conflict with the allied forces of the Bosnian Muslims and Bosnian Croats, and finally conflict among and between Bosnian Serbs, Bosnian Croats and Bosnian Muslims, with the former two receiving active support from the states of Serbia and Croatia respectively. The focus in this chapter of the dissertation will be exclusively on the conflict that occurred within the territory of Bosnia and Herzegovina, making references to other Yugoslav conflicts only as it relates directly to the Bosnian conflict.

At the end of the 1980s, the socialist state of Yugoslavia was made up of six constituent republics—Serbia, Montenegro, Bosnia-Herzegovina, Slovenia, Croatia and Macedonia – and two autonomous regions within the republic of Serbia – Vojvodina and Kosovo. During the late 1980s and early 1990s, Yugoslavia, like many parts of Eastern Europe and the former Soviet bloc was undergoing a process of economic liberalization and political democratization.<sup>2</sup> Internal tensions over the desperate economic situation in the country and the future political organization of the federation gave rise to challenges to federal legitimacy from its constituent republics.<sup>3</sup> The opening political space coupled with economic and political uncertainty provided an opportunity for the emergence of nationalist discourse and ethno-national political parties. Some republics sought greater

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should be understood to refer to the entire territory of Bosnia-Herzegovina and all the individuals that inhabited that territory at the start of the war, unless otherwise indicated. Where necessary for clarification purposes, I will follow ‘Bosnian’ by the relevant ethnic/religious marker of identity - Muslim, Croat, or Serb. I do this recognizing that I may commit violence against those Bosnians upon whom an ethno/religious marker with which they did not identify was forced during the war and was further reified by the Dayton Accords.

<sup>2</sup> Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford: Stanford University Press, 2001); Susan Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, DC: The Brookings Institution, 1995).

<sup>3</sup> Kaldor, *New and Old Wars*, 38.

autonomy while others sought to recentralize federal control. For example, in 1990 while Slovene and Croatian politicians attempted to negotiate the transformation of Yugoslavia from a federation into a confederal state, Serbian nationalist politicians sought to recentralize the federal state and enhance their own political power by provoking conflicts along ethnic lines.<sup>4</sup>

In June 1990, the republic of Serbia abolished the provincial assembly of Kosovo and revoked its status as an autonomous governing unit.<sup>5</sup> Fear of Serbian domination and a “Greater Serbia Project” pervaded much of the Yugoslav federation as did increasing ethnic polarization. The republics of Slovenia and Croatia declared independence and fought wars with the republic of Serbia and in the case of the latter its own minority Serb population. Conflict began in Slovenia in June 1991 but ended by agreement between what remained of the federal Yugoslavia and republics of Slovenia and Croatia on 8 July. The war in Croatia was characterized by confrontation between Serb minorities located in the Krajina and Slavonija regions and the Croatian Government and lasted for more than six months. Serb authorities within these regions of Croatia, backed by the Serbian government in Belgrade, organized a referendum for autonomy and began forcibly expelling ethnic Croats from the territory. The outbreak of fighting over territory resulted in the mass movement of both the ethnic Serbian and Croatian populations. The United Nations became involved in the conflicts in the former Yugoslavia early in September 1991 when the Security Council passed resolution 713 (1991) condemning the fighting

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<sup>4</sup> Noel Malcolm. *Bosnia: A Short History* (New York: New York University Press, 1994): 216; V.P. Gagnon. "Ethnic Nationalism and International Conflict: The Case of Serbia." *International Security* 19 (1994): 2, 155.

<sup>5</sup> Malcolm, *Bosnia*, 216.

and establishing an arms embargo against all of the territory of Yugoslavia. The arms embargo was justified as an effort to limit the conflict and prevent its further escalation. Although the arms embargo applied equally to the entire territory of Yugoslavia it would have unequal effects after Yugoslavia dissolved into multiple recognized sovereign states with varying military and defense capability. In February 1992 the Security Council established a United Nations Protection Force (UNPROFOR) on the territory of Croatia to monitor a cease-fire between Serbia and Croatia and to “create the conditions of peace and security required for negotiation of an overall settlement of the Yugoslav crisis.”<sup>6</sup> United Nations peacekeepers were deployed as observers of a peace settlement in a civil war.

The European Community, under significant pressure from Germany, however, recognized the sovereign independence of Slovenia and Croatia in December 1991. Germany persuaded its more hesitant European counterparts with its argument defending a policy of “preventive recognition” which Germany argued would give international legitimacy and protection to Slovenia and Croatia in an effort to deter the use of force by Yugoslavia against them.<sup>7</sup> The European Community based its decision on the logic that the republics of the Yugoslavia were states and that these borders were sacrosanct. The potential conflict between citizens’ ethnic identities, national rights and state territory was less problematic in largely homogenous Slovenia, which most closely resembled a European-style nation-state.<sup>8</sup> Croatia, however, was not nationally homogeneous. Nonetheless, its minority Serb population was territorially concentrated. Bosnia-

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<sup>6</sup> S/RES/743 (1992), 21 February 1992.

<sup>7</sup> Woodward, *Balkan Tragedy*, 183.

<sup>8</sup> *Ibid.*

Herzegovina on the other hand, was a multi-ethnic and multi-religious state with no clear territorial or political divisions between groups. As a consequence, there was significant reluctance on the part of the EC to recognize Bosnia-Herzegovina based on the argument that given the deterioration of its internal political circumstances it was not able to constitute a sovereign state.

Between 29 February and 1 March 1992, the Bosnian government held a republic-wide referendum in which Bosnian voters overwhelmingly supported independent statehood. Bosnian Serb authorities declared the vote invalid, however, because most Serbs boycotted the election.<sup>9</sup> In April 1992 the United States reversed its original position of non-recognition of the constituent republics of Yugoslavia. The US responded to immense domestic pressure to recognize Croatia but decided according to the principle of equality that recognition should be equally applied to the republics seeking international recognition. The United States pressured the European Community to also recognize Bosnia-Herzegovina based on this logic.<sup>10</sup> Bosnia-Herzegovina was recognized as an independent state on 6 April 1992. Official fighting began the following day, although human rights organizations had reported that the occupation of northwestern Bosnia and the forced removal of its Muslim population by the Yugoslav

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<sup>9</sup> During the referendum on independence held between 29 February and 1 March 1992, 64% of the electorate voted on a ballot paper that asked the following question: "Are you in favor of a sovereign and independent Bosnia-Herzegovina, a state of equal citizens and nations of Muslims, Serbs, Croats and others who live in it?" Greater than 90% of voters answered yes when the results of the referendum were announced on 2 March (Malcolm, *Bosnia*, 231). However, most Serbs either boycotted the election or were forcibly prevented from participating by Bosnian Serb authorities. Bosnian Serb authorities declared the results invalid (Helsinki Watch, *War Crimes in Bosnia-Herzegovina* (New York: Human Rights Watch, August 1992): 27.

<sup>10</sup> Woodward, *Balkan Tragedy*.

army had started nearly six months before its declaration of independence.<sup>11</sup> Bosnia-Herzegovina quickly became engulfed in a war characterized by mass civilian casualties and gross violations of international humanitarian law.

The Yugoslavian constitution had granted both republics and nations national rights. Bosnia-Herzegovina had been recognized as a republic but not as a nation, unlike Serbia, Slovenia and Croatia.<sup>12</sup> This resulted in major issues of contestation in Bosnia-Herzegovina as it descended into war. The first issue was whether rights should be vested in individuals or ethnic communities. The second major issue was the “national question” – could Bosnia acquire titular status when traditionally the break-up of multinational states or empires led to the founding of national states.<sup>13</sup> Bosnians were divided over what an independent Bosnia-Herzegovina should look like – what group would control the state and what rights would be conferred on the others. The contest over rights and the national question in Bosnia-Herzegovina involved the powerful national states of two of the groups contesting these issues – the Croats and Serbs. This meant that Croatia and Serbia had compelling reasons to pursue their own national interests within the boundaries of the newly independent Bosnia-Herzegovina.<sup>14</sup>

For its part, the international community faced its own major issues of contestation. The international community lacked a definition of the practical meaning of self-determination. It was contested whether self-determination should be based on Helsinki principles that recognized the inviolability of borders, historicist principles that

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<sup>11</sup> Helsinki Watch, *War Crimes in Bosnia-Herzegovina*, 25.

<sup>12</sup> Woodward, *Balkan Tragedy*, 210-11.

<sup>13</sup> Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (Armonk, New York: M.E. Sharpe, 1999), pp. 5-6.

<sup>14</sup> *Ibid.*, 5-6; p. 8.

defined the nation based on its people who were linked by common identity prior to the state; democratic principles where the population residing in the territory has the right to choose their state; or the practicalities of *realpolitik* based on the ability to militarily control territory and populations.<sup>15</sup> Simultaneously, members of the international community were struggling to define the appropriate purpose of, and agreed criteria for, the use of military force. The war in Bosnia-Herzegovina occurred in a context in which there was no international agreement on how to resolve tensions between sovereignty and territorial integrity and the right to self-determination on the one hand and between sovereignty and the ability of the international community to investigate and intervene in the internal affairs of states (humanitarian intervention) on the other.<sup>16</sup>

### **International Community Response to Human Rights Violations in Bosnia-Herzegovina**

The international response to war in Bosnia-Herzegovina occurred within a context of dramatic political change in Europe. At the end of the Cold War European states were understandably preoccupied with the dissolution of the USSR, the emergence of newly independent states in Eastern Europe and the reunification of Germany. European countries were negotiating the Maastricht treaty and struggling to create a common foreign and security identity as they both widened and deepened European integration. The Security Council had successfully removed Iraq from Kuwait during the Persian Gulf War, was monitoring the Iraqi treatment of Kurds and Shias in Iraq and was engaged in its first Chapter VII authorized humanitarian mission in Somalia.

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<sup>15</sup> Woodward, *Balkan Tragedy*, 212.

<sup>16</sup> Burg and Shoup, *War in Bosnia-Herzegovina*, 190.

Although the disintegration of Yugoslavia acquired special significance as a harbinger of the types of conflicts the Security Council would confront in the immediate post-cold war era, there were striking similarities between it and other internal conflicts occurring in the early 1990s.<sup>17</sup> Yet the attention devoted by the Security Council to the Bosnian crisis far exceeded that given to any other conflict on its agenda. For example, between 1992 and 1995, the United Nations Security Council met formally more than 130 times to discuss the conflict in Bosnia-Herzegovina. The Council passed more than 70 resolutions and nearly 60 presidential statements directly relating to the situation in Bosnia-Herzegovina; and 145 non-elected Members of the United Nations participated in formal Security Council meetings between 1992 and 1995 (See Figure I and Figure II). Alternatively, the Council held only 18 formal meetings during which 6 non-elected Members joined the Council to discuss the situation in Somalia during this same period, despite its landmark decision to authorize in Somalia the first use of military force for strictly humanitarian purposes. Most non-elected participants in Security Council meetings on the situation in Bosnia represented the regions of Europe (45%) and the Middle East and North Africa (21%) for a combined total of 66% of the non-elected participants. The participation of states from these regions can be explained largely by the geographic proximity of the Bosnian conflict and by shared cultural, social and religious identification with the Bosnian population (see Figure II). Disproportionate attention was devoted to the crisis in Bosnia-Herzegovina because when deciding Bosnia

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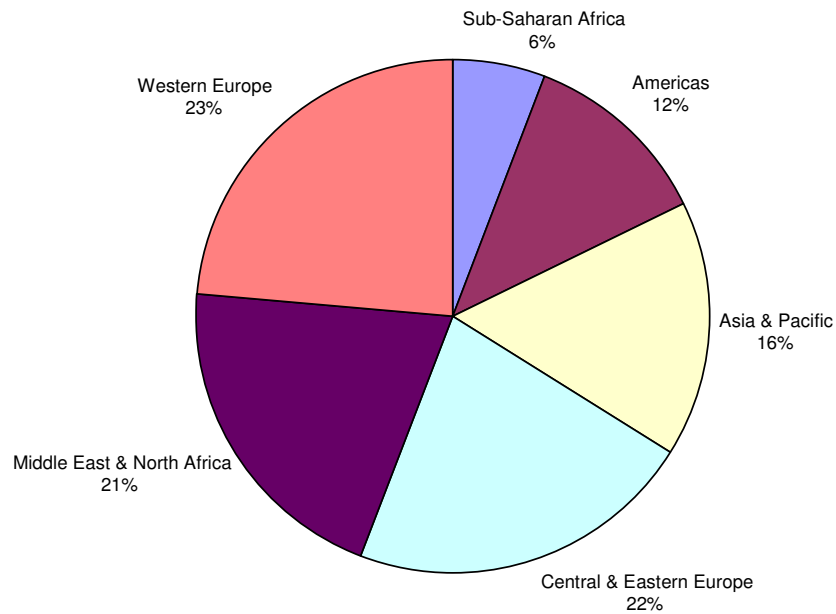
<sup>17</sup> See remarks by the representative of Yemen, S/PV.3009, 9 September 1991. Internal conflicts accompanied by mass human rights violations also were occurring in Somalia, Rwanda, Angola, Cambodia, El Salvador, Liberia, South Africa and Western Sahara. All of these conflicts were on the agenda of the Security Council between 1992 and 1995.

**Table 4.1: Security Council Action (1992-1995)**

Country of Conflict	Number of Formal Meetings	Security Council Resolutions	Presidential Statements	Time Spent in Formal Meetings	Non-Elected Participants
Bosnia-Herzegovina <sup>18</sup>	131	74	56	115 hr. 25 min.	145
Rwanda	34	23	9	21 hr. 10 min.	1
Somalia	18	16	2	13 hr. 55 min.	6

policy, the Security Council was debating nothing less than what the new world order would look like post-Cold War.

**Figure 4.1 Regional Representation in Security Council Debates 1992-1995**



<sup>18</sup> These numbers reflect formal Security Council meetings directly concerning Bosnia and Herzegovina. Meetings and resolutions strictly on the conflict between Serbia and Croatia and preventive action in the former Yugoslav Republic of Macedonia are not included.

The crisis in Bosnia-Herzegovina raised important questions about legitimate statehood, the answers to which had far-reaching consequences for United Nations Members. These questions included: how to resolve situations of contested state sovereignty; what constitutes the legitimate means to self-determination; whether norms of human rights or non-intervention should take precedence when they conflict; and what the Charter obligations of Security Council Members are in responding to war – whether between or within states.

The dissolution of Yugoslavia held enormous symbolism for member states of the United Nations. Yugoslavia was highly admired by many of its peers for both being a founding member of the non-aligned Movement and for its status as a successful multi-ethnic and multi-religious state. The non-aligned movement and the non-aligned caucus of the Security Council were particularly active in drafting resolutions for review by the Council and in calling for open debates of the Security Council in which non-elected Members could participate. Members of the non-aligned movement and the Organization of the Islamic Conference were instrumental in calling for General Assembly debates and resolutions related to the Bosnia crisis and in particular, related to the selective lifting of the arms embargo when division among permanent members of the Council prevented effective action on the issue. Neighbor states in eastern and central Europe were concerned about the demise of a symbol of multi-ethnic statehood and reminded the Security Council about the minority protections established following both World Wars.

Resolution of the Bosnian crisis meant resolving moral dilemmas about the application of principles of international law. The crisis raised questions about the

appropriate international response to systematic human rights crimes reminiscent of the Holocaust. Venezuela argued that it was essential to

discourage the illusion that war and genocide, carried out with impunity are legitimate means of manifesting the right to self-determination; and to curtail any claim that ethnic, cultural or religious ties give States the right to interfere in the internal crises of any other State.<sup>19</sup>

Member States of the United Nations also were attentive to the fact that they were determining what the special responsibility of the Security Council for the maintenance of international peace and security would mean in practice. The interpretation of its duty by the Security Council was particularly important at a time when threats to international peace and security were beginning to be defined in terms of human rights violations and intra-state conflict. Small State Members of the United Nations were particularly concerned whether or not the Security Council would discharge its responsibility to protect the territorial integrity of a small Member State under assault and whether the Council's response would be consistent. Security Council members were debating what the post-Cold War political order would look like and members of the United Nations who were not elected to the Council wanted to participate in and attempt to influence the outcome of that debate. The delegation of Venezuela, for example, on several occasions made explicit reference to President Bush's speech to a joint session of the US Congress in 1990 in which he proposed a new world order "where diverse nations are drawn together in common cause to achieve the universal aspirations of mankind: peace and security, freedom and the rule of law...where brutality will go unrewarded and

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<sup>19</sup> S/PV.3200, 18 April 1993, p. 30 (Venezuela)

aggression will meet collective resistance”.<sup>20</sup> That new world order, however, could not be founded on ethnic cleansing and genocide, Venezuela argued.<sup>21</sup>

Finally, the nature of the human rights violations themselves and particularly the vivid capture of these violations by media imagery and through expert testimony aroused the interest of states which drew direct parallels between the Bosnian crisis and World War II and the Holocaust. The term ‘ethnic cleansing’ only entered the popular language of politics during the Bosnian war. The phrase is a literal translation of the Serbo-Croatian/Bosnian phrase *etnicko ciscenje*. It was believed to be part of the Yugoslav National Army’s military vocabulary to describe its policy of expelling Muslims and Croats from the territories it conquered.<sup>22</sup> The policy of ethnic cleansing included forced population transfers and the systematic use of violence against civilians including murder and rape for the purpose of acquiring territory. These cleansings were unique from their predecessors because they were broadcast live around the world. Media images of Bosnian Muslims behind the barbed wire of concentration camps, pictorial evidence of summary execution, and forensic evidence of mass graves fostered international outrage. States addressing the Security Council made frequent references to the outrage of their populations who viewed efforts at ethnic cleansing as similar to the Holocaust against the Jews in Europe or “what the Nazis called the “Endlösung: final solution.”<sup>23</sup>

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<sup>20</sup> See for example statement of Austria in S/PV.3106, 16 August 1992 quoting President Bush’s address to a joint session of Congress on 11 September 1990.

<sup>21</sup> S/PV.3200, 18 April 1993, p. 29 (Venezuela)

<sup>22</sup> Jennifer Jackson Preece, “Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms,” *Human Rights Quarterly* 20 (1998), 821; Carrie Booth Walling, “The History and Politics of Ethnic Cleansing,” *International Journal of Human Rights* 4 (2001): 3/4, 48.

<sup>23</sup> S/PV.3200, 18 April 1993, p. 28 (Venezuela)

The permanent members of the Security Council had varying levels of interest in the resolution of the Bosnian crisis. None of the permanent members initially viewed the Bosnian crisis as threatening to their vital interests. For Europe and the United States, Bosnia was a peripheral but not a core security concern. The conflict was threatening to transatlantic values however. Over time, resolution of the crisis became a central national interest for France, the UK and the US whose bitter divisions over the appropriate response threatened their mutual relations and future European security arrangements including the future of NATO.<sup>24</sup> The transatlantic alliance was marked by different attitudes toward the use of force and different geopolitical interests and responsibilities. As a result, the US and European powers disagreed over the cause of the fighting, how to best end the conflict and the purpose of military intervention.<sup>25</sup> The United States was predisposed to the use of military force to coerce a political settlement on Bosnia. It was primarily concerned with defining global norms and protecting international order and stability. France and the UK, however, who had troops on the ground, were disinclined to use force in defense of one side over the others. Further, the more direct threat to European security posed by Bosnia led France and the UK to be less concerned with the general principles of the international order and more focused on containing the conflict and ending the war.<sup>26</sup> Bickering between the US, France and the UK created bitterness between them, weakened the effectiveness of the Security Council and prevented early and coherent common action to end the fighting in Bosnia.

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<sup>24</sup> Woodward *Balkan Tragedy*,: 11; Dana Allin, *NATO's Balkan Intervention* (Oxford: Oxford University Press, 2002) 9; 14.

<sup>25</sup> Allin, *NATO's Balkan Intervention*, 6.

<sup>26</sup> *Ibid.*, 14.

China is an ardent defender of Chapter 2 Article 7 of the Charter of the United Nations which upholds the state's sovereign right to non-interference in domestic affairs. With regards to Bosnia-Herzegovina, China consistently acted to protect the norms of sovereignty, territorial integrity, and non-intervention in domestic affairs. China is highly suspect of the use of military force for humanitarian purposes and views it as an attempt by Western states to dominate world affairs and control smaller, weaker states.<sup>27</sup> The Russian Federation was sympathetic with and responsive to its allies (the Serbs) and its national interests. Russia was 'fearful of the implications for itself and the territorial frontiers of recently independent states in the Commonwealth of Independent States (CIS) if the principle of the sanctity of borders was compromised in relation to Bosnia-Herzegovina'.<sup>28</sup> The number and length of formal meetings on the situation in Bosnia-Herzegovina is evidence of the strong Security Council commitment to finding an appropriate solution for the violence in Bosnia but disagreement among Security Council members on how best to achieve this end resulted in the adoption of ever-changing and often inconsistent mandates.<sup>29</sup>

### **Causal Stories about the War in Bosnia-Herzegovina**

Whether policy makers choose policies or causal stories to suit their view of war or whether they change their views of war to suit the policies that they choose to adopt,

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<sup>27</sup> Jia Qingguo, "China," in *Humanitarian Intervention: The Evolving Asian Debate* (Tokyo: Japan Center for International Exchange, 2003), 19-23.

<sup>28</sup> Spyros Economides and Paul Taylor, "Former Yugoslavia," in *United Nations Interventionism, 1991-2004*, ed. Mats Berdal and Spyros Economides (Cambridge: Cambridge University Press, 2007), 69.

<sup>29</sup> See Economides and Taylor, "Former Yugoslavia," for a thick description of the evolving UN mandate in Bosnia-Herzegovina.

the causal stories advanced by Security Council members during the Bosnian conflict demonstrate that state interests change over time and are influenced by global norms.<sup>30</sup>

This section will trace the competing causal stories about the war in Bosnia-Herzegovina in the Security Council between 1992 and 1995 and identify their proponents. The evidence that emerges from examining the contestation process between competing causal stories in the Security Council helps to illustrate why some stories win out over others as well as the conditions required for humanitarian intervention.

There were three causal stories advanced by members of the Security Council to explain the situation in Bosnia-Herzegovina. Each story offered a different interpretation of the legitimate sovereign authority over the territory of Bosnia-Herzegovina, the identity of perpetrators and victims, and the character of human rights abuses. The inadvertent causal story described the war in Bosnia-Herzegovina as an intra-state civil war in which all three parties to the conflict were responsible for the human rights conditions on the ground. The intentional causal story described the war as an external aggression against an independent and sovereign state member of the United Nations (Bosnia-Herzegovina) by Serbia in which Bosnian civilians were being deliberately targeted for ethnic cleansing by Serbian perpetrators.<sup>31</sup> The complex causal story argued that that the war was characterized by fighting by both purposeful and unorganized actors

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<sup>30</sup> Burg and Shoup argue that the choice of policies lead to the adoption of views about the Bosnian war (*War in Bosnia-Herzegovina*, 190). See also Carne Ross, *Independent Diplomat: Dispatches from an Unaccountable Elite* (Ithaca: Cornell University Press, 2007). See Finnemore, *Purposes of Intervention* on how the purpose of the use of military force has changed in response to changing national interests and in response to global human rights norms.

<sup>31</sup> The Security Council did not acknowledge the remaining constituent republics of Yugoslavia as the successor state of Yugoslavia. The Federal Republic of Yugoslavia consisted of the republic of Serbia and the republic of Montenegro. It was principally the government of Serbia that intervened in the war in Bosnia-Herzegovina although it did so with the military forces of what remained of the federal state.

that sometimes deliberately and other times unintentionally abused the civilian population. In short, the conflict was complex, often confusing, and not amenable to resolution by the Council because it lacked a “point of leverage” or a single locus of control.<sup>32</sup>

The contestation between causal stories centered on the primary issue of whether or not the Security Council should authorize the use of military force to stop the human rights violations. In absence of consensus on the question of humanitarian intervention, the contestation over the causal story of Bosnia-Herzegovina continued with regard to Security Council policy on the arms embargo and the establishment of safe areas. The decisions that individual Council Members made on these three issues were directly connected to the causal story they held about the war in Bosnia-Herzegovina. Members who argued that Bosnia was a civil war demanded consent from the three rival parties prior to Security Council action in an effort to maintain legitimacy and impartiality. Alternatively, Members who argued that the Bosnian state was a victim of external aggression from a neighbor state located sovereign authority solely with the Bosnian government. Generally, the Council Members that articulated an intentional causal story supported humanitarian intervention and the partial lifting of the arms embargo, in large part because these actions were consistent with the principles of state sovereignty and the sovereign right of the Bosnian State to defend its territorial integrity. Nonetheless, Security Council members also argued that the protection of human rights was important to the preservation of international security. At stake in Bosnia-Herzegovina, for the

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<sup>32</sup> See Stone, “Causal Stories,” 289.

proponents of the intentional causal story, was nothing less than safeguarding the survival of an entire people and their State.<sup>33</sup>

### **Security Council Debates on Responsibility for International Humanitarian Law Violations:**

United Nations involvement in the territory of the former Yugoslavia formally began in September 1991 when the Security Council imposed an arms embargo against the Federal Socialist State of Yugoslavia in response to intra-state fighting in hopes of containing the conflict within its territorial boundaries. The appropriateness of the arms embargo became the subject of debate after its internal boundaries (that separated constituent republics of the Yugoslav state) became international boundaries between newly recognized successor states. The United Nations Protection Force (UNPROFOR), authorized by resolution 743 (February 1992), was originally mandated to monitor a ceasefire and peace settlement brokered between the republics of Croatia and Serbia. Thus, Security Council involvement in the region began with a traditional peacekeeping function to separate competing sides in a civil war. However, following the official break-up of Yugoslavia and the subsequent international recognition of Slovenia, Croatia and Bosnia-Herzegovina in March and April 1992, the character of the conflict changed for many United Nations Members, despite an absence of change in mission mandate on the ground. What previously had been an intra-state conflict became multiple inter-state wars following international recognition of independent and sovereign statehood for

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<sup>33</sup> See Woodward *Balkan Tragedy*; Woodward argues that there were two competing understandings of the conflict civil war and war of aggression.

Slovenia, Croatia and Bosnia-Herzegovina and their subsequent admittance to membership in the United Nations in May 1992.

Official fighting began in Bosnia on 6 April 1992. In a presidential statement on 24 April, the Security Council demanded that all forms of interference from outside Bosnia-Herzegovina cease immediately, recognizing the external involvement of other actors in the conflict. In the same statement, however, the Security Council also called on all three communities inside Bosnia-Herzegovina to stop fighting and participate in tripartite talks organized by the European Community.<sup>34</sup> Here we see elements of both the inadvertent and intentional causal stories – of Bosnia as civil war and of Bosnia as victim of external aggression – present in the same Security Council document.

Contestation among permanent members of the Security Council over the character of the conflict in Bosnia resulted in the passage of compromise resolutions and presidential statements which ultimately stymied coherent Security Council action.

Because UNPROFOR had been deployed to the region to monitor the ceasefire between Serbia and Croatia, military troops were already on the ground in the region when massive human rights violations began to occur in Bosnia-Herzegovina. This was similar to the situation of northern Iraq a year earlier when the Security Council at the conclusion of Operation Desert Storm acted to protect Iraqi citizens from state repression. When large-scale fighting erupted in Bosnia-Herzegovina the United Nations was present on the ground but it lacked a specific mandate with regard to Bosnia-Herzegovina. In fact, it was not until September 1992 with the passage of resolution 776 (1992) that UNPROFOR's mandate was extended to include Bosnian territory. Significant debate

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<sup>34</sup> S/PV.3070, 24 April 1992.

preceded and accompanied the Security Council decision to authorize a peacekeeping mission in Bosnia, specifically because there was little agreement among Security Council Members over the character of the conflict – whether it was a civil war, an interstate war, or had elements of both. There was widespread agreement among Council Members, however, on the vast humanitarian tragedy in Bosnia-Herzegovina – a conflict that very quickly came to be identified with gross violations of international humanitarian law undertaken for the purpose of altering the ethnic composition of the population and territory of the Bosnian State.

Although the widening conflict in Bosnia-Herzegovina was perceived to threaten the peace and stability of the entire region through the threat of spillover violence and mass refugee flows, Security Council action on Bosnia-Herzegovina was motivated primarily by human rights considerations. Council Members unanimously condemned the practice of ethnic cleansing with many Council Members drawing specific parallels between the savagery of the crimes against civilians in Bosnia and the crimes against humanity of the Second World War.<sup>35</sup> In her testimony before the Council in November 1992, the United Nations High commissioner for Refugees indicated that “rarely have the violations of human rights and humanitarian law, violence and destruction reached the levels we are currently witnessing in the former Yugoslavia”.<sup>36</sup> The representative of Belgium argued that the conflict in Bosnia-Herzegovina,

has reached a scale and savagery not seen in Europe for 47 years...It has thus brought back the worst memories of anything Europe has known this century: the extermination of innocent victims and the forced displacement of populations, on

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<sup>35</sup> S/PV.3106, 13 August 1992, p. 8 (Ecuador)

<sup>36</sup> Mrs. Sadako Ogata, United Nations High Commissioner for Refugees in S/PV.3134, 13 November 1992, p. 31

the basis of ethnic and religious criteria, in grave violation of all human rights Conventions.<sup>37</sup>

Both permanent and elected Members of the Council condemned these atrocities by making specific references to the violation of international humanitarian laws including the Geneva Conventions, the Helsinki Final Act, the Charter of Paris, and the United Nations Charter during formal meetings.<sup>38</sup> Finally, the Council specifically condemned the ongoing international humanitarian law violations in a series of presidential statements and resolutions drafted for that purpose. For example, in an August 1992 presidential statement, the Security Council condemned the detention and abuse of civilians in concentration camps and demanded that immediate access be granted to all detainees by the International Committee of the Red Cross (ICRC). The Security Council also reaffirmed that all parties were responsible for complying with the Geneva Conventions of 12 August 1949 and that perpetrators would be held individually responsible for breaches of international humanitarian law.<sup>39</sup> Security Council resolution 771 (1992) subsequently condemned the practice of ethnic cleansing and reiterated its demand for compliance with international humanitarian law in Bosnia-Herzegovina. Resolution 771 (1992) also called on all States to make available to the Council evidence of violations of international humanitarian law.<sup>40</sup> Security Council concern with the human rights aspects of the Bosnian war were the focus of numerous resolutions and statements including: resolution 798 (1992) which condemned the “organized and

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<sup>37</sup> Belgium in S/PV.3082, 30 May 1992, p. 31

<sup>38</sup> See for example S/PV.3082, p. 31 (Belgium) p. 33 (USA); S/PV.3106, 13 August 1992, p. 35 (UK); p. 10 (Ecuador)

<sup>39</sup> S/PV.3103, 4 August 1992.

<sup>40</sup> S/RES/771 (1992), 13 August 1992.

systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina”; resolution 808 (1993) which established a Commission of Experts to examine international humanitarian law violations; and resolution 827 (1993) which established an international criminal tribunal for the prosecution of war crimes and crimes against humanity in the territories of the former Yugoslavia.<sup>41</sup> Security Council members indicated by the passage of these resolutions that the protection of human rights and respect for international humanitarian law were intricately linked to the maintenance of international peace and security. Global human rights norms were shaping state conceptions of national and international interest.

There is evidence in the formal record that at least some Members of the Security Council specifically articulated this link between the protection of human rights and the maintenance of international peace and security. In its defense of the adoption of resolutions 770 (1992) authorizing sanctions against Serbia and Montenegro and 771 (1992) condemning ethnic cleansing, the representative from Hungary argued,

The adoption of these two resolutions is another example, in our opinion, of the strong commitment of the Security Council to human rights and humanitarian issues. To act urgently is not only a moral obligation of the Council: it is indispensable for the preservation of the credibility of the United Nations. Only a credible Organization and a credible Security Council can perform their basic functions – maintaining international peace and security.<sup>42</sup>

Expert testimony given to the Council highlighted the centrality of human rights violations as an objective of the conflict rather than its by-product.<sup>43</sup> The Special

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<sup>41</sup> S/RES/798 (1992), 18 December 1992; S/RES/808 (1992), 22 February 1993; S/RES/827 (1993), 25 May 1993.

<sup>42</sup> S/PV.3106, 13 August 1992, p. 32.

<sup>43</sup> Mr. Mazowiecki, Special Rapporteur appointed by the Commission of Human Rights in S/PV.3134, 13 November 1992, p. 39.

Rapporteur on former Yugoslavia appointed by the United Nations Commission of Human Rights remarked to the Council,

In the context of the conflict taking place in the territory of Bosnia and Herzegovina, which may expand to other areas of the former Yugoslavia, one cannot examine the human rights questions separately from the development of the political and military situation in the area. The issue at stake is the fundamental right to life, which is totally threatened... Profound changes in the world have led to the recognition that respect for human rights has become a crucial element of international security. The former Yugoslavia constitutes, in this respect, one of the most serious, and, at the same time, most tragic challenges faced by the international community and intergovernmental organizations, primarily by the United Nations.<sup>44</sup>

Only six months earlier the Special Rapporteur's counterpart in Iraq had broken new ground by presenting evidence about human rights abuses to the Council. Cape Verde argued before the Council that the grave violations occurring in Bosnia-Herzegovina were crimes committed against all of the international community and not just the Bosnians because "they violate our very decency and human dignity." Japan similarly noted that grave implications of the conflict extended beyond the region of Europe to the entire international community. Venezuela defended its vote in favor of imposing sanctions against Serbia and Montenegro "for reasons that are basically humanitarian" stating explicitly, "respect for the norms and principles of international law is a prerequisite for peace and security in the world. Any State that violates them must be condemned".<sup>45</sup> But not all Council Members agreed that human rights considerations had a place in Security Council decision-making. India, China and Zimbabwe denied the linkage between human rights and international security. India for example, expressed its

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<sup>44</sup> S/PV.3134, 13 November 1992, p. 39.

<sup>45</sup> S/PV.3082, 30 May 1992, p. 27.

strong reservation about the appropriateness of human rights concerns being discussed in the Council noting that human rights concerns belonged in the Human Rights Commission in Geneva; whereas concerns about international peace and security were in the purview of the Security Council.<sup>46</sup> Notably, however, China expressed its reservations about human rights considerations in formal meetings and abstained from voting on resolutions that linked human rights and humanitarian law to Chapter VII of the UN Charter, but did not veto them.

In this early period of UN involvement in Bosnia-Herzegovina, three competing causal stories about the conflict emerged in the Security Council. On 30 May 1992, the Council adopted resolution 757 (1992) establishing mandatory sanctions against Serbia and Montenegro under Chapter VII of the Charter. Only China and Zimbabwe abstained. Hungary articulated an intentional causal story when it described the conflict in Bosnia as ‘naked aggression against a State Member of the United Nations’ and identified the “Belgrade leadership” as the aggressor in the Bosnian war and as having “overwhelming responsibility” for its conduct.<sup>47</sup> The intentional causal story, characterized by intentional human rights abuses carried out by a deliberate and identifiable perpetrator against a specific set of victims – was shared by 5 elected and 1 permanent Member of the Security Council (Belgium, Cape Verde, Hungary, Morocco, Venezuela and the United States of America). Venezuela articulates this position best.

...Yugoslavia is no longer in the midst of a civil war, as was said last year by the former Chancellor, Mr. Loncar: Belgrade is today waging war against other States, sovereign Members of our Organization.<sup>48</sup>

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<sup>46</sup> S/PV.3106, 13 August 1992, p. 11.

<sup>47</sup> S/PV.3082, 30 May 1992, p. 16.

<sup>48</sup> Ibid. 28-30.

At the same time, however, the remaining permanent Members of the Council were divided between describing the conflict as a complex situation with multifaceted causes (China and France) or as a primarily internal civil war with some limited external interference (Russian Federation and United Kingdom). Lack of unity on the causal story resulted in texts of draft resolutions that “carefully maintained impartiality towards all parties to the conflict” despite evidence from other quarters of the United Nations and independent human rights organizations that most atrocities were the result of a systematic strategy of ethnic cleansing by the Serb party.<sup>49</sup>

The Security Council met in formal meetings four times for more than 9 hours between 13 and 16 November 1992 to discuss the character of the Bosnian conflict. The Council adopted resolution 787 (1992) which condemned the “massive and systematic human rights violations” and affirmed that “any the taking of territory by force or any practice of ‘ethnic cleansing’ is unlawful and unacceptable.” Thirty-one non-elected Members of the United Nations participated in the meetings along with four experts including the Special Rapporteur appointed by the Commission of Human Rights, the United Nations High Commissioner for Refugees, and the Co-Chairmen of the International Conference of Yugoslavia. In total 46 State Members of the United Nations debated the cause and character of the Bosnian conflict. An intentional causal story that characterized the Bosnian war as a case of external aggression was articulated by twenty-nine States but only included 5 elected members of the Security Council (Austria, Ecuador, Hungary, Morocco and Venezuela) and 1 permanent Member (the United States

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<sup>49</sup>Helsinki Watch, *War Crimes in Bosnia-Herzegovina*.

of America). In the six months following the adoption of resolution 757 (1993), the intentional causal story failed to gain new adherents in the Security Council. The inadvertent causal story which described the conflict as an ethnic, religious, and civil war in which three parties were guilty of atrocities was supported by only 5 States but included Zimbabwe, an elected Member of the Council, and three permanent Members (China, France, and the Russian Federation). China and France moved from articulating a complex causal story to an inadvertent causal story meaning that four of the five permanent members of the Security Council articulated the civil war explanation of conflict. Proponents of the civil war story also made reference to the complexity of the conflict. The remaining elected members of the Council (Cape Verde, Japan and Belgium) joined 7 non-elected Members in condemning ethnic cleansing (an intentional crime) but did not explicitly identify its perpetrators or victims, causing this explanation to fall short of meeting the constituent criteria of an intentional causal story. It is important to note, however, that Belgium and Cape Verde had previously defended the intentional causal explanation in the Security Council in May 1992.

There was significantly more agreement among the broader international community on the intentional causal story about inter-state aggression against Bosnia-Herzegovina than in the Security Council. For example, the General Assembly on 18 December 1992 condemned Serbia and Montenegro by name for “violating the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina” and for failing to comply with Security Council resolutions. The General Assembly resolution passed with 102 votes in favor and no opposition; nonetheless fifty-seven

Members abstained in the voting.<sup>50</sup> It is important to note that calls from the General Assembly for more forceful Security Council action in Bosnia-Herzegovina were motivated both by humanitarian concerns but also more explicitly in defense of the protection of sovereignty and territorial integrity. Bosnia-Herzegovina was now a member of the United Nations. As early as 25 August 1992 the General Assembly urged the Security Council to consider taking forceful measures under Chapter VII of the Charter to restore Bosnia's territorial integrity. Subsequently, in a series of meeting held between 19-20 April 1993, thirty-four states addressed the Security Council, urging the Council to stop human rights violations in Bosnia by expanding its protection or permitting the Bosnian Government the means to defend itself. Ten of these States including Bosnia-Herzegovina (Afghanistan, Algeria, Comoros, Croatia, Czech Republic, Malaysia, Sierra Leone, Slovenia and Turkey) specifically named the conflict "genocide". Twelve states articulated a story about Serbian ethnic cleansing (Albania, Bulgaria, Germany, Indonesia, Ireland,<sup>51</sup> Islamic Republic of Iran, Lithuania, Malta, Saudi Arabia, Senegal, Sweden, and United Arab Emirates). Five additional states described the violence as inter-state "aggression" (Argentina, Denmark, Egypt, Italy and Jordan).<sup>52</sup> But the disunity among Council Members on the causal account, in spite of the broader convergence around the intentional causal story by United Nations members not serving on the Security Council, stymied Security Council action to halt the atrocities.

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<sup>50</sup> A/RES/47/121, 18 December 1992.

<sup>51</sup> Ireland alone did not name the perpetrators of ethnic cleansing.

<sup>52</sup> S/PV.3201, 19 April 1993 (Bosnia-Herzegovina, Malaysia, Turkey, Indonesia, and Slovenia), S/PV.3202, 20 April 1993, p. 11 (United Arab Emirates), p. 17 (Comoros), pp. 23-25 (Egypt); S/PV.3203, 20 April 1993, p. 3 (Jordan); p. 12 (Algeria); pp. 49-50 (Sierra Leone); p. 58 (Argentina); p. 66 (Czech Republic).

In fact, the April 1993 debates in the Security Council on the Bosnian conflict were characterized by harsh criticism of permanent Council Members for threatening the credibility of the United Nations and for propagating double standards by its twin failures to lift the arms embargo against the Bosnians or to defend them against continued assault.

During this series of meetings on the appropriate use of force with regard to Bosnia-Herzegovina, Comoros broke with diplomatic protocol and directly attacked permanent members for their positions on the Bosnian conflict.

As for the permanent five members of the Security Council, need we remind you that the honor and privilege bestowed upon you by the founding fathers of this Organization go hand in hand with responsibility and sacrifice on your part?<sup>53</sup>

The representative of Comoros accused France and the United Kingdom of hesitating to make courageous and difficult political decisions and called on the Russian Federation to stop supporting its former clients, reminding it that “the Cold War is over” and that Russia would not want to be identified with the Serbs’ crimes in Bosnia-Herzegovina.<sup>54</sup> Comoros then asked China to make an exception to its principled position against the use of force because of the brutality of the crimes in Bosnia-Herzegovina. Comoros encouraged the US to stand firm with its principles and take a leadership role in the Council on Bosnia because it would be “un-American to be indifferent to ethnic cleansing” and religious persecution.<sup>55</sup> Similarly, Jordan accused the Security Council members of only deterring and stopping aggression in cases where conflict affected their individual interests and questioned whether discussions of the human rights practices of

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<sup>53</sup> S/PV.3202, 20 April 1993, p. 17.

<sup>54</sup> Ibid., p. 17.

<sup>55</sup> Ibid., p. 20.

other countries at the upcoming international conference on human rights in Vienna would be appropriate when the Security Council had not yet secured the human rights of the Bosnian Muslims.<sup>56</sup> Sierra Leone argued that it could not turn a blind eye from the atrocities that were being committed in Bosnia-Herzegovina just because they were taking place far from Sierra Leone.

I come from Africa, a long way from Bosnia and Herzegovina, but we share a common identity and a common humanity with the people of that country, and that is why we have asked to speak before the Council today.<sup>57</sup>

Sierra Leone praised the intentions of the Clinton Administration to stop the atrocities in Bosnia-Herzegovina and lamented that the US Administration was unable to carry “the rest of the membership of the Security Council with it to engage the criminals of Bosnia and Herzegovina today”. The representative from Sierra Leone even went as far as to call on the American people to act on behalf of the international community to stop the war in Bosnia despite the unwillingness of other members of the Security Council to end the atrocities.<sup>58</sup>

While disunity among Council Members did not prevent the Council’s active participation in the Bosnian conflict or its universal condemnation of the practice of ethnic cleansing, it did prevent humanitarian intervention. Disagreement among Security Council members also complicated efforts to defend the Bosnians through means short of using military force. Lack of agreement on the character of the conflict prevented uniform action by the Security Council with regard to policy on safe areas and the lifting of the arms embargo. The contestation between rival causal stories in the Security

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<sup>56</sup> S/PV.3203, 20 April 1993, pp. 4-5.

<sup>57</sup> Ibid., p. 55.

<sup>58</sup> S/PV.3203, 20 April 1993, pp. 50-51.

*Figure 4.2: Timeline of Key Events in Bosnia-Herzegovina (1991-1995)*

Date	Event
September 1991	SC establishes arms embargo against Yugoslavia
February 1992	UNPROFOR established in Croatia
April 1992	Bosnia-Herzegovina declares independence; war in Bosnia-Herzegovina officially begins
May 1992	Bosnia-Herzegovina admitted as Member of the United Nations
September 1992	Resolution authorizes use of all necessary means to protect humanitarian convoys in BiH
November 1992	SC debates character of Bosnian conflict and human rights violations
December 1992	GA resolution condemns Serbia and Montenegro for violating sovereignty of BiH; SC condemns systematic rape of Muslim women by Serb forces
February 1993	SC establishes Commission of Experts to examine international humanitarian law violations
April 1993	Resolution 819 & 824 establish safe areas; SC Mission visits Bosnia
May 1993	Resolution 827 establishes international criminal tribunal for former Yugoslavia
June 1993	Members of non-aligned caucus of Council call meeting to consider reinstating Bosnian defense rights under Article 51 of Charter; measure fails
August 1993	UN and NATO agree on “dual key” arrangement for use of force
September 1993	International Court of Justice declares that Bosnia is a genocide and criticizes the international failure to prevent it
5 February 1994	Markala market massacre in Sarajevo
14-15 February 1994	SC meets in response to Markala marketplace massacre
12 March 1994	UN requests NATO air support against the Bosnian Serbs
31 March 1994	Bosnian Serb attacks on Goražde
April 1994	NATO airstrikes around Goražde; Serbs kidnap 150 UN personnel
November 1994	GA advises SC to lift arms embargo; subsequent SC debate ends without vote; ICTY issues indictments against Bosnian Serbs, Karadžić and Mladić
May 1995	Airstrikes authorized against Serb positions; Serbs retaliate by kidnapping 400 UN personnel; Security Council responds by weakening policy on use of force
6-11 July 1995	Siege and fall of Srebrenica
12 July 1995	Deportations out of Srebrenica begin; thousands of men missing
14-20 July 1995	Bosnian Serbs attack safe area of Žepa
10 August 1995	US produces evidence of mass graves around Srebrenica
28 August 1995	2 <sup>nd</sup> Markala Marketplace massacre in Sarajevo
30 August 1995	SG reports mass executions; NATO begins Operation Deliberate Force
September 1995	SC discusses and defends the use of military force against the Serbs
October 1995	Agreement to end hostilities signed by parties
November 1995	Dayton Peace Accords signed

Council and the implications of a divided Security Council on decisions about the use of force to stop ethnic cleansing will be the focus on the next section which examines Security Council debate around the issue of sovereign authority in Bosnia-Herzegovina and its right to self-defense.

### **Security Council Debates on Self-Defense Rights in Absence of Humanitarian Intervention**

In April 1993, the Security Council declared six cities and towns safe areas (Srebrenica, Sarajevo, Tuzla, Žepa, Goražde, and Bihać) in an effort to relieve civilians from Bosnian Serb paramilitary attacks and to halt ethnic cleansing. Initially identified as an imperfect stop-gap measure to halt atrocities in the absence of Security Council agreement on either the authorization of the use of force to protect civilians by UNPROFOR or the partial lifting of the arms embargo, safe haven policy quickly became a source of contention in the Security Council. The problem that emerged with the establishment of the safe havens was that in absence of UNPROFOR authorization to deter attacks against them and without the ability of the Bosnian State to defend them from attack, the safe havens were at risk of becoming extremely unsafe for its inhabitants who were largely concentrated without military protection. Further, safe haven policy seemed to signal that other population centers were “unsafe” and not subject to international protection from ethnic cleansing.

In June 1993, resolution 836 (1993) authorized UNPROFOR to deter attacks against the safe areas and to use force if necessary in self-defense and in response to

bombardments of, or incursions into, the safe areas.<sup>59</sup> It passed with thirteen votes in favor and two abstentions (Pakistan and Venezuela).<sup>60</sup> Nonetheless, non-aligned Members of the Council called for the reinstatement of Bosnia-Herzegovina's self-defense rights under article 51 of the United Nations Charter on 29 June 1993. Twenty-four States requested to participate in the debate in addition to the 15 members of the Security Council. The meeting lasted for 9 hours and 10 minutes without recess. Twenty-one states advanced an intentional causal story about Serbian aggression against the Bosnian state and its citizens and 17 of these States directly linked this causal story to justification for lifting of the arms embargo. Yet only six of these states were Security Council Members (Cape Verde, Djibouti, Morocco, Pakistan, USA, and Venezuela). Cape Verde argued that if a "lack of political will on the part of those who have the power and the means and bear the special responsibility to carry out, and ensure the implementation of the decisions of the Council" were unwilling to defend Bosnia-Herzegovina, then Bosnia should be allowed to defend itself.<sup>61</sup> Venezuela similarly argued that it was gravely inconsistent for the Security Council to recognize Bosnia-Herzegovina as a member-state but not defend it or its right to self-defense.<sup>62</sup> States from the Middle East accused the Security Council of not defending Bosnia the way it defended Kuwait from external aggression and thus of promoting double standards – only

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<sup>59</sup> S/RES/836 (1993), 4 June 1993.

<sup>60</sup> S/PV.3228, 4 June 1993; Pakistan and Venezuela stated that they abstained from the vote on resolution 836 (1993) because they had principled objections to the shortcomings of safe have policy with regards to operational design and insufficient protection of inhabitants.

<sup>61</sup> S/PV.3247, 29 June 1993, pp. 6-7.

<sup>62</sup> *Ibid.*, p. 131.

acting where its interests were directly involved.<sup>63</sup> The resolution advanced by the members of the non-aligned caucus to exempt Bosnia-Herzegovina from the arms embargo failed with only 6 votes in favor and 9 abstentions. The Council Members that abstained from the vote were divided between those who viewed the conflict as a civil war (Russian Federation) those who argued the war was an aggression (Hungary) or those who neglected to comment on the nature of the conflict but argued that lifting the arms embargo would reflect UN failure at peaceful settlement and lead to an increase in violence (Brazil, China, France, Japan, New Zealand, Spain, and United Kingdom).

It would be 8 months later before any agreement on the limited use of military force to defend safe areas could be reached. On 5 February 1994, a mortar shell exploded in the Markala marketplace of Sarajevo resulting in the deaths of more than 60 civilians. The shelling received extensive media coverage and provoked international outrage. Serbian forces were believed to be responsible for the attack. On 9 February, NATO decided that it would use air power against any heavy artillery remaining around Sarajevo and not under UNPROFOR control at the end of a 10 day period. On 14 February, 41 non-members joined the 15 members of the Security Council to express their outrage over the horrific attack and discuss the potential military response in protection of the safe area of Sarajevo. During this meeting, the United States argued that 'United Nations diplomacy must be backed by a willingness to use force and that only the combination of force and diplomacy would end the slaughter and break the political stalemate.<sup>64</sup>' The United States explained, however, that the use of force in defense of Sarajevo was not

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<sup>63</sup> S/PV.3247, 29 June 1993, p. 72 (Islamic Republic of Iran) see also p. 67 (Afghanistan), p. 101 (Libyan Arab Jamirayeh).

<sup>64</sup> S/PV.3336, 14 February 1994, p. 18.

humanitarian intervention because it was in defense of UN protected safe areas and not intervention on behalf of any particular party to the conflict,

It is important for all to be clear about what the decision of the North Atlantic Council means and what it does not mean. It is not an intervention in this conflict on behalf of one or another of the parties. The purpose is to persuade the parties that the pursuit of a military conclusion to this conflict serves the interests of no one...<sup>65</sup>,

During a meeting that convened 4 times during a 2 day period and lasted for 10 hours and 25 minutes, these 56 member-states of the United Nations made statements and become proponents of conflicting causal stories about the character of the Bosnian conflict. The dominant frame held by Security Council Members remained, as before, that the conflict in Bosnia-Herzegovina was a civil war in which all three sides to the conflict could be labeled as perpetrators and their respective civilian populations as victims. No side had clean hands. The states adopting this frame, including most of the permanent members of the Security Council, urged all sides to end the violence and work toward a political settlement. The European powers joined the United States in claiming greater fault lay with the Bosnian Serbs, but refrained from identifying them as clear perpetrators or describing the conflict in terms of the intentionality of the Genocide Convention. Nonetheless, there was widespread agreement that the threat of the use of force was necessary in response to continuing escalation. The proponents of the intentional causal story, however, continued to grow. Nearly 30 proponents, including 8 of the voting members of the Security Council (Czech Republic, Djibouti, New Zealand, Nigeria, Oman, Pakistan, Rwanda and the United States), identified the Bosnian Serbs as the

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<sup>65</sup> S/PV.3336, 14 February 1994, p. 19.

perpetrators of an “ethnic cleansing” campaign or “genocide” directed primarily against the Bosnian Muslims. Slovenia sums up this position best,

The war in Bosnia and Herzegovina is neither a religious nor an ethnic conflict, nor is it a “three-way civil war”, as some observers tend to believe. That war started as a war of aggression against a United Nations Member State, and it has remained, in essence, a war for territorial expansion. The genocidal practice of “ethnic cleansing” directed against Muslims of Bosnia and Herzegovina was devised and carried out as an instrument of war for territorial expansion.<sup>66</sup>

In the competition between causal stories, however, the proponents of the intentional causal story were largely non-members of the Security Council and largely represented States from the Middle East and Africa with some notable exceptions. The supporters of the intentional causal story, even among voting Security Council members were less prominent and visible than the permanent Security Council members and the vast majority of European states advancing either a causal story about civil war or the complex causal story. Even with the support of the most prominent permanent member, the United States, contestation between causal stories continued and the Security Council remained divided. A small number of states (including Argentina, Algeria, and Luxembourg) fell somewhere in between the intentional and inadvertent causal stories: they named Bosnia-Herzegovina “genocide” but despite the intentional character of the crime, failed to link it to an identifiable perpetrator or clear victim.

Enforcement of the no-fly zone around Sarajevo by NATO ushered in a brief period of optimism as fighting temporarily decreased. But by mid-March 1994, the Security Council issued two presidential statements condemning attacks on safe areas,

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<sup>66</sup> S/PV.3336, p. 142.

**Table 4.2: Elected Members of the Security Council by Year (1991-1995)**

<b>Year</b>	<b>Elected Members</b>
1991	Austria, Belgium, Cote D'Ivoire, Cuba, Ecuador, India, Romania, Yemen, Zaire, Zimbabwe
1992	Austria, Belgium, Cape Verde, Ecuador, Hungary, India, Japan, Morocco, Venezuela, Zimbabwe
1993	Brazil, Cape Verde, Djibouti, Hungary, Japan, Morocco, New Zealand, Pakistan, Spain, Venezuela
1994	Argentina, Brazil, Czech Republic, Djibouti, New Zealand, Nigeria, Oman, Pakistan, Rwanda, Spain
1995	Argentina, Botswana, Czech Republic, Germany, Honduras, Indonesia, Italy, Nigeria, Oman, Rwanda

one of which identified the Bosnian Serbs specifically as the perpetrators<sup>67</sup>. In April 1994 after repeated attacks against the safe haven of Goražde, NATO engaged in limited military action to defend Goražde. On 21 April, the Security Council unanimously adopted resolution 913 (1994) which directly condemned the Bosnian Serbs for their failure negotiate in good faith a peaceful settlement to the conflict and for violating the

<sup>67</sup> S/PRST/1994/11, 14 March 1994; S/PRST/1994/14, 6 April 1994.

terms of the ceasefire around Gorazde.<sup>68</sup> Islamic states and states from the Middle East and North Africa accused the Security Council of an anti-Muslim bias for failing to engage in a humanitarian intervention on behalf of the Bosnian Muslims in the face of increasing international acceptance of an intentional causal story of Serbian aggression and attempted genocide against the Government of Bosnia-Herzegovina and its population.<sup>69</sup>

In September 1994, after repeated Serb attacks on “safe areas”, US Secretary of State Madeline Albright, named “Belgrade authorities” as continuing to bear primary responsibility for the wars in the Balkans of the preceding 3 years.<sup>70</sup> A few days later on 3 November 1994, the General Assembly passed resolution 49/10 recommending that the Security Council exempt Bosnia-Herzegovina from the arms embargo. In response, the Security Council met on 8 November to discuss the General Assembly recommendation. The formal Council meeting which included 29 non-members of the Council and the Permanent Observer of the Organization of Islamic Conference highlighted the mounting tensions within the international community over the Security Council response to Bosnia-Herzegovina. In particular, the arms embargo debate illustrated the divisions between small and large member States of the United Nations, the former who were significantly more concerned with the self-defense rights granted in article 51 of the Charter than the latter; the tensions between the Security Council and the Secretariat including UNPROFOR personnel over the mismatch between force mandate and capacity

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<sup>68</sup> S/RES/913 (1994), 22 April 1994.

<sup>69</sup> S/PV.3367, 21 April 1994.

<sup>70</sup> S/PV.3428, 23 September 1994.

on the ground; between Security Council members and the remaining members of the United Nations, the vast majority of whom were in favor of lifting the arms embargo; and between the members of the transatlantic alliance.

Pakistan started the 8 November arms embargo debate by describing the situation in Bosnia-Herzegovina as “one of the gravest tragedies of modern times”.

The Bosnian people are not only the target of Serbian aggression and genocide but also the helpless victims of a double standard that on the one hand failed to respond effectively to the Serbian aggression and on the other hand denied the Bosnian people their inherent right to self-defence.<sup>71</sup>”

Cambodia appealed to Security Council Members to consider the similarities between the Bosnian Serb tactics in Bosnia-Herzegovina and the attacks against Cambodians by the Khmer Rouge, urging them to lift the arms embargo so that the Bosnians could reaffirm their human dignity.<sup>72</sup> The United States of America forcefully defended the Bosnian government’s “right to defend itself”, identifying the Bosnian Serbs as aggressors and specifically identifying Bosnian Serb General Karadžić as standing in the way of peace.<sup>73</sup> Yet other permanent members continued to reject the intentional causal story. France and Russia condemned the Bosnian Muslims for provocative attacks on Serb forces.<sup>74</sup> In response, the USA defended the Bosnian government from the attacks of other Security Council members,

...Impartiality does not require of this Council that we treat equally those who have not acted equally. There are those who condemn Bosnia for its recent attack on Bosnian Serb forces in the central and western parts of the country. My Government regrets all continued fighting. But let us not confuse attacks made to recover territory lost to aggression with aggression. Let us not confuse the actions

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<sup>71</sup> S/PV.3454, 8 November 1994, p. 2.

<sup>72</sup> Ibid., pp.51-52.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.; S/PV.3461

of a Government that has declared its desire for peace with that of a faction unwielding in its pursuit of war. The Government of Bosnia did not start this war and is willing to end it. The Bosnian Serbs began this war and are determined to prolong it. These differences matter and they should be reflected in the actions and attitudes of the Council.<sup>75</sup>

Although the United States was a forceful proponent of the intentional causal story, US support in absence of a strong coalition of support among permanent members of the Council, prevented the intentional causal story from winning out against competing explanations of causation. Nonetheless, there was movement in the direction of the intentional causal story on the Security Council at this time. Both Argentina and Spain identified by name the Serbs as the perpetrators of ethnic cleansing in Bosnia-Herzegovina strengthening the force of the intentional causal story.

In general, proponents of the intentional causal story, including the United States, were in favor of lifting the arms embargo because they located sovereign authority with the Government of Bosnia-Herzegovina. Not all proponents of the intentional causal story, however, supported this policy on exemption. Those proponents of the intentional causal story that objected to the lifting of the arms embargo, including Argentina, Spain, the Czech Republic, and New Zealand, did so based on the argument that lifting the embargo would cause more harm to the Bosnian people, not because they doubted the Bosnian Government's right to self-defense. In the end, however, lack of agreement among Council members on the source of sovereign authority in Bosnia-Herzegovina prevented revision of the arms embargo policy. Slovenia diagnosed the difficulty in reaching agreement as the result of "lack of coherence in characterizing the conflict for

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<sup>75</sup> S/PV.3454, 8 November 1994, p. 69.

what it really is” noting that “only a realistic assessment of the situation can offer the necessary ground to define adequate remedies”.<sup>76</sup> Slovenia characterized the war in Bosnia as one of territorial aggression by the Bosnian Serbs and Serb authorities in Serbia and a conflict distinguished by the practice of ethnic cleansing, with the Bosnian Muslims its primary victims.<sup>77</sup>

By June 1995, Bosnian Serbs had been actively threatening the United Nations and regularly “detaining” UNPROFOR personnel, yet consensus had not been achieved on the character of the conflict or its perpetrators. In an urgent meeting called to order at 12:40am on 16 June 1995, the Security Council debated the future of the UNPROFOR mission in light of recent attacks against UNPROFOR personnel and the continued fighting between the parties to the conflict. The meeting lasted until 3:00 am and in the end the Security Council passed resolution 998 (1995) establishing a rapid reaction force to support and defend UNPROFOR in maintaining its existing mandate. In addition, resolution 998 (1995) specifically demanded that “the Bosnian Serb forces release immediately and unconditionally all remaining detained UNPROFOR personnel”.<sup>78</sup> The Russian Federation abstained from voting on the resolution precisely because it seemed to target only one of the Bosnian parties, contrary to its argument that Bosnia was a civil war. China abstained from the vote, noting that the purpose of establishing a rapid reaction force for enforcement actions would be a “de facto change to the peacekeeping status of UNPROFOR.”<sup>79</sup> Although Argentina voted in favor of the resolution, it too

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<sup>76</sup> S/PV.3454, 8 November 1994, p. 23.

<sup>77</sup> Ibid.

<sup>78</sup> S/RES/998 (1995), 16 June 1995.

<sup>79</sup> S/PV.3543, 16 June 1995, p. 13.

pointed out the contradiction between maintaining a peacekeeping mandate for UNPROFOR while requiring military personnel to use force on the ground.<sup>80</sup> Malaysia, Egypt, Nigeria and Botswana expressed concern over the diminishing credibility of the United Nations and stated that they were humiliated by repeated kidnapping of UNPROFOR personnel by the Bosnian Serbs.<sup>81</sup> Though not stated publicly in the forum of the Security Council, France was similarly humiliated by the abduction of nearly 100 of its peacekeepers.<sup>82</sup>

Momentum began to build behind the intentional causal story after the Bosnian Serb forces overran the “safe haven” of Srebrenica in July 1995. Previous violent action against UNPROFOR by the Bosnian Serbs had already angered Members of the Security Council, particularly its kidnapping and detention of more than 400 UN personnel to use as human shields in May 1995. Starting on 12 July 1995, Bosnian Serb forces ethnically cleansed Srebrenica through forced population removal and murderous cleansing. Over the next several days, thousands of Muslim men disappeared. In the meeting of the Security Council on 12 July, Honduras used the phrase “Karadžić methods” as a synonym for Serbian ethnic cleansing and named Milošević (President of Serbia) and Mladić as perpetrators. Even France identified Bosnian Serb leader, General Mladić, by name and informed the Council that it was ready, if the UN deemed it appropriate, for the use of force to be taken against the Bosnian Serbs. The Russian Federation, however, distributed blame equally among the Bosnian Muslims of Srebrenica (for their

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<sup>80</sup> S/PV.3543, 16 June 1995, p. 21.

<sup>81</sup> Ibid.

<sup>82</sup> Woodward *Balkan Tragedy*; Allin “NATO’s Balkan Intervention”; Brian C. Rathbun, *Partisan Interventions: European Party Politics and Peace Enforcement in the Balkans* (Ithaca: Cornell University, 2004).

“unprovoked attacks”) and the Bosnian Serbs (for their “disproportionate response”).<sup>83</sup> Nonetheless, the Security Council unanimously adopted resolution 1004 (1995) condemning the Bosnian Serb offensive against Srebrenica and demanding its immediate withdrawal accompanied by the release of all detained UNPROFOR personnel. In total, 8 Security Council members made an explicit statement linking Bosnian Serb perpetrators with the crime of ethnic cleansing in Srebrenica – an intentional causal story – including 3 permanent members (United States, United Kingdom and France). An important shift had happened. But by August, after the safe area of Žepa had also been overrun by Bosnian Serb forces and forensic evidence of the Srebrenica massacre began to surface, the Russian Federation officially and “sternly condemned the actions of the Bosnian Serb army in Srebrenica” and expressed its concern over reports of its “flagrant violations of the norms of international humanitarian law in Srebrenica”.<sup>84</sup> Madeline Albright, speaking on behalf of the United States, stated that Bosnian Muslims had been “systematically slaughtered on the instructions of the Bosnian Serb leadership”.<sup>85</sup>

Despite this movement toward the intentional causal story, the use of full-scale military force against the Bosnian Serbs did not occur until a second attack on Sarajevo’s downtown Markala market on 28 August 1995 which was captured on film by the international television media. Only two days later, the Secretary-General released its report to the Security Council confirming the possibility of mass executions in Srebrenica the month before. The response of NATO was quick and determined – extensive air strikes of Bosnian Serb positions accompanied by military force on the ground by the

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<sup>83</sup> S/PV.3553, 12 July, 1995, p. 9.

<sup>84</sup> S/PV.3564, 10 August 1995, p. 5.

<sup>85</sup> Ibid., p. 6.

Rapid Reaction Force began on 30 August – called Operation Deliberate Force. The continued use of military force against the Serb side of the conflict provoked the Russian Federation to call an emergency meeting of the Security Council to address the shift to humanitarian intervention.

The intentional causal story had won out over both the complex and civil war causal stories. The Europeans had joined the United States and the Islamic, Middle Eastern, African, and developing countries in identifying the Bosnian Serb leadership (and their backers in Belgrade) with the “ethnic cleansing” of Bosnian Muslims in Bosnia-Herzegovina. Although the Russian Federation continued to defend the causal account of civil war and China objected to the use of force, the remaining Security Council Members were united in their belief that the Bosnian Serbs were the intentional perpetrators of ethnic cleansing in Bosnia-Herzegovina. With the support of all the elected members of the Council, the objections of China and the Russian Federation were insufficient to stop humanitarian intervention in absence of a veto. France justified the move to military operations by “the heinous shelling of the central market of Sarajevo, whose perpetrators have been clearly identified and which has been vigorously condemned by the entire international community”.<sup>86</sup> Reports by Human Rights Watch and the Report of the Secretary General to the Security Council on the Srebrenica massacre confirmed the intentional causal account and named General Mladić, the Serb

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<sup>86</sup> S/PV.3575, 8 September 1995, p. 4

paramilitary leader “Arkan” and other members of the Bosnian Serb leadership as perpetrators of the crime.<sup>87</sup>

But even after the move toward intervention, the inadvertent causal story about civil war continued to be propagated in the Security Council by Russia. Although the Russian Federation assented to the intentional causal account, it did not actively adopt it. For example, as late as November 1995, the Russian Federation continued to call upon “all states and all parties” to comply with Security Council resolutions to resolve the “civil war”.<sup>88</sup>

Nonetheless, on 21 December 1995, the Security Council unanimously adopted resolution 1034 (1995) which strongly condemned “all violations of international humanitarian law and human rights” and condemned in particular, violations of international humanitarian law and human rights by Bosnian Serb and paramilitary forces in the areas of Srebrenica, Žepa, Banja Luka and Sanski Most.” The resolution noted a “consistent pattern of summary executions, rape, mass expulsions, arbitrary detentions, forced labour and large-scale disappearances.” Resolution 1034 (1995) also specifically named Bosnian Serb leaders Radovan Karadžić and Rako Mladić for “Their direct and individual responsibilities for the atrocities committed against the Bosnian Muslim population of Srebrenica in July 1995”.<sup>89</sup> In addition, however, seven operative paragraphs were addressed to “all parties” reflecting the persistence of the minority Security Council view that all parties were perpetrators of the Bosnian war, some

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<sup>87</sup> Human Rights Watch, *Bosnia-Herzegovina: the Fall of Srebrenica and the Failure of UN Peacekeeping*; 7 (October 1995): 13. S/1995/988, 27 November 1995.

<sup>88</sup> S/PV.3591, 9 November 1995.

<sup>89</sup> S/RES/1034 (1995), 21 December 1995.

continued ambiguity of its character, and the persisting norm of impartiality for UN peace operations.

Four principle issues were a source of division between the Europeans and the Americans with regard to the Bosnian conflict: the character of the conflict; the nature of the human rights violations; arms embargo policy; and the purpose of the use of force.<sup>90</sup> Inability to agree on these issues threatened transatlantic values that were important to the cohesion of the NATO alliance as well as mutual relations between them. The United States adopted the position that Bosnia-Herzegovina was an independent state under attack from neighboring Serbia early in the conflict. In fact, as early as 1989 the United States' relations with Serbia had been strained over its treatment of its minority populations including the ethnic Albanians in Kosovo. France and the UK however, understood the conflict to be more complicated than the simple story articulated by the Americans. Attack was coming from two sources outside of Bosnia – Serbia and Croatia – but also from within by Bosnian Serbs and Bosnian Croats. Two of three of the ethnic groups residing in Bosnia-Herzegovina were supporting the external war against the Government. The Bosnian state's existence was being opposed by the majority of its inhabitants from this perspective raising questions about the legitimacy of Bosnian Government sovereignty.<sup>91</sup> The members of the transatlantic alliance were similarly divided, at least early in the conflict, between whether the war was characterized more by ethnic cleansing or as a traditional war over territory. Divisions over the arms embargo reflected not only the articulation of different causal stories about the conflict and

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<sup>90</sup> Allin "NATO's Balkan Intervention," 15-21.

<sup>91</sup>Ibid.

different perspectives on sovereign authority in Bosnia, it also reflected different national interests. The American government was under immense pressure from Congress and its domestic population to unilaterally lift the arms embargo which they viewed as denying Bosnia the right to defend itself. The US also had an interest in arming the Bosnian Muslims so that they could reverse some of the Bosnian Serb gains and make potential intervention easier and safer for NATO and UN troops. The Europeans were bitter that the US both pressured them to alter the arms embargo policy and blamed them for its continuation arguing that the US was a veto-wielding member of the United Nations and could have blocked the arms embargo initially. France and the UK also had different national interests than the US when it came to the question of the use of force. Not only were the European states more inclined to see the conflict as one in which all sides were perpetrators, they had military troops on the ground that would be put at risk if the UN, led by the US was to initiate humanitarian intervention on behalf of the Bosnian Muslims. The United States pushed the use of diplomacy backed by force but it was unwilling to commit ground troops and was only willing to use force from the air because it was safer for US forces. What was in the interests of US forces however, was threatening to the forces of France and the UK.<sup>92</sup>

Although the US articulated an intentional causal story and France and the UK articulated an inadvertent causal story for most of the conflict, eventually France and the UK adopted the intentional causal story. What can explain this shift? Why did the intentional causal story eventually win out over the inadvertent causal story in the contest between them in the Security Council? It is not clear from the evidence whether the

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<sup>92</sup> Allin, "NATO's Balkan Intervention," 15-21.

French and British adoption of the intentional causal story in late 1995 was sincere or strategic. There is some evidence that these states changed their minds about who the principle perpetrators of ethnic cleansing in Bosnia-Herzegovina were after expert testimony and forensic evidence implicated the Bosnian Serbs in massive atrocities in Srebrenica and other safe areas and following the repeated abduction of UN troops by Bosnian Serb military and paramilitary forces. Evidence suggests that President Chirac and the French Government were shamed by the kidnapping of its military forces and felt guilt over the mass executions of Bosnian Muslims from Srebrenica. The inadvertent causal story was no longer tenable for France or the UK given the accumulating forensic evidence, expert testimony and media coverage of the events on the ground.

Nonetheless, by the time that the United Nations Security Council authorized the significant use of force against the Bosnian Serbs, it was in the national interests of both France and the UK to do so. By 1995 divisions within the transatlantic alliance over Bosnia policy threatened the mutual relations between the US and its European allies. The inability to solve the Bosnian crisis and stop the human rights violations fundamentally threatened the credibility of European Security institutions including NATO and the United Nations.<sup>93</sup> Here we see, however, the powerful interplay of human rights and national interests with the former shaping the latter.

Although the US articulated its commitment to the intentional causal story beginning in 1989 its support for the use of military force became more forceful once it became evident that the use of American forces in Bosnia was inevitable. The United States articulated unwavering support for Bosnia-Herzegovina but it was unwilling to

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<sup>93</sup> Woodward, *Balkan Tragedy*, 2; 11.

deploy US troops on the ground. Only after it became apparent that US ground troops would be required to extract UNPROFOR from the intensified fighting going on around them did the US decide to push forcefully for the use of military force against the Serbs to compel a political agreement. By advocating the use of military power by NATO, the US would be permitted to avoid deploying ground troops until after the conflict had ended and a peace deal was signed.<sup>94</sup>

In May 1992 six members of the Security Council articulated an intentional causal story but only one permanent member – the United States. The Russian Federation and the United Kingdom articulated an inadvertent causal story and China and France articulated a complex causal story. By November 1992, however, Ecuador acknowledged ethnic cleansing was occurring moving closer to the intentional causal story but did not identify a perpetrator. The United Kingdom stated that those responsible for human rights violations should be held responsible but noted that Serb policy (in Belgrade and in Bosnia) was to extend Serb control over Bosnian territory through expulsion.<sup>95</sup> Its statement however did not reflect all the constituent elements of an intentional causal story.

The intentional causal story gained more proponents in the Security Council by June 1993 but none of the new proponents were permanent members of the Security Council. Nearly 1 ½ years later all the elected members of the Security Council and the United States articulated an intentional causal story in the Security Council to describe

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<sup>94</sup> See Economides and Taylor, "Former Yugoslavia".

<sup>95</sup> S/PV.3106, 13 August 1992, pp. 35-36.

*Table 4.3: Causal Stories about Bosnia-Herzegovina 1992-1995*

<b>Date</b>	<b>Intentional Causal Story</b>	<b>Inadvertent Causal Story</b>	<b>Complex Causal Story</b>	<b>Unarticulated</b>
<b>May 1992</b> (S/PV.3082)	Belgium Cape Verde Hungary Morocco Venezuela <b>USA</b>	<b>Russian Federation</b> <b>United Kingdom</b> India	<b>China</b> <b>France</b> Zimbabwe	Austria Ecuador Japan
<b>June 1993</b> (S/PV.3228 & S/PV.3247)  Safe Area Protection	Cape Verde Djibouti Hungary Japan Morocco New Zealand Pakistan <b>United States</b> Venezuela	<b>Russian Federation</b>		Brazil <b>China</b> <b>France</b> Spain <b>United Kingdom</b>
<b>November 1994</b> (S/PV.3454 &S/PV3461)  Lifting arms embargo; attacks on Bihac	Argentina Brazil Czech Republic Djibouti New Zealand Nigeria Oman Pakistan Rwanda Spain <b>United States</b>	<b>China</b> <b>France</b> <b>Russian Federation</b> <b>United Kingdom</b>		
<b>July 1995</b> (SPV3553)  Fall of Srebrenica	Czech Republic <b>France</b> Germany Indonesia Italy Oman <b>United Kingdom</b> <b>United States</b>			Argentina Botswana <b>China</b> Honduras <b>Russian Federation</b>
<b>August 1995</b> (S/PV.3564)	Argentina Botswana Czech Republic France Germany Honduras Indonesia Italy Nigeria Oman Rwanda United Kingdom United States			<b>China</b> <b>Russian Federation</b>

the fighting in Bosnia-Herzegovina. At this point, in November 1994, China, France, the Russian Federation and the United Kingdom clearly articulated an inadvertent causal story about conflict in which all three parties to the civil war were guilty of human rights abuses.

In July 1995 a significant shift in the power of the intentional causal story occurred when France and the United Kingdom identified Bosnian Serbs backed by Serbia as perpetrators of ethnic cleansing. China and the Russian Federation did not counter the characterization by articulating a rival causal story. China noted its reservation about the invocation of Chapter VII in resolution 1004 (1995) which condemned the Bosnian Serb offensive against Srebrenica. The Russian Federation publicly condemned the Bosnian Serbs but stated its opposition to the use of force against them. Resolution 1004 (1995) was passed unanimously by the Security Council. It is notable that China and the Russian Federation decided not to abstain on this important vote. Beginning in July 1995, China and the Russian Federation largely stopped commenting on the character of the conflict. They did not articulate an intentional causal story but they stopped contesting it during the formal meetings of the Security Council.

### **The Importance of Media Imagery, Forensic Evidence, and Expert Testimony**

Both Members of the Security Council and non-Members participating in formal Security Council meetings made repeated references to the strong impact of the television and print media in bringing human rights abuses to their attention and for mobilizing their domestic populations to support Bosnian victims of ethnic cleansing. The existence of

expert opinion and media imagery helped to provoke international interest in Bosnia-Herzegovina leading to intense UN involvement in the conflict, but domestic agitation within Member States did not directly provoke humanitarian intervention. Popular pressure and public opinion can trigger a governmental response to mass atrocity – it can cause a government to do something in response or at minimum to be seen to be doing something by its population – but it is insufficient on its own to trigger humanitarian intervention. International outrage triggered by the graphic media imagery only provoked humanitarian intervention after Security Council Members overwhelmingly adopted an intentional causal story about the conflict in Bosnia-Herzegovina. Nonetheless, the graphic imagery of the second Markala marketplace massacre in Sarajevo combined with the emerging forensic evidence of mass executions of Bosnian Muslim men by Bosnian Serb forces in Srebrenica, which were described in testimony collected by human rights organizations and by aerial surveillance photos by the US government, were the catalyst for humanitarian intervention, once the majority of permanent members of the Security Council adopted the intentional causal story. Expert testimony, forensic evidence and media imagery mediated the contestation between the intentional and inadvertent causal stories in the Security Council and eventually led to the adoption of the intentional causal story by most of its permanent members. Expert testimony, forensic evidence and media imagery can also explain why humanitarian intervention happens at a particular point in time and not another. Most members of the Security Council converged around the intentional causal story between mid-July and mid-August, however the punitive use of military force on behalf of the Bosnian Muslims

did not occur until 30 August, two days following the second attack on the Markala marketplace and on the same day that the Secretary-General released its report to the Security Council confirming the possibility of mass executions of Muslims by Serbs in Srebrenica.

## **Conclusions**

Evidence from the Bosnian case illustrates the increasing importance of the link between the protection of human rights and the maintenance of international peace and security held by Security Council Members. Security Council members justified their decisions by making reference to humanitarian motivations. The establishment of international criminal tribunal to investigate and prosecute war crimes in the former Yugoslavia illustrates the importance of the protection of human rights to collective security, greatly increasing the legitimacy of Security Council engagement on human rights questions. Nonetheless, despite the existence of a few norm entrepreneurs in the Security Council that actively promoted human rights for their own sake between 1992 and 1995 (Argentina, Venezuela, the Czech Republic, and New Zealand for example), most Security Council Members adopted an instrumental understanding of the relationship between human rights and security – human rights were important only because they threatened security. Human rights concerns, in the absence of great power strategic interests, were largely ineffective in prompting the use of military force and when they eventually did it was in absence of a clear mandate. There is an important interplay between human rights and national security concerns in the Security Council.

The United Nations Security Council response to the situation in Bosnia-Herzegovina significantly shaped the evolving norm of humanitarian intervention. Although this response was marked by incredible ambiguity and inconsistency over time, it is these very inconsistencies and alterations in Council policy that illustrate both the expanded possibilities for, and limitations to, humanitarian intervention during this early period when the norm was emerging. The most prominent factor for determining humanitarian intervention was widespread agreement among Council Members on an intentional causal story about the Bosnian conflict – a story that linked identifiable perpetrators to massive human rights violations directed against a specific population with the intention to destroy it. The intentional causal story in Bosnia-Herzegovina characterized the Bosnian war as an inter-state aggression distinguished by acts of ethnic cleansing and genocide. The perpetrators were Bosnian Serbs and the leaders in Serbia that supported them. Lack of convergence around the intentional causal story in the Security Council before 1995 hindered Security Council decision-making not only with regards to humanitarian intervention but on the related issues of Bosnian self-defense rights and the establishment of the safe havens. Convergence around the intentional causal story eventually led to humanitarian intervention, including its adoption by three permanent members. In the case of Rwanda, which will be examined in chapter 5, permanent members of the Security Council converged around an inadvertent causal story about civil war.

The factors that caused the intentional causal story about Bosnia-Herzegovina to eventually win out over the competing causal stories of complexity and civil war include:

the existence of media imagery, forensic evidence, and expert testimony to support the intentional causal explanation; and the coherence between the intentional causal story and existing norms of state sovereignty and territorial integrity. Great power leadership was important but not as significant as these other factors.

Strong leadership in the Security Council in support of the intentional causal story is necessary for its success and the United States was an early advocate of an intentional causal story in Bosnia-Herzegovina. However, while the preceding cases of northern Iraq and Somalia demonstrated the necessity of United States support, the Bosnian case demonstrates the limits of US leadership. The support of the United States is necessary but not sufficient for explaining the success of an intentional causal story. Humanitarian intervention only became possible in Bosnia-Herzegovina when a majority of permanent members of the Security Council articulated their support for the intentional causal story.

Expert testimony, forensic evidence and media imagery made articulation of the inadvertent causal story untenable in 1995 when the facts on the ground no longer matched the explanation for the violence expressed by France and the United Kingdom. After the Security Council converged around the intentional causal story, expert testimony, forensic evidence and media imagery also helped to explain the timing of humanitarian intervention.

The Bosnian case furthered the norm of humanitarian intervention by expanding the possibility of humanitarian intervention to situations of contested sovereignty, not just in the absence of a legitimate state. But intervention in this case was only possible because of widespread agreement that the victim of ethnic cleansing and attempted

genocide was a State Member of the United Nations and its civilian population – this distinguishes the Bosnian case and the later case of Sierra Leone from all other cases examined in this dissertation. Examination of the Rwanda case will show in cases of contested sovereignty it is even more difficult to build the consensus necessary to use force against a sovereign state than in defense of it, even when the State is the perpetrator of genocide. This can be explained by the strength of the existing norms of state sovereignty and non-intervention. Humanitarian intervention (an emerging norm) is more likely when it complements these existing norms than when its practice directly challenges them. States in general, and Security Council Members in particular, were biased toward the protection of state sovereignty at the expense of human rights at this early stage of the humanitarian intervention norm's development. Humanitarian intervention succeeded in Bosnia because it complemented and reaffirmed state sovereignty and failed in Rwanda, in part because it opposed it. The Security Council was making decisions about humanitarian intervention in the early 1990s in a context where the appropriate grounds for self defense and the appropriate use of force were being negotiated both inside and outside the Council chamber. In fact, the failure of the Security Council to use force in defense of Tutsis in Rwanda in 1994 may have helped to motivate Security Council use of force in Bosnia-Herzegovina in 1995 when the facts on the ground no longer matched an inadvertent causal explanation.

## Chapter 5

### **The Limits of the Humanitarian Intervention Norm: the Rwandan State as Perpetrator**

When the Security Council became involved in the Rwanda conflict in March 1993, the spirit of post-cold war optimism that had characterized the Council in the aftermath of the Gulf War had been replaced by a deepening concern over the health and reputation of the United Nations. The United Nations had taken on more peacekeeping operations in the five years between 1989 and 1993 than it had in the previous forty<sup>1</sup>. The Security Council's early success in reversing Iraqi aggression against Kuwait and the emergence of Security Council intervention into civil wars had led to high expectations in the international community about the role of the Security Council in securing international peace and security. But mission failures in Somalia and Bosnia-Herzegovina coupled with the Council's inability to determine in what contexts and under what conditions it could be effective, made the Council extremely apprehensive about undertaking new missions.<sup>2</sup>

Decision-making about Rwanda was significantly influenced by Security Council Members' experiences elsewhere and particularly by its experience in Somalia. Just days before the United Nations Assistance Mission in Rwanda (UNAMIR) was authorized, eighteen US rangers had been killed in Somalia by the population it was purporting to protect. In the aftermath of Somalia and the United Nation's failure to secure the safe

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<sup>1</sup> See Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002), 29; See also Wallensteen and Johansson "Security Council Decisions".

<sup>2</sup> Barnett, *Eyewitness to Genocide*, 13.

havens in Bosnia-Herzegovina, the Security Council became apprehensive about peace enforcement – the deployment of UN troops to conflict zones without a peace agreement and with the authorization to use all necessary means in defense of their mandates. From the earliest formal meetings on Rwanda, Security Council members linked the United Nations' presence in Rwanda to the progress of the parties to the conflict in meeting the terms of their peace agreement. This meant that failure to adequately implement the peace agreement could lead to UN withdrawal. When the systematic massacre of civilians began in April 1994 and fighting between the parties resumed, the Security Council dramatically decreased its operations in Rwanda rather than reinforcing them. This was in part the result of the contingent nature of the Rwandan intervention as well as framing of the conflict by permanent Security Council members as a civil war. The Security Council had taken a contractual approach to Rwanda and the resumption of fighting was treated as a breach of that contract, legitimating UN withdrawal. Whereas the cases of Somalia and Bosnia-Herzegovina demonstrated the advancements of the emerging norm of humanitarian intervention, the case of Rwanda sharply highlights the nascent norm's limitations.

The Security Council response to Rwanda demonstrates that there are limits to the financial and human costs that intervening states are willing to incur in order to protect the human rights of non-citizens. In early 1994, during the height of the Rwandan genocide, the new humanitarian intervention norm was insufficiently developed or internalized by states to overcome the high costs associated with intervention in absence of clear strategic interests, particularly given the high costs that the United Nations was enduring

elsewhere. When the Security Council first authorized a peacekeeping operation for Rwanda in late 1993 the credibility of the United Nations was under threat, the safety of peacekeeping forces in other parts of the world was severely compromised, and the financial burden of ongoing peacekeeping operations was excessive. The Security Council was only a reluctant partner in the peace process and agreed to participate in Rwanda's transition because the Council conceptualized the conflict as a traditional civil war after which both parties had committed to a peace agreement.

The Rwandan case also illustrates that when the emerging norm of humanitarian intervention came into conflict with the highly internalized norms of sovereignty and non-interference in internal affairs, the latter won out. In Somalia, the Security Council justified its military intervention based on the absence of state authority. In Bosnia-Herzegovina, the Council authorized use of force in a case of contested state sovereignty; but in Bosnia the state was the victim rather than the perpetrator of massive human rights violations. As a result, in both cases, application of the humanitarian intervention norm reinforced existing norms about state sovereignty and non-intervention rather than directly challenging them. What the Rwandan case shows is that it is significantly more difficult to build the consensus necessary in the Security Council to authorize the use of force against a sovereign state member of the United Nations, even when that state is a perpetrator of genocide; specifically because to do so would violate the sovereignty norm. For this reason, Rwanda represented a fundamentally different type of conflict than the previous cases of UN intervention. Even in the case of northern Iraq, where the Security Council authorized for the first time interference in a member's domestic affairs

for humanitarian reasons, the perpetrator state (Iraq) had already had its sovereignty temporarily revoked by the international community specifically for its failure to respect the non-intervention and state sovereignty norms. To invoke the emerging humanitarian intervention norm for Rwanda, even during the genocide, was in direct contradiction to sovereignty and non-intervention norms. It is significantly more difficult to challenge state sovereignty by confronting a perpetrator state than a state being victimized in the absence of strategic interests. Despite showing the weakness of the humanitarian intervention norm, and arguably setting back its further development, the case of Rwanda also vividly illustrates the nascent norm's existence. The moral outrage provoked by Security Council inaction demonstrates changed beliefs about the connection between security and human rights and the Council's responsibility to respond to massive human rights violations in conflict.

The Rwanda case is interesting to examine because it has a dual character. For the purpose of this study, Rwanda is a non-case, an example of the absence of humanitarian intervention because although a traditional Chapter VI peacekeeping operation was on the ground in Rwanda in April 1994 when the genocide commenced, the United Nations Assistance Mission in Rwanda (UNAMIR) had neither the mandate nor the capacity to prevent or stop civilian deaths. The United Nations not only failed to authorize UNAMIR to undertake humanitarian intervention, the Secretariat ordered UNAMIR forces to not intervene to protect civilians in an effort to maintain the impartiality imposed by its Chapter VI mandate.<sup>3</sup> Months later, the United Nations

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<sup>3</sup> See Barnett, *Eyewitness to Genocide*; Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto, Canada: Random House Canada, 2003).

Security Council did authorize the use of all necessary means under Chapter VII of the Charter to allow member states to respond to the refugee crisis created by the genocide. France launched a humanitarian intervention in June 1994 after most of the killing had ended to provide humanitarian relief to refugees but not to stop the killing. This intervention is a separate event from the former and does not qualify as a humanitarian intervention based on the strict definition applied to this study.<sup>4</sup> Rwanda was also the victim of two distinct conflicts occurring simultaneously: civil war and genocide. In their formal debates however, Security Council Members disagreed on the character of the fighting in Rwanda including a fundamental disagreement whether the civilian casualties were a byproduct of civil war or evidence of an altogether separate conflict: genocide. At the very early stages of its involvement, the Security Council defined the conflict in Rwanda as a civil war and this framework influenced how Council Members conceived of the appropriate response once conflict resumed between the parties less than a year later. Once Rwanda was conceptualized as a civil war, inertia set in. When the mass killing started in April 1994, many Council Members had difficulty either recognizing or admitting that genocide was occurring. After expert testimony, forensic evidence and television and print media labeled the killing “genocide” however, some members of the Security Council continued to strategically describe the conflict as a civil war, obscuring evidence to the contrary.

The authorization for the use of military force for humanitarian protection came late to Rwanda – after the genocide – and only after an intentional causal story was

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<sup>4</sup> I define humanitarian intervention as the use of military force by a group of states against a sovereign state without the consent of its authorities for the purpose of preventing, halting, or punishing widespread and gross violations of the fundamental human rights of individuals.

adopted by the majority of the Security Council members including the United States. Conversely, disunity among Council Members over the nature of conflict prevented forcible military action to stop the killing. Humanitarian intervention did not happen when it was needed most – during the genocide. Further, when the Security Council finally authorized its members to use force in Rwanda, an intervention was launched with the consent of the interim government responsible for planning the genocide and undertaken by one of its strategic allies – France, raising significant doubts about its humanitarian character. For France, addressing the humanitarian crisis in June 1994 became a national interest. Also, with consent of the interim state, the emerging norm of humanitarian intervention was no longer in tension with the sovereignty norm, making its application more possible. Finally, the Rwanda case also emphasizes the importance of great power leadership in the Security Council. Lack of support for humanitarian intervention among permanent members is an insurmountable barrier to authorization for the use of force, despite the best efforts of elected members who advocate on its behalf. But we also learn by examining Rwanda that elected members of the Security Council have the ability to shape the humanitarian intervention norm and define the conditions of its use. Elected Members are not passive recipients of a norm defined by the Council's permanent Members, as realist analysis would cause us to expect. The Rwanda case, as conventionally understood, is an illustration of the fatal weakness or even total absence of a norm of humanitarian intervention. However, I contend that examination of the Rwandan case confirms the existence of an emerging humanitarian intervention norm at the same time that it illustrates its contours and the conditions under which it can be

applied in international politics during the mid-1990s. It is in the emerging norm's breach in Rwanda that we find evidence of its existence.

### **Background to “Ethnic” Conflict**

The war that started in Rwanda in October 1990 was deeply rooted in ethnic politics. Rwanda is comprised of three ethnic groups: the Hutu, the Tutsi, and the Twa. At the beginning of the 1990s these groups represented nearly 85%, nearly 15% and under 1% of the population respectively. The ethnic distinction between Hutu and Tutsi were socially engineered through “a complex interplay of culture, politics, and economics.”<sup>5</sup> These ethnic categories existed in Rwanda prior to its colonization (Tutsi referred to a person rich in cattle while Hutu referred to a subordinate or ordinary person); but it was colonialism that institutionalized the “ethnic distinction” of superior Tutsi and inferior Hutu through its politics of divide and rule. These distinctions were solidified through the distribution of identity cards – a practice continued in Rwanda into the 1990s.<sup>6</sup> The Belgian colonial rulers elevated, and then supported the Tutsi to govern over the more numerous Hutu instituting an ethnocracy which lasted until the early 1960s. The Rwandan colony was rocked by violent outbreaks of violence between Tutsi and Hutus toward the end of the 1950s resulting in what came to be known as the “Hutu Revolution” whereby 80% of Rwandans voted to end the Tutsi monarchy.<sup>7</sup> When Rwanda was granted its independence from Belgium in 1962 one repressive regime

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<sup>5</sup> Barnett, *Eyewitness to Genocide*, 50.

<sup>6</sup> Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), 32; Barnett, *Eyewitness to Genocide*, 51-2.

<sup>7</sup> Des Forges, *Leave None to Tell the Story*, 39.

replaced another and ethnic violence between the majority Hutu and minority Tutsi persisted. President Habyarimana, the President of Rwanda at the time of the 1990 invasion, came to power through a military coup in 1973 and instituted a single party government that lasted until his death in 1994. At the end of the 1980s however, Habyarimana's rule was threatened by economic crisis, pressure for political liberalization, domestic challenges to his rule and external military offensives launched by the adult children of displaced Tutsis from Rwanda. The Rwandan Patriotic Front (RPF), a Rwandan nationalist organization comprised primarily of members of the Tutsi ethnic group who had been living in exile, invaded Rwanda from neighboring Uganda in October 1990. The RPF justified its invasion as an effort to resolve the long-standing Tutsi refugee crisis in the region caused by repression and violence, to eliminate political persecution and discrimination against Tutsi in Rwanda, and to replace the existing government with a democracy.<sup>8</sup>

### **Early International Response to the War between Rwanda and the RPF**

President Habyarimana of Rwanda insisted that the RPF invasion was a foreign invasion supported by the government of Uganda rather than an intra-state conflict. Nonetheless, he did not bring the matter before the United Nations Security Council. Instead, the Government of Rwanda sought military support from France, a long-time

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<sup>8</sup> Human Rights Watch, "Rwanda: Human Rights Developments 1994," *Human Rights Watch Annual Report* [http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm#P397\\_139563](http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm#P397_139563).

ally, and Belgium, its previous colonial ruler.<sup>9</sup> The Government of Rwanda and the RPF fought each other for nearly three years. During the height of the conflict nearly one million Rwandans were internally displaced or became refugees. This is the equivalent of one-seventh of the total population of Rwanda.<sup>10</sup> Following the RPF invasion the Government began to arbitrarily arrest and charge political opposition leaders and members of the Tutsi minority as “accomplices” of the RPF. Military battles between the Government and the RPF were frequently followed by the killing of Tutsi civilians, individually or in groups, by government troops. Investigations by Human Rights Watch inside Rwanda found evidence that President Habyarimana’s regime had instigated attacks on Tutsi in an effort “to bolster crumbling solidarity among Hutu”.<sup>11</sup>

The conflict did not make it onto the Security Council agenda until requested jointly by France and Rwanda in March 1993. During the three years prior to Security Council involvement there was still considerable external involvement on both sides of the conflict (France on the side of the Government of Rwanda and Uganda on the side of the RPF) as well as regional efforts to end the conflict and promote a peace settlement. France, Belgium and the Organization of African Unity (OAU) initiated peace negotiations in 1992 which resulted in a cease-fire monitored by an OAU military observer force, but despite the ceasefire agreement, the fighting between parties continued.<sup>12</sup> In February 1993 the RPF launched a major military attack and the French

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<sup>9</sup> Howard Adelman and Astri Suhrke, “The Security Council and the Rwandan Genocide,” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David M. Malone (Boulder, Lynne Rienner Publishers, 2004), 485.

<sup>10</sup> Human Rights Watch, “Rwanda 2003” [http://www.hrw.org/reports/1994/WR94/Africa-06.htm#P258\\_112461](http://www.hrw.org/reports/1994/WR94/Africa-06.htm#P258_112461).

<sup>11</sup> Ibid

<sup>12</sup> Adelman and Suhrke, “The Security Council and the Rwandan Genocide,” 486.

intervened militarily on behalf of the Rwandan Government to end it.<sup>13</sup> A new cease-fire was established on 22 February after which the French and the Rwandan government sought UN involvement which they believed would be more favorable to the Rwandese Government than continued OAU involvement which they interpreted as pro-RPF.<sup>14</sup> On 12 March 1993, the Security Council called on both parties to respect a 7 March ceasefire and invited the Secretary-General to examine the possibility of deploying an observer force to the border between Rwanda and Uganda.<sup>15</sup> On 22 June 1993, the Security Council did indeed establish the United Nations Observer Mission Uganda-Rwanda (UNOMUR) to be deployed on the Ugandan side of the border.<sup>16</sup> Uganda supported the observer mission in an effort to verify that its government was not involved in the conflict.<sup>17</sup> Negotiations between the Government of Rwanda and the RPF ended in a peace agreement called the Arusha Accords which were signed in Arusha Tanzania on 4 August 1993. The peace agreement was based on power-sharing principles and created a timetable for the creation of an interim government that would hold power until democratic elections could be held.<sup>18</sup> The peace agreement caused serious splits between moderates and extremists within the Habyarimana governing coalition.

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<sup>13</sup> Barnett, *Eyewitness to Genocide*, 57; 60.

<sup>14</sup> Adelman and Suhrke, "The Security Council and the Rwandan Genocide," 486-7.

<sup>15</sup> S/RES/812, 12 March 1993.

<sup>16</sup> S/RES/846, 22 June 1993.

<sup>17</sup> Adelman and Suhrke, "The Security Council and the Rwandan Genocide," 486.

<sup>18</sup> Barnett, *Eyewitness to Genocide*, 62.

### **Conditional UN involvement in Rwanda (October 1993- 5 April 1994)**

The United Nations Security Council approved a chapter VI peacekeeping operation for Rwanda on 5 October 1993. From inception, the operation was conceived as a simple mission that would monitor an existing peace agreement and report on violations. Renewal of the mission mandate was made dependent upon continual success in meeting the timetables agreed to by the parties through the Arusha process. Security Council Members were impressed by the joint delegation comprised of representatives of both the Rwandan Government and the Rwandese Patriotic Front – parties who only weeks before had been fighting each other.<sup>19</sup> Both parties expressed their profound gratitude to the UN, OAU, Zaire, Tanzania, and France, among others for help in brokering a peace agreement between them. They jointly requested the immediate deployment of a UN force to assist them in making the democratic transition in Rwanda.<sup>20</sup> The record of its formal meeting on 5 October 1993 indicates that Security Council Members were optimistic that a peacekeeping mission in Rwanda would be successful and that it would be an easy mission – one that would adhere to the principles of classic peacekeeping and avoid the perils of peace enforcement that hampered success in Somalia and Bosnia-Herzegovina.<sup>21</sup> France specifically described Rwanda as a “special case” because it was “an all too rare example – of the coming together of two parties long opposed.”<sup>22</sup> Brazil, Djibouti and Pakistan echoed that optimism, each celebrating the “determination” and “clear willingness” of both parties to work together

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<sup>19</sup> See S/PV.3288, 5 October 1993.

<sup>20</sup> S/PV.3288, 5 October 1993, pp. 6-9.

<sup>21</sup> *Ibid.*, p. 16 (Djibouti).

<sup>22</sup> *Ibid.*, p. 20.

to resolve their differences.<sup>23</sup> During the formal meeting, Security Council Members unanimously passed resolution 872 (1993) establishing the United Nations Assistance Mission for Rwanda (UNAMIR) with a mandate to monitor the cease-fire and security situation up to the scheduled elections and to investigate acts of non-compliance with the Arusha agreement. UNAMIR's other tasks included providing assistance in mine-clearance, monitoring the repatriation of refugees and coordinating the delivery of humanitarian assistance.<sup>24</sup> Despite its hope for an easy success in Rwanda, however, the Security Council warned the parties that UN participation in Rwanda was conditional – it was dependent upon progress in implementing the peace agreement. The Security Council was willing to engage the Rwanda situation but had decided in advance that it could not afford another failure in the field. Cape Verde's remarks acknowledged the turbulent political climate the Security Council faced as well as the expectations placed upon it by members of the United Nations,

This decisive contribution of the United Nations to the resolution of conflict unleashed in Rwanda is, at the same time, in the eyes of many – and especially the small countries – an assurance that now more than ever the United Nations is, during this turbulent phase of the transition to a new international order, the main instrument at the service of the peoples in question relating to the promotion and preservation of international peace and security.<sup>25</sup>

In a veiled reference to the ongoing turmoil in Somalia and Bosnia, the representative from the United Kingdom stated,

Peace agreements such as this are only a success if they are pursued in good faith and sincerity by all parties involved. As recent events elsewhere have demonstrated, the United Nations cannot impose peace where there is no

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<sup>23</sup> S/PV.3288, 5 October 1993.

<sup>24</sup> S/RES/872 (1993), 5 October 1993.

<sup>25</sup> S/PV.3822, 5 October 1993, p. 14.

willingness to sustain compromise. It is therefore, in our view, essential that the parties continue to cooperate fully and stick firmly to the timetable that they have set for themselves for national reconciliation and elections.<sup>26</sup>

Council Members were convicted that Rwanda must be different from the situation in Somalia where 18 peacekeepers had been killed only 3 days before. Finally, the United States placed additional financial conditions on its support for the Rwanda operation. The US put on record its apprehension over the increasing burden being placed upon the United Nations and its member states in terms of providing manpower and financial resources to the ever growing number of UN peacekeeping operations. The remarks by the US representative betrayed that Rwanda was a low priority operation and that addressing the financial concerns of the United States would be central to continued US support of the mission. Only minutes after UNAMIR had been approved, the US stated its commitment to decreasing mission costs.

My Government will continue to monitor and work to reduce costs and personnel levels throughout this peacekeeping operation, and we look forward to the report of the Secretary-General called for in the resolution on ways to reduce the levels of the United Nations Assistance Mission for Rwanda and to reduce costs.<sup>27</sup>

From the start, there was a clear limit to what the Security Council and its most prominent member, the United States, was willing to sacrifice for the Rwandans in terms of its reputation and the financial and human costs incurred by its members.

When it established UNAMIR in October 1993 the Security Council had characterized the conflict in Rwanda as a civil war. It interpreted reports about developments in Rwanda from the Secretariat and other organs through this frame.

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<sup>26</sup> S/PV.3822, 5 October 1993, p. 22.

<sup>27</sup> Ibid., p. 23.

Brazil likened the Rwanda conflict to other civil wars in terms of its durability and brutality; noting that it was not distinctive from other civil conflicts.<sup>28</sup> While the Security Council was willing to undertake a minimal, classic peacekeeping operation in Rwanda, it would not enforce peace. Nearly three months later, in January 1994, the Security Council welcomed five new elected members to the Council including Rwanda who was taking its appointed turn in its regional rotation. This is notable because the conflict in Rwanda was on the Security Council agenda; yet from this point forward, the Rwandan representative had access to all secure documents, reports, and meetings of the Security Council with regards to its handling of the Rwandan crisis and its relationship with both parties; and had a unique advantage in terms of shaping the debate on Rwanda. The presence of Rwanda on the Security Council had a spoiler effect on Security Council efforts since the delegation representing the Rwandan Government manipulated information in pursuit of its national interests. During the Council's January meeting on Rwanda, Security Council members expressed their concern over reports of outbreaks of violence in Rwanda and the parties' failure to meet its timeline for creating a transitional government. Nonetheless, because the parties continued to show goodwill, the Council reaffirmed the UNAMIR deployment. Resolution 893 (1994) also stressed, however "that continued support for UNAMIR will depend upon the full and prompt implementation by the parties of the Arusha Agreement." In February 1994, the Security Council expressed its concern about the continued delays in meeting the projected timetable for establishing a transitional government in Rwanda and its adverse effect on the humanitarian situation. The Council urged President Habyirama, who remained

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<sup>28</sup> See Brazil, S/PV.3288, 5 October 1993, p. 29.

interim president until elections could be held, to use his influence to install the other transitional institutions.<sup>29</sup> But the installation of the new interim government still had not been accomplished when the mandate came up for renewal on 5 April 1994. During the early April meeting, Council Members complimented the parties on meeting the early objectives of the peace plan but stressed the need for progress on transitional institutions to the continuation of the peacekeeping force. Indeed, UNAMIR was only renewed for 6 additional weeks in which time the Council expected President Habyarimana to finalize the transitional institutions or else the Council would reassess the “Organization’s commitment to Rwanda”.<sup>30</sup>

At the time that resolution 909 (1994) was passed, the Security Council was dealing with renewed chaos in Bosnia-Herzegovina following mortar attacks on the Sarajevo marketplace and US troops were departing Somalia. In this context, Rwanda both seemed quieter and for many of the permanent members of the Council an unnecessary use of resources if the parties remained stalemated.<sup>31</sup> The Security Council had existing commitments elsewhere and resolution of the conflict in Bosnia-Herzegovina had greater strategic significance for four of the five permanent members. Resolution 909 (1994) stated that the Council “will review the role of the UN in Rwanda if in the next 6 weeks no progress is made on establishing transitional institutions and the beginning of Phase II”.<sup>32</sup> Phase II of the timetable included the disengagement, demobilization and integration of the armed forces and gendarmerie. Despite the

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<sup>29</sup> S/PRST/1994/8, 17 February 1994.

<sup>30</sup> S/PV.3358, 5 April 1995; see France p. 6; USA p. 6.

<sup>31</sup> See Colin Keating “Rwanda: An Insider’s Account” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David M. Malone (Boulder, Lynne Rienner Publishers, 2004), 504.

<sup>32</sup> S/RES/909 (1994), 5 April 1994.

political setbacks, however, France noted that the ceasefire had held between the parties ever since the peace agreement was signed and contrasted this to the other African cases on the Security Council agenda. There was little mention of the deteriorating security and humanitarian situation in Rwanda by Security Council Members (with the exception of Oman who noted that ethnic crimes, political assassinations and banditry were occurring).<sup>33</sup> Paragraph 27 of the Secretary General's report to the Security Council on the situation in Rwanda noted that in January and February violent demonstrations, roadblocks, assassinations of political leaders and murders of civilians had emerged in Rwanda.<sup>34</sup> But the report neglected to share information from the UN field commander, General Romeo Dallaire, who told the Secretariat that he had been informed of preparations by extremist members of the Hutu government to launch a massive killing campaign against Tutsi living in Rwanda. On 11 January, General Dallaire sent a cable to New York asking for permission to confiscate weapons that were being stockpiled in preparation for the murder of civilians.<sup>35</sup> This information, as was the case with other bad news about Rwanda, was excluded from the Secretary-General's 30 March report.<sup>36</sup>

### **One Hundred Days of Genocide and the Absence of UN Humanitarian Intervention**

On 6 April 1994, the airplane carrying President Habyarimana of Rwanda was shot down over Kigali, the capital of Rwanda. Within 30 minutes of the plane crash, the military, police and civilian militias set up roadblocks throughout Kigali and began

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<sup>33</sup> S/PV.3358, 5 April 1994.

<sup>34</sup> S/1994/360, 30 March 1994.

<sup>35</sup> See Dallaire, *Shake Hands with the Devil*, 142-7.

<sup>36</sup> See Dallaire, *Shake Hands with the Devil* and Barnett, *Eyewitness to Genocide*.

massacring Tutsis based on their national identity cards and pre-prepared lists. Members of the presidential guard also went to the homes of moderate members of the government, members of the opposition parties, and human rights activists and killed them and their families. Ten Belgian soldiers from UNAMIR who were attempting to protect Prime Minister Uwilingiyamana, a progressive Hutu, were captured, tortured and killed, prompting a formal withdrawal of all Belgium troops two days later. Lessons from the UN intervention in Somalia were being learned by Council members and perpetrators in civil conflicts alike. The Secretariat had received evidence from General Dallaire that the murder of Belgian peacekeepers was premeditated in an effort to provoke UN withdrawal.<sup>37</sup> It is estimated that 20,000 people were killed in the immediate area of Kigali within the first week of the plane crash. Similar methods were enacted throughout the country with the killing organized by local governments<sup>38</sup>.

On that same day in New York, the Security Council was meeting to discuss the attacks on the safe areas of Goražde and acts of ethnic cleansing in Banja Luka and Prijedor in Bosnia-Herzegovina. The meeting opened with an expression of sorrow for the deaths of the Presidents of Rwanda and Burundi, who had been traveling together when their plane was shot down. The Members rose for a moment of silence. Afterwards, they approved a presidential statement expressing the Council's deep concern with attacks against civilians in Bosnia-Herzegovina.<sup>39</sup> The Security Council met to issue a presidential statement on Rwanda the next day on 7 April. In its statement,

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<sup>37</sup> Dallaire, *Shake Hands with the Devil*.

<sup>38</sup> Human Rights Watch, "Rwanda: Human Rights Developments 1994" *Human Rights Watch Annual Report* [http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm#P397\\_139563](http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm#P397_139563).

<sup>39</sup> S/PRST/1994/11, 6 April 1994.

the Security Council expressed its regret over the plane crash and its concern over the considerable loss of lives in Rwanda following the plane crash, including the loss of lives of Government leaders, civilians and the Belgian peacekeepers. The Security Council strongly condemned these acts of violence but placed a particular emphasis on the attacks against United Nations personnel. While the statement identified those responsible for the attacks and urged the “Rwandese security forces and military and paramilitary units to put an end to these attacks” it also called upon “all Rwandese” and “all parties and factions to desist from any further threats or acts of violence (emphasis added)”.<sup>40</sup> The Council characterized the violence as a by-product of the civil war by reminding the parties that UNAMIR had been extended “with a 6 week review provision on the understanding that progress would be made in establishing all the transitional institutions under the Arusha Peace Agreement” and it urged “all parties” to “respect the cease-fire”<sup>41</sup>. This language implied that the deaths occurring in Rwanda were a direct result of the fighting between parties to the conflict and threatened UN withdrawal if the killing continued, rather than humanitarian intervention. The statement made no reference to the killing of civilians as intentional or systematic. In the days that followed foreign governments including the US, UK and France launched extensive military operations in Rwanda in an effort to safely evacuate their nationals. General Dallaire insists that had these troops stayed to reinforce UNAMIR after completing their rescue missions it might have been possible to stop the genocide.<sup>42</sup>

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<sup>40</sup> S/PRST/1994/16, 7 April 1994.

<sup>41</sup> Ibid.

<sup>42</sup> Dallaire, *Shake Hands with the Devil*; Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York, Basic Books, 2002).

Thirteen days after the massacres began Secretary-General Boutros-Ghali submitted a special report to the Security Council on UNAMIR.<sup>43</sup> This report noted that Members of the Security Council were “fully aware of the critical situation in Rwanda” and diagnosed the violence as having “political and ethnic dimensions”.<sup>44</sup> According to the report, “Reliable reports strongly indicate that the killings were started by unruly members of the Presidential Guard and then spread quickly throughout the city”.<sup>45</sup> The report noted that some members of the provisional government had been killed in the violence including the Prime Minister along with 10 members of UNAMIR. The Secretary-General described UNAMIR personnel as incapable of continuing their tasks under the mandate given the conditions on the ground and argued that UNAMIR personnel should not be left at risk if there was no possibility of them fulfilling their mandate.<sup>46</sup> As a result, the Secretary General advanced 3 alternatives for responding to the crisis, including: 1) a massive reinforcement of UNAMIR and a change in its mandate to include enforcement powers under Chapter VII of the Charter of the United Nations; 2) a reduction of troops to a small contingent headed by the force commander in Kigali to broker a ceasefire and monitor conditions and withdrawal of all other UNAMIR forces; and 3) complete withdrawal of UNAMIR from Rwanda.<sup>47</sup> The report of the Secretary-General articulated an inadvertent causal story. The report argued that the violence was caused by the plane crash when “unruly members of the Presidential Guard” initiated the

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<sup>43</sup> S/1994/470, 20 April 1994, Special Report of the Secretary General on the United Nations Assistance Mission to Rwanda.

<sup>44</sup> *Ibid.*, paragraphs 1 & 2.

<sup>45</sup> *Ibid.*, paragraph 3.

<sup>46</sup> *Ibid.*, paragraphs 4 & 7.

<sup>47</sup> *Ibid.*, paragraph 13.

killing. Although he identified the perpetrators of the violence by their governmental positions, he described the actors as “unruly” indicating that the killing was not part of a systematic policy, but an unintended consequence of the tragic death of the President.

On 21 April, the Security Council met to discuss the options laid out by the Secretary –General. In a meeting that lasted 35 minutes, the Council adopted the second option: the reduction of UNAMIR forces from 2, 558 to 444 troops but with an extension of the mandate, albeit reduced in scope. The lack of extensive debate accompanying the passage of resolution 912 (1994) is notable, given the high level of killing that was being reported as underway. On 21 April, Security Council members were also preoccupied with catastrophic events unfolding in Bosnia-Herzegovina where the safe-haven of Goražde was under attack. In fact, the 35 minute meeting on the future of UNAMIR took place during the suspension of a formal meeting on Bosnia-Herzegovina which lasted for nearly 8 hours on that same evening. In his reflections on the meeting on Rwanda, the delegate of Nigeria at that time, Ibrahim Gambari, argued that the meeting in which resolution 912 (1994) was adopted was more than a simple intermission from the debate on Bosnia. According to Gambari, the Nigerian delegation insisted that Council members who wished to make statements explaining their votes be permitted to do so, despite opposition from other Council members who wished to quietly and quickly adopt resolution 912 (1994).<sup>48</sup> Only five members of the Council chose to make a statement including only a single permanent member – France. Unfortunately, the silence of the permanent members of the Security Council in the formal record conceals, perhaps by

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<sup>48</sup> Ibrahim A. Gambari, “Rwanda: An African Perspective,” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David M. Malone (Boulder: Lynne Rienner Publishers, 2004), 516.

design, if they understood the systematic nature of the killing in Rwanda and whether they continued to articulate an inadvertent causal story in which civilians were dying within the context of a civil war when faced with the mounting evidence of dramatic numbers of Tutsi civilian deaths. Security Council resolution 912 (1994) indicates that the Council dealt with the situation of Rwanda in a civil war framework but the unwillingness of most members of the Security Council to explain their vote on 21 April obscures how they justified their decision and prohibits an evaluation of whether the justifications were sincere or strategic.

Resolution 912 (1994) was passed unanimously by the Security Council. Resolution 912 (1994) demanded the immediate cessation of hostilities between the Government of Rwanda and the RPF and called for UNAMIR to broker a ceasefire. The resolution described the violence taking place in Rwanda as “continued fighting, looting, banditry and the breakdown of law and order”.<sup>49</sup> The resolution expressed the regret of the Security Council about the violence and deaths of government members and civilians but linked the deaths directly to the resumption of the civil war. Consequently, it emphasized that following the Arusha framework was central to ending the violence in Rwanda. Resolution 912 (1994) reduced the personnel and functions of UNAMIR so that it would function primarily as an intermediary between the parties to the conflict toward the establishment of a ceasefire. UNAMIR was also tasked with assisting with the delivery of humanitarian relief if possible, monitoring developments on the ground and reporting them to the headquarters in New York. The Security Council commanded its peacekeepers to engage in diplomacy and report on civilian deaths, rather than stop them.

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<sup>49</sup> S/RES/912 (1994), 21 April 1994.

According to the Security Council, the Rwandans were responsible for the reduction of UNAMIR because of their continued fighting and their failure to live up to the terms of the Arusha Agreement.

Four of the speakers who justified their vote for the Council record, France, Rwanda, Djibouti and Nigeria, characterized the conflict as a civil war and called on the rival parties to agree to a cease-fire, indicating that the killing was directly connected to the ensuing violence between the Government and the RPF. Only the latter two, indicated that the violence had ethnic dimensions. Rwanda, who was a representative of the government in power, a party to the conflict and a voting member of the Council, described the violence as the result of a spontaneous furor of the general population provoked by the assassination of the Head of State of Rwanda and exacerbated by massacres launched by the Rwandese Patriotic Front<sup>50</sup>.

The assassination of the Head of State of Rwanda caused consternation and stupor among the people of Rwanda. This tragic event gave rise to such furor that it was followed by acts of violence that, unfortunately, cost the life of some well-known persons and thousands of ordinary civilians. We deeply regret this. We regret also the death of some United Nations personnel and we again express our heartfelt condolences in connect with what has happened...The tragedy that the people of Rwanda are living through reached its climax when this climate of violence was exacerbated by the resumption of hostilities and by armed attacks, accompanied by a wave of massacres launched by the Rwandese Patriotic Front.<sup>51</sup>

France, Rwanda's ally in the Security Council, explained the reason for the troop reduction, placing responsibility squarely on the shoulders of both parties to the conflict for failing to live up their responsibilities.

The United Nations gave the Rwandese parties several days to conclude a cease-fire, which would have allowed UNAMIR to carry out the mandate given to it by

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<sup>50</sup> S/PV.3368, 21 April 1994, p. 5.

<sup>51</sup> Ibid.

Resolution 872 (1993). Unfortunately, there is still no cease-fire, and the Security Council was therefore compelled to reconsider the conditions for UNAMIR's presence, reducing it to a minimal level. We hope that the Rwandese parties will come to their senses and realize that the United Nations can neither take their place nor impose peace on them.<sup>52</sup>

Djibouti likened the ongoing violence to other past periods of violence in Rwanda's history which he described as having an ethnic character. By describing the crisis "as an outward manifestation of long-ingrained ethnic tensions" Djibouti portrayed the crisis as a continuing cycle of violence between ethnic Hutus and Tutsis and argued the solution was UN protection of civilians rather than a ceasefire.<sup>53</sup>

We see not so much the need to coerce the combatants into a ceasefire and force law and order as the need to maintain minimum safety for innocent civilians and to offer some protection, while pushing for a return to negotiations. The United Nations should certainly be able to provide, with the acceptance of both parties, safety and refuge for innocent civilians. By agreement, neither party would attack such areas under the threat of being charged with international human rights violations.<sup>54</sup>

It is not clear from the statement whether Djibouti believed that both sides were responsible for killing civilians or if Djibouti was following the diplomatic protocol of impartiality called for by peacekeeping operations. Nigeria described the killing as the result of vicious rage and senseless violence of some elements from each of the rival parties, democratizing blame. Only Nigeria publicly regretted its decision to vote in favor of the troop reduction citing the UN's inability to immediately reinforce UNAMIR as justification for its decision.<sup>55</sup> Both Djibouti and Nigeria who favored a continuing

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<sup>52</sup> S/PV.3368, 21 April 1994, p. 7.

<sup>53</sup> Ibid., p. 4.

<sup>54</sup> Ibid., pp. 4-5.

<sup>55</sup> Ibid., p. 3.

UNAMIR presence in Rwanda described the violence as an “outward manifestation of long-ingrained ethnic tensions...culminating once again in a situation where ordinary people are made to suffer and die”.<sup>56</sup> Like France, Oman notes that the breakdown of the ceasefire is the immediate cause for the reduction of UNAMIR and reminds the parties that improvement in conditions on the ground would allow the Security Council to reconsider the mandate and composition of UNAMIR.<sup>57</sup> In sum, the causal story about the conflict in Rwanda was an inadvertent causal story about the resumption of civil conflict in the aftermath of the 6 August plane crashed that killed Rwanda’s president. According to this civil war framework, civilian deaths were characterized as the consequence of renewed fighting and for which both parties were responsible. The logic of the civil war framework meant that the failure of the Rwandan Government and the RPF to meet the terms of the Security Council’s conditions for UN participation could lead to a troop and mandate reduction or withdrawal rather than reinforcement.

Not all Security Council Members accepted the civil war framework, however. Interviews, memoirs and research on the informal discussions preceding the vote on resolution 912 (1994) indicate that an intentional causal story about systematic killing in Rwanda emerged among a small group of elected members to the Security Council who worked in private sessions to negotiate a compromise with the remaining Council members. A small group of elected members were concerned about the renewed fighting (civil war) but also expressed concern about the character of the killings that were happening in Rwanda (genocide). For this group, New Zealand, Czech Republic,

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<sup>56</sup> S/PV.33.68, 21 April 1994, p. 4.

<sup>57</sup> Ibid., pp. 3-4.

Nigeria, Spain and Djibouti, troop reduction was a strategy for maintaining a UN presence in Rwanda however minimal, in the face of strong permanent member support for complete troop withdrawal. Supporters of an intentional causal story sought a response to the violence separate from but alongside efforts to broker a ceasefire. According to Colin Keating, the Ambassador of New Zealand and sitting Security Council President in April 1994, a coalition consisting of the Czech Republic, Spain, Nigeria, Djibouti and New Zealand actively supported a strategy to preserve the UN presence in Rwanda in the hopes of providing some protection for civilians.<sup>58</sup> Going into the end of April, most States including the permanent members, wanted to terminate the Rwanda mission as did many of the troop-contributing countries. The elected coalition, drawing on testimony from the NGO community that genocide was happening in Rwanda, sought to maintain even a minimal UN presence in Rwanda and to move the Council to focus on the killing that was happening in the towns and villages of Rwanda rather than the fighting between the belligerents.<sup>59</sup> The strategy met with limited success when on 30 April New Zealand forced Security Council compromise on a presidential statement that used language of the genocide convention in its description of the killings in Rwanda in exchange for tabling a resolution that would have publicly exposed the Security Council members resisting the resolution by putting them on the formal record.<sup>60</sup>

Although in the presidential statement of 30 April the “Security Council reiterates the demand in resolution 912 (1994) for an immediate cease-fire and cessation of

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<sup>58</sup> Colin Keating, “Rwanda: An Insider’s Account,” in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David M. Malone (Boulder: Lynne Rienner Publishers, 2004), 507.

<sup>59</sup> Keating, “Rwanda,” 508.

<sup>60</sup> *Ibid.*, 509.

hostilities between the interim Government of Rwanda and the Rwandese Patriotic Front” revealing the persistence of the civil war framework among Security Council Members, the statement also adopts language from the genocide convention. Specifically, the statement says,

The Security Council condemns all these breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population, and recalls that persons who instigate or participate in such acts are individually responsible. In this context, the Security Council recalls that the killing of members of an ethnic group with the intention of destroying such a group in whole or in part constitutes a crime punishable under international law.<sup>61</sup>

Even though the statement never uses the word genocide to describe the killings in Rwanda, it borrows the exact language of the genocide convention. The existence of the reference to the genocide convention alongside references to resolution 912 (1994) illustrates the disunity that existed among Council Members at the time over the nature of the conflict and violence in Rwanda. The presidential statement of 30 April represents a compromise between two factions on the Security Council: those who argued that the conflict was a civil war and those who argued that the violence was genocide. The original draft version of the presidential statement included the word “genocide” however the word “genocide” was removed on the insistence of the UK and US and replaced with the word “crime”.<sup>62</sup>

The first description of the killing in Rwanda as genocide within the public record of the Security Council occurred on 16 May 1994. During a formal debate that lasted for one hour and forty minutes, Security Council Members alternately described the conflict as a civil war or genocide. The civil war frame – in which the killings of civilians was

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<sup>61</sup> S/PRST/1994/21, 30 April 1994.

<sup>62</sup> Power, *A Problem from Hell*, 361.

inadvertent or the unintended consequence of the fighting – was advanced by six Security Council members, including 3 permanent members (China, UK and USA) and the Secretary-General. Rwanda, a party to the conflict, argued before the Council that the deaths were the result of long-standing inter-ethnic rivalry between Hutus and Tutsis. Although the Government of Rwanda acknowledged the deaths of Tutsi citizens, it explained these deaths as a spontaneous explosion of anger from Hutus based on their previous repression at the hands of the Tutsi. The Government characterized itself as a victim of an ethnically motivated attempt to rid the country of Hutus by the RPF and of an externally imposed war as a result of an external aggression from Uganda.<sup>63</sup> In this way, the Government of Rwanda utilized the civil war framework of mutually responsible parties but also attempted to shift the framework to one in which the Rwandan state was victim. The conceptualization of the violence as a spontaneous eruption was shared by the delegation from Pakistan which characterized the situation in Rwanda as one of “chaos and mayhem”.<sup>64</sup> The report submitted by the Secretary-General to the Security Council (S/1994/565) identified the resumption of the civil war as the cause of the ensuing massacres in Rwanda. Similarly, China argued that the “civil war” worsened after the death of President Habyiramaana.<sup>65</sup> According to the civil war framework, both parties were responsible for the atrocities and the solution to the deaths of civilians was the establishment of a ceasefire between the parties. For example, China demanded that the “conflicting Rwandese parties should cease forthwith *massacring each*

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<sup>63</sup> S/PV.3377, 16 May 1994, p. 6.

<sup>64</sup> Ibid., pp. 7-8.

<sup>65</sup> Ibid., p. 9.

*other* (emphasis added) and agree to an effective and lasting ceasefire”.<sup>66</sup> The United States reminded the parties that the UN was not in Rwanda to enforce peace. “But whatever efforts the United Nations may undertake, the true key to the problems in Rwanda is in the hands of the Rwandese people. In Rwanda, this means that the killing – by all parties – must stop”.<sup>67</sup> The situation on the ground was not amenable to UN resolution according to the US, “The situation in Rwanda is horrifying, difficult and very much in flux”.<sup>68</sup> The United Kingdom called on both sides to stop the bloodshed in the areas they control but admitted that many of the atrocities were occurring within the territory under the control of the Government.<sup>69</sup>

In a dramatic break with diplomatic protocol, the representative of New Zealand, in his remarks questioned the sovereign authority of the Rwandan delegation and the veracity of its statement.

I need to begin, I regret, by saying that in the view of my delegation the first speaker in our debate should not have spoken. I say this for two reasons. First, in the view of my delegation he does not represent a State. He has no legitimacy and is merely the mouthpiece of a faction. He should not have been seated in a privileged position at this table. Second, he has, in the view of my delegation, given us a shameful distortion of the truth.<sup>70</sup>

New Zealand described the violence in Rwanda as the result of genocide and questioned why resolution 918 (1994) which authorized UNAMIR II, did not call for the protection of civilians. Both Argentina and Spain joined New Zealand in criticizing the remarks made by the Rwandan delegation. Argentina described the massacres as systematic but

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<sup>66</sup> S/PV.3377, 16 May 1994, p. 9.

<sup>67</sup> Ibid., p. 13.

<sup>68</sup> Ibid., p. 13.

<sup>69</sup> Ibid., p. 12.

<sup>70</sup> Ibid., p. 11.

failed to specifically name any perpetrators. The delegation argued that there can be no justification for massacres of civilians “regardless of those that have been put forward this evening”.<sup>71</sup> Spain also characterized the international humanitarian law violations in Rwanda as “systematic, generalized and manifest” according to the reports of non-governmental organizations and the communications media, and expressed its regret at having to hear “reasoning which comes too close to an attempt to justify acts that we consider altogether unjustifiable”.<sup>72</sup> The Czech Republic provided the clearest characterization of an intentional causal story about genocide in Rwanda that is concurrent with but distinct from the resumption of the civil war.

So we have some 200,000 Tutsi lives lost, out of a total population of 1 million – 20 percent of all of Rwanda’s Tutsis. Each of us can figure out how many lives such a percentage would represent in his own country for his own people. This situation is now being described as a humanitarian crisis as though it were a famine or perhaps a natural disaster. In the view of my delegation, the proper description is genocide...Now, as is well know, a civil war has been raging in Rwanda as well since 1990. But even a civil war, however awful by itself, is no excuse – never mind justification – for genocide. And civil war or not, the hundreds of thousands of civilians who have fallen victim to the butchers were not at the frontlines but far in the hinterland with no visible connection to the RPF except their ethnic background. Hence the real innocence of those whom we all too automatically refer to as ‘innocent civilians’.<sup>73</sup>

Not only did the Czech Republic advance an intentional causal story about genocide, it identified by name both the perpetrators and victims of the systematic policy.

By whom? Who is it who has been committing these unspeakable atrocities? Certainly not the Rwandan people at large, Hutu or otherwise. These atrocities have been committed by the Presidential Guard created by President Habyarimana. They have been committed by elements of the Rwandese Government forces loyal to him. They have been committed by the militia, the Gendarmerie. They have been committed on orders of people close to President

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<sup>71</sup> S/PV.3377, 16 May 1994, p. 14.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid., p. 16.

Habyarimana and at the instigation of the incendiary broadcasts of Radio Mille Collines.<sup>74</sup>

The Czech Republic also directly attacked the reasoning behind the civil war story, or inadvertent causal story, advanced by other Members of the Council citing lack of evidence for RPF massacres.

All reports indicate that these atrocities have been committed by Hutu cutthroats – and seldom has this word been literally the right one – against their Tutsi neighbours. Now, there are those that would apportion blame ‘evenly’; those who would argue that there must also have been Tutsi atrocities against Hutus in the past month. And indeed, human rights organizations have assiduously sought direct evidence of massacres in areas controlled by the largely Tutsi Rwandese Patriotic Front (RPF). So far, they have found very little such evidence.<sup>75</sup>

In total, on 16 May 1994, only 4 Members of the Council (New Zealand, Czech Republic, Spain and Argentina) characterized the killing in Rwanda as intentional and only New Zealand and the Czech Republic identified the perpetrators.

The remaining Council Members including two permanent members, France and the Russian Federation, expressed their concern about the massacres of civilians but did not advance any causal explanation for the violence. France indicated that the violence was simply “unleashed” and was sympathetic to the inadvertent causal story, fluctuating between apportioning blame to both parties or characterizing the atrocities as a primordial or a natural occurrence between Hutus and Tutsis. Resolution 918 (1994) was passed unanimously by the Security Council despite the differences between members on the character of the violence in Rwanda. Evidence of these competing stories, however, can be found in the language of the resolution. For example, in the preamble the Council reproduces the language of the genocide convention warning that “killing members of an

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<sup>74</sup> S/PV.3377, 16 May 1994, p. 16.

<sup>75</sup> Ibid., pp. 15-16.

ethnic group with intention of destroying that group” is punishable under international law and asks the Secretary General to investigate serious law violations in Rwanda. At the same time in Operative paragraph A, the Council demands “all parties cease hostilities” again linking the atrocities to the civil war. Acting under Chapter VII of the Charter, the Security Council established an arms embargo against Rwanda as well as Rwandan nationals but denied Chapter VII authorization for the use of force to protect civilians or stop the killing. Disunity among Council Members on the cause and nature of the conflict prevented humanitarian intervention to stop the killing.

By the time that the Security Council passed resolution 925 (1994) on 8 June 1994, a shift had occurred within the Council toward the acceptance of the intentional causal explanation of the massacres in Rwanda. Only Oman continued to describe the conflict as the direct result of “centuries of ethnic conflict” joined by the Russian Federation who recognized that mass extermination was deliberate but argued that the situation was ‘complex’.<sup>76</sup> Most notably, the permanent Members of France, the United States and the United Kingdom used the term “genocide” to describe the violence in Rwanda. The Secretary General’s reports to the Security Council throughout the conflict had characterized the violence as connected to and the result of the civil war; but in its report of 31 May 1994, the Secretary General confirmed the reports of NGOs that genocide was happening in Rwanda. Paragraph 36 states

The magnitude of the human calamity that has engulfed Rwanda might have been unimaginable but for its having transpired. On the basis of the evidence that has emerged, there can be little doubt that it constitutes genocide, since there have

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<sup>76</sup> S/PV.3388 (1994), 8 June 1994 p. 14 (Oman); p. 6 (Russian Federation).

been large-scale killings of communities and families belonging to a particular ethnic group.<sup>77</sup>

Despite recognition that genocide was indeed happening in Rwanda, both the UK and US betrayed their discomfort with using term. The UK noted in its remarks that the Secretary-General had concluded that the massacres amounted to genocide, rather than stating that the UK concurred with the finding; whereas the United States persisted in describing events in Rwanda as “acts of genocide” rather than “genocide”.<sup>78</sup> But despite growing consensus that genocide was occurring in Rwanda, very few Security Council Members identified its perpetrators during formal meetings or in official documents.

Genocide, by definition, is an intentional act yet Council Members seemed reluctant either to move beyond its tradition of neutrality and publicly name its architects and perpetrators or to identify those it would then be expected to stop in the formal record. In his report to the Council however, the Secretary General identified the perpetrators as members of the Rwandan government forces, the Presidential Guard and the *interhamwe*, the youth militia recruited and formed by the late President’s party. According to the Secretary-General, when confronted with the evidence of the massacres, “the head of the interim Government and the chiefs of staff of the Rwandan Armed forces and Gendarmerie acknowledged that this was the case, at the same time alleging that the RPF bore equal culpability for the massacres. However, this allegation was not corroborated...”<sup>79</sup> The Secretary-General also notified the Council that in retrospect, there was certain information that now seemed important to have shared with the

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<sup>77</sup> S/1994/640, 31 May 1994, para. 36.

<sup>78</sup> S/PV.3388, 8 June 1994 p. 8 (UK); p. 11 (USA).

<sup>79</sup> S/1994/640, 31 May 1994 para. 7.

Council. The Czech Republic expressed its concern that the Secretariat took so long to describe the events in Rwanda as genocide despite knowing that the Council, and particularly the elected members, base its work heavily on the Secretary-General's reports. The Czech Republic also noted that where crimes occur there are criminals and urged the Security Council to take decisive action, arguing that both preventing and responding to genocide was the reason behind the creation of the United Nations.

I used the word 'holocaust' a moment ago, and one does not use that word lightly. But today, as we commemorate the fiftieth anniversary of D-Day, we reflect upon the Second World War as a war directed against a regime which became anathema to the civilized world precisely because of its having unleashed a holocaust. The regime in Rwanda has been attempting to do something similar – with machetes instead of gas chambers; with the notorious *interhamwe*, comparable to the SS, with the Mouvement Républicain National pour le Démocratie et le Développement and the Comité Démocratique Républicain, comparable to the Nazi party. It was precisely to forestall the reemergence of such regimes that this Organization, the United Nations, was created almost 50 years ago.<sup>80</sup>

Although the formal record indicates that at the start of June there was widespread agreement in the Security Council that genocide was occurring in Rwanda, the language of resolution 925 (1994) identified the end of the civil war as the solution to the massacres, rather than external intervention. Resolution 925 (1994) authorized member states to use all means necessary to support humanitarian action in Rwanda. The preamble states that “acts of genocide have occurred in Rwanda” and that “genocide constitutes a crime punishable under international law.” But the resolution also directs UNAMIR to act as an intermediary in trying to broker a ceasefire between the parties and calls on both parties to commit to a cease-fire and stop systematic killings in areas under

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<sup>80</sup> S/PV.3388, 8 June 1994, p. 4.

their control.<sup>81</sup> While the Council members clearly agreed that genocide was occurring, they continued to articulate disagreement on who the perpetrators and victims of the genocide were by requesting both sides to stop systematic slaughter. Without the clear identification of perpetrators and victims, constituent elements of the intentional causal story were missing.

The delegation of one elected member, Djibouti, accused Security Council Members of focusing so much energy on the debate over naming the conflict genocide, that it had neglected searching for real solutions to stopping the massacre. He accused these members of strategically hiding behind human rights discourse in order to appear to be doing something to satisfy their domestic audiences but deliberately failing to end the genocide.

The killings must be stopped now. If this is so, then it is abundantly clear that we are simply deceiving ourselves in emphasizing the human rights aspects of this tragedy, however stunning it is to us. No one will deny that highlighting the criminal, genocidal and human rights violation aspects of the situation is necessary, but as an approach to the ongoing situation in Rwanda it leads us to focus on a cure after the fact, rather than dealing with the real cause and necessary prevention of the disease. The decisive political and military aspects are receding into the background while a collective international hand-wringing takes place, seeking to assign blame for what has already taken place. Meanwhile, the death and dying continue at a totally unacceptable level of thousands of people a day.<sup>82</sup>

We cannot escape the fact that what is required is a firm and unequivocal demand by the Council to the parties that fighting must be stopped forthwith, coupled with measures that clearly show the Council's determination to back up this demand. We cannot continue to push the issues of security and peace into the background of human rights headlines, however well it might play at home for some of us. The reason we have this human rights situation, with human beings dying every day in unacceptable numbers, is precisely that the fighting has been allowed to

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<sup>81</sup> S/RES/925 (1994), 8 June 1994.

<sup>82</sup> S/PV.3388, 8 June 1994, p. 2.

continue, and, with possible counteroffensives looming, it could grow even worse.<sup>83</sup>

Although Djibouti clearly stated that the genocide was the result of the civil war, rather than happening concurrently, Djibouti seemed to be advocating for determined action on behalf of the Council to stop the massacres, perhaps even including the use of force.

Despite the shift in the Council to acceptance of the explanation of genocide in Rwanda, there continued to be disunity among Council Members over who the perpetrators and victims of the genocide were, as well as the best method for ending the killing. In approving Resolution 925 (1994), the Security Council authorized both an expanded UNAMIR (with the call for an immediate deployment of two additional battalions and preparations for two more in the near future) and an expanded mandate (including the authorization to engage in self-defense to protect civilians at risk). However, the Resolution fell short of authorizing the use of force under Chapter VII of the Charter of the United Nations. Although resolution 925 (1994) was passed unanimously by the Security Council member states were unwilling to contribute the troops and resources necessary to make resolution 925 (1994) operational. Humanitarian intervention remained stymied by the weakness of the causal story about conflict in Rwanda, disunity among Council Members on how to stop the killing, and a lack of commitment to preserving human life in Rwanda given the large human and financial costs associated with intervention and Rwanda's lack of strategic importance for potential interveners.

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<sup>83</sup> S/PV.3388, 8 June 1994, p. 3.

## **French Intervention near the end of the Genocide**

The Security Council has been required to handle many difficult issues in the past few years, but none has exceeded in its horror and intractability the situation in Rwanda. There could not have been and never has been any argument about the fact that in the hackneyed phrase ‘something must be done’. But it has been far more difficult to identify what the ‘something’ realistically should be and then to do it.<sup>84</sup>

-statement by representative of the United Kingdom

By the end of June 1994 Security Council Members agreed that “something must be done” about Rwanda but many of its Members either lacked the capacity or perhaps more importantly, the political will to fully support the expanded UNAMIR II mission that had been approved by the Council in resolution 925 (1994) with the financial and human resources it required. France, a traditional political and military ally of the Habyiramana regime that had launched the genocide, offered to do something – launch an intervention in the southwest of the country to stem the humanitarian crisis and maintain a presence until the expanded UNAMIR could get up to force. France argued that it was motivated by the desire to save lives. The mission’s objective would be to save endangered civilians and it would not interpose itself between the forces or influence the outcome of the conflict.<sup>85</sup> Rwanda, represented on the Council by the interim Government of Rwanda who had been identified by the Secretary General as responsible for the genocide, supported the resolution noting that the UN should pressure a cease-fire but avoid the use of military force.<sup>86</sup> Resolution 929 (1994) authorized members states acting under Chapter VII and in cooperation with the Secretary General to conduct a

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<sup>84</sup> S/PV.3388, 8 June 1994, pp. 7-8.

<sup>85</sup> S/PV.3392, 22 June 1994, p.p. 5-6.

<sup>86</sup> Ibid., p. 5.

temporary operation under national command to contribute to the security of civilians in Rwanda, with the costs borne by participating members. The resolution passed with support of ten Council Members including 4 of the 5 permanent Members. Members speaking in support of the resolution argued that the French intervention would save lives and was necessary given the significant delays in getting UNAMIR to full force. Five members of the Council, including China abstained from the vote after voicing their objections to the French-led intervention. The states who objected did so on the grounds that the humanitarian intervention would cause more harm than good. New Zealand questioned French motives and suggested that the French intervention directed support away from the only intervention that could stop the genocide: UNAMIR.

If the energy was directed to supporting the UN its difficulties in getting UNAMIR operational would disappear overnight.<sup>87</sup>

The French intervention was also opposed by humanitarian organizations on the ground who believed the mission would fail in its humanitarian goals and make things worse.<sup>88</sup> Both Brazil and China were troubled by the lack of support of one of the parties, the RPF. China based its abstention on “the experience of Somalia” indicating that cooperation from both sides was crucial to success. China also acted out of deference to the OAU who recommended that any action taken by individual countries be taken within the framework of UNAMIR.<sup>89</sup>

Those members supporting French humanitarian intervention argued that it was an exceptional and necessary response to the killing until UNAMIR could be made

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<sup>87</sup> S/PV.3392, 22 June 1994, p. 8.

<sup>88</sup> Ibid., p. 8.

<sup>89</sup> Ibid.

operational (Russian Federation, Argentina, Djibouti, and Spain). Other members noted that things in Rwanda could hardly get any worse and that an imperfect solution was better than no solution. Djibouti argued,

To those who would say that this intervention would only make matters worse, we can only ask how that could be possible. For those who continue to push for complex forms of inaction, we can only say that the rest of humanity probably feels at this point that anything would be better than what is.<sup>90</sup>

The Czech Republic argued that the killings had continued without stop while member states failed to provide the resources necessary for UNAMIR to fulfill its mandate.

While the lack of support of the RPF was regrettable, the overriding concern had to be to save lives.<sup>91</sup> In response to accusations of impartiality and the pursuit of national interests on behalf of the French, the US argued that the mandate of the intervention makes it impartial and encouraged the French to quickly prove its evenhandedness in Rwanda. Argentina similarly stated that ‘the operation is to be strictly humanitarian, conducted with impartiality, with neutrality, for a limited period of time and strictly in connection with effective deployment of an expanded UNAMIR.’<sup>92</sup> The United Kingdom continued to describe the conflict and its solution in the civil war framework, despite its acceptance of the genocide, arguing that innocent civilians continue to be killed while the conflict rages. The UK argued that it wasn’t in the interest of any parties to the Rwanda conflict to question “the bona fides of the multinational force” and called

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<sup>90</sup> S/PV.3392, 22 June 1994, pp. 3-4.

<sup>91</sup> Ibid., p. 9.

<sup>92</sup> Ibid.

on “both parties” to accept the “humanitarian intervention sanctioned by the international community as an interim measure to protect those whose lives are at risk”.<sup>93</sup>

With the passage of Resolution 929 (1994) by the Security Council a military intervention for humanitarian purposes in Rwanda was finally approved. However, this intervention was opposed by the party representing the victims of the genocide.

Although there is evidence of widespread agreement among Council Members on the existence of genocide in Rwanda, there continued to be disunity among them about two important aspects of the intentional causal story: the identities of the perpetrators and the victims. Security Council documents described an intentional crime but rarely identified the criminals and when it did all parties seemed to be included as perpetrators. Further, the early civil war framework seemed to continue to orient many Council Members thinking about solutions to the conflict. All Resolutions passed by the Council identified the solution to the genocide as the end of hostilities between the parties, failing to distinguish between the genocide and the civil war which were waging concurrently. During the twentieth century, genocides have frequently occurred under the cover of war.<sup>94</sup> Despite these continued uncertainties with the constituent elements of the intentional causal story, at minimum there was agreement among Security Council members that genocide was happening in Rwanda – an intentional crime by legal definition. First, Resolution 929 (1994) authorized member states to operate under national command to contribute to the security of civilians in Rwanda. Widespread

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<sup>93</sup> S/PV.3392, 22 June 1994, p. 9.

<sup>94</sup> Eric Weitz, *A Century of Genocide* (Princeton: Princeton University Press, 2003); Benjamin Valentino, *Final Solutions: Mass Killing and Genocide in the Twentieth Century* (Cornell University Press, 2004); Scott Strauss, *The Order of Genocide: Race, Power and War in Rwanda* (Cornell University Press, 2006).

agreement among Council Members on an intentional causal story is necessary for the authorization of humanitarian intervention to become possible. Second, by June 1994 the use of military force no longer posed a challenge to the sovereignty norm. Those Members that recognized the legitimacy of the interim Rwandan Government received its consent for the intervention. Those Members who questioned the legitimacy of the interim Government argued that it lacked sovereign authority over Rwanda, leaving the country in absence of a legitimate Government. In both cases, using force to protect human rights no longer threatened the state sovereignty of a member state of the United Nations.

### **Explanations of Non-Intervention**

Realist theory predicts that states will intervene militarily in other states when it is in the national interests of the intervening state. Humanitarian justifications for the use of force will mask other non-humanitarian motives. Conversely, states will not intervene to stop gross human rights abuses when it does not benefit them to do so. Rwanda lacked strategic importance for most of the permanent members of the Security Council, however. It neither threatened them militarily or economically nor threatened a significant ally. Intervention to stop the mass killing was more costly than not intervening and did not provide opportunities for absolute or relative gains militarily or economically. For France, a political and military ally of the sitting Rwandan Government, the situation was different. France served its national interests by supporting the interests of its ally and non-use of coercive force to protect civilians was

in the Rwandan Government's interest given its genocidal intent. When evidence of the genocide was irrefutable, however, it became in France's *a priori* national interest to respond to the humanitarian crisis. With regards to causal stories, there is no evidence that elected members directly persuaded permanent members of the Council to adopt an intentional causal story. Rather, expert testimony, forensic evidence and media communications made continued articulation of the civil war story untenable and perhaps the alternative intentional causal story more convincing.

Although Security Council justifications are an expression of members' stated positions they do not necessarily reflect belief or policy goals. Causal stories can be used either sincerely or strategically by Security Council members. With regard to Rwanda, there exists significant evidence that permanent members of the Security Council and particularly the United States both possessed information and expressed belief privately that genocide was occurring in Rwanda within days of its commencement.<sup>95</sup>

Nonetheless, the United States continued to articulate an inadvertent causal story about civil war in the Security Council for more than a month. The story about civil war was only a partial truth that obscured US knowledge of the simultaneously occurring genocide. The United States adopted an intentional causal story only in the face of irrefutable evidence and only after expending significant effort to remove references to the term "genocide" from Security Council presidential statements and resolutions in April. Finally, it is striking that so little time, attention and resources were devoted to the situation in Rwanda as compared to the sustained Security Council engagement with Bosnia-Herzegovina. This significantly limited the documentary record on Security

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<sup>95</sup> Power, *A Problem from Hell*; Barnett, *Eyewitness to Genocide*.

Council decision-making, particularly when Council members often declined to justify their decisions publicly. The failure to do so however, implies that the justifications for their decisions might not resonate broadly in an international society that had come to expect the Security Council to react to gross human rights violations when they threatened international peace and security.

The Rwanda case also offers some support to liberal arguments about domestic interests and pressure. Samantha Power shows that lack of domestic pressure on the US government and lack of agitation in support of humanitarian intervention led to US government inaction without penalty. There was no domestic political cost for ignoring the genocide in Rwanda and elected officials did not pay a political price for not saving Rwandan lives.<sup>96</sup> Conversely, the executive branch was under considerable domestic pressure from Congressional critics of the United Nations in general and peacekeeping operations in particular. President Clinton signed Presidential Directive 25 on 3 May 1994 and it was released publicly the following day. Presidential Directive 25 limited US involvement in United Nations peacekeeping operations in absence of vital national interests. The considerations captured in the directive influenced Rwanda policy significantly.<sup>97</sup> Finally, General Dallaire has argued that France, the UK and the US demonstrated their capability of rapidly mobilizing troops for the evacuation of their nationals which begin immediately after the violence was initiated. Dallaire argues that if these forces had remained to support UNAMIR after they have completed their evacuations the genocide could have been stopped. He argues that the sense of

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<sup>96</sup> Power, *A Problem from Hell*, 366; 373-4.

<sup>97</sup> *Ibid.*, 342.

humanitarian commitment of these states was weaker than their interest in preventing troop deaths, financial burdens or political risk.<sup>98</sup>

There is evidence however, even in the case of non-intervention in Rwanda, that human rights norms shape national interests and of the existence of an emerging norm of humanitarian intervention. It is in the response of Security Council members to the international outrage at their perceived breach of moral and legal responsibility that we find evidence of an emerging norm of Security Council responsibility. Security Council members were forced to make excuses and extend apologies for their failure to authorize military force to interrupt the genocide.<sup>99</sup> One of the excuses given by the United States, for example, is that it acted to nurture the emerging norm of humanitarian intervention during a critical moment when the US relationship with the UN was under duress and the future of UN peacekeeping was under threat. Samantha Power writes of the Clinton Administration,

They believed that the UN had more to lose by sending reinforcements and failing than by allowing the killings to proceed. Their chief priority, after the evacuation of the Americans, was looking after UN peacekeepers on the grounds that it would ensure a future for humanitarian intervention. In other words, Dallaire's peacekeeping mission in Rwanda had to be destroyed so that peacekeeping might be saved for use elsewhere.<sup>100</sup>

The deliberate attempt by the US and the UK to avoid using the word "genocide" to describe the killing might illustrate that states use language strategically to coincide with pre-chosen policy options. It might also illustrate belief in the power of language and the

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<sup>98</sup> Dallaire, *Shake Hands with the Devil*.

<sup>99</sup> See Barnett, *Eyewitness to Genocide*.

<sup>100</sup> Power, *A Problem from Hell*, 384.

belief that the increasing acceptance of human rights norms obligated the Security Council to protect them.

### **Lessons from Rwanda**

Lack of humanitarian intervention by the Security Council during the height of the Rwandan genocide showed the limitations of the new norm of humanitarian intervention in the early 1990s. Early framing of the conflict in Rwanda as a civil war combined with the Security Council strategy to avoid another Somalia by making its presence in Rwanda conditional led to a dramatic decrease in UN engagement with Rwanda once the mass killing started in early April 1994. Disunity among Council Members on the causal explanation for the killing prevented early humanitarian action to stop the genocide. The Rwanda case also illustrates that causal stories can be used strategically or sincerely. Council members like the US and France continued to describe the killing in Rwanda as a civil war despite evidence that these states had irrefutable knowledge of the concurrent genocide. Alternatively, New Zealand and the Czech Republic advanced principled arguments that reflected careful examination of the evidence available to them from NGOs, human rights organizations and media outlets.<sup>101</sup> Most Council members continued to describe the killing in Rwanda as a civil war even after the evidence of the systematic massacre of Tutsi civilians at the hands of Government forces was confirmed by the Secretary-General, human rights organizations, and media organizations. A small group of elected members to the Council, however, advanced an alternative conceptualization to the civil war frame early in April. These

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<sup>101</sup> Keating, "Rwanda".

members advanced an intentional causal story about genocide in Rwanda that identified clear perpetrators and victims. Although the intentional causal story eventually won out in the Council there is limited evidence to show that it was the result of elected member persuasion. Rather, continued articulation of the inadvertent causal story became untenable beginning in mid-May in the face of substantial forensic evidence and expert testimony confirming the genocide. Powerful members of the Security Council could prevent the word “genocide” from appearing in Security Council documents but could not remove references to the events and crimes the word described. Despite the convergence around a story about genocide in the Security Council between mid-May and early-June, there continued to be disunity among the Council members with regards to its perpetrators and victims. Even though all Council Members eventually adopted an intentional causal story of genocide, many Members, including the permanent Members to the Council continued to talk about both parties as responsible for the killing and identified the establishment of a cease-fire as the solution to the massacres. This revealed the continuing strength of the civil war frame within the Council.

The Rwanda case also illustrates the necessity of great power interest in humanitarian intervention. As the earlier cases of Northern Iraq and Somalia have shown, humanitarian intervention is not possible without the support of the United States. The case of Bosnia-Herzegovina further illustrated that support of the United States was necessary but not sufficient to motivate humanitarian intervention. Rather, support or acquiescence of most of the permanent Members of the Security Council is required before Security Council authorized humanitarian intervention happens. The United

States was at best a reluctant supporter of UN involvement in Rwanda and at worst actively pressured other members of the Council to withdraw its commitment from Rwanda in the face of increasing human and financial costs and lack of strategic interests. There are limits to the costs that intervening States will bear in terms of blood and money to save strangers. Alternatively, France rotated between being a barrier to and a supporter of humanitarian intervention in Rwanda because it held both humanitarian and strategic interests that coincided with ending the conflict in Rwanda, but in a way that was favorable to its ally the Rwandan government.

Timing matters for humanitarian intervention decisions. The Rwanda case was overshadowed by Security Council interest in Somalia and Bosnia-Herzegovina. Not only was the Security Council distracted by seemingly more violent events in these conflicts that were occurring simultaneously, because of the difficulty in solving the crisis, it was reluctant to try to stop the violence when the cease-fire broke down. The Rwanda mission was viewed in the shadow of Somalia. Comments from Security Council members in the formal record indicate that they viewed the violence in Rwanda as not particularly distinctive when compared to other conflicts or natural for this part of Africa. Failure to intervene in Rwanda can also be explained by a lack of UN capacity. At the time of its involvement in Rwanda, the United Nations was involved in eighteen peacekeeping operations. It was struggling with the financial cost of peacekeeping as well as increasing limitations on troop availability, particularly in the aftermath of the deaths of UN personnel in both Somalia and Bosnia-Herzegovina. The United States had just passed Presidential Directive 25 placing severe limitations on US involvement in and

support for peacekeeping operations. Indeed, once approved, UNAMIR II could not become operational because of Member State unwillingness to supply troops and equipment to support the mission in Rwanda. Ultimately, however, the capacity question is a question of political will. Member States demonstrated their available military capacity when they swiftly and forcefully evacuated their foreign nationals during the first days of the genocide. Further, the existence of the French operation illustrated that it had the capacity to reinforce UNAMIR but lacked the will to place its troops under UN command.

Examination of the Rwanda case shows that in cases of contested sovereignty it is even more difficult to build the consensus necessary to use force against a sovereign state than in defense of it, even when the state is the perpetrator of genocide. This can be explained by the strength of the existing norms of state sovereignty and non-intervention in domestic affairs. Humanitarian intervention is more likely when it complements these existing norms than when its practice directly challenges them. States in general and Security Council Members in particular, were biased toward the protection of state sovereignty at the expense of human rights at this early stage of the humanitarian intervention norm's development. Humanitarian intervention was possible in Somalia and Bosnia-Herzegovina because its use complemented or reaffirmed state sovereignty and failed in Rwanda, in part, because it opposed it. And when humanitarian intervention did occur in Rwanda, it no longer threatened state sovereignty because Council members either believed that they had received sovereign consent for the intervention or they believed that Rwanda lacked sovereign authority entirely.

Finally, despite these limitations of the humanitarian intervention norm, like in the case of Bosnia-Herzegovina before it, the establishment of the International Criminal Tribunal for Rwanda (ICTR) by Resolution 955 in November 1995 illustrated the increasing importance of the link between the protection of human rights and the maintenance of international peace and security held by Security Council Members. By establishing an international criminal tribunal to investigate and prosecute genocide in Rwanda, it further advanced the legitimacy of human rights and their relevance to collective security. There is a significant difference, however, between Security Council efforts to punish and deter future human rights violations through the creation of tribunals and the exercise of humanitarian intervention which is designed to stop ongoing human rights violations and is thus significantly more costly. The Security Council has shown significantly more willingness to do the former than the latter. The reaction of the Security Council to Rwanda illustrates a very instrumental understanding of the relationship between human rights and security. Amidst the debates among Council Members about whether genocide was occurring in Rwanda, Djibouti accused the Council's most powerful members of hiding behind human rights to avoid dealing with the security dimensions of the conflict and to convince its domestic public it was 'doing something' about the horror in Rwanda. In contrast, there were powerful norm entrepreneurs among the elected Members to the Council, including most notably New Zealand and the Czech Republic, who argued that the Security Council had a Charter-mandated responsibility to protect the human rights of the Rwandan population in fulfilling its Chapter VII responsibilities.

The failure of the Security Council to authorize the use of force to stop the genocide in Rwanda shows the relative weakness of the emerging norm of humanitarian intervention compared to national interests and existing norms that protect these interests like state sovereignty and non-intervention.

Risk-less warfare in pursuit of human rights is a moral contradiction. The concept of human rights assumes that all human life is of equal value. Risk-free warfare presumes that our lives matter more than those we are intervening to save.<sup>102</sup>

In mid-1994, the emerging norm of humanitarian intervention was weak and in the process of being defined. In this context the new norm's relationship to existing norms is crucial. In Rwanda the state was the perpetrator bringing the use of force in defense of human rights into direct conflict with the protection of state sovereignty and non-interference in domestic affairs. The failure to exercise humanitarian intervention in Rwanda shows the weakness of the norm of humanitarian intervention but it also shows that the norm exists – the breach illustrated broadly shared expectations about what constitutes the appropriate behavior of the Security Council when faced with genocide. The life of a norm is characterized by movement forward and backward; not all emerged norms survive to become internalized by international actors. Future cases will show whether or not the emerging norm of humanitarian intervention is substantively hollow and whether the failure of states to adjust their behavior to the norm reflects lack of socialization or the weakness of the normative ideal itself.

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<sup>102</sup> Dallaire, *Shake Hands with the Devil*, 517 quoting Michael Ignatief.

## Chapter 6

### **Illegal but Legitimate Humanitarian Intervention? The Causal Story about Kosovo**

The decade of the 1990s ended as it began for the Security Council, with systematic human rights violations in the territory of the former Yugoslavia threatening to spread violence and insecurity to the entire Balkan region. Arguably, the wars in the former Yugoslavia in the early 1990s had their start in Kosovo, a province of Serbia that lost its constitutional autonomy to growing Serbian nationalism in 1989 setting off fears of greater Serbian nationalism. Kosovo's majority Albanian population was subjected to gross and systematic human rights violations. When the parties to the Bosnian War came together for a peace conference in Dayton, Ohio in 1995, the leaders of the Kosovo Albanians were not invited. The international sponsors of the conference feared that including resolution of the "Kosovo question" would threaten Serb participation and acceptance of a peace deal for Bosnia. With the status of Kosovo left unresolved, many of Kosovo's Albanians abandoned their decade long non-violent struggle for self-government and turned to violence in an effort to secede from Serbia, draw international attention to continuing Serb repression and to provoke an intervention to stop it. By 1998, Kosovo's Albanians and the Serb authorities were engaged in a vicious cycle of violence and reprisal. The systematic violation of human rights and humanitarian law threatened to disrupt the fragile peace in the Balkan region. Unlike the beginning of the 1990s however, the Security Council had precedents of humanitarian intervention to draw upon during their deliberations over their potential response and a

decade of experience of dealing with the Serbian leadership whom it had previously identified as perpetrators of a systematic policy of ethnic cleansing in Bosnia-Herzegovina.

The case of Kosovo brought into sharp relief the tensions within the Security Council on the status of human rights norms and the degree to which they either conformed to, or conflicted with, existing norms of state sovereignty and territorial integrity. At stake in the Security Council debate on Kosovo, was nothing less than determining the limits of state authority and state control over population and territory. In an era of increasing state commitment to human rights principles, where do the rights of the state and its duties to its population begin and end? In the case of Kosovo, Security Council Members not only disagreed on the nature of the conflict – whether it was a civil war, or systematic ethnic cleansing - they also disagreed whether an internal conflict was occurring at all or whether it was simply a police response to unruly elements of its domestic population. Disunity among permanent Security Council members on both the character of the violence in Kosovo and the appropriate response, stymied Security Council action. Humanitarian intervention was not authorized in the Kosovo case because two permanent members of the Security Council rejected the intentional causal story about Serbian ethnic cleansing of the Albanian population.

Further, humanitarian intervention on behalf of the Kosovo Albanians, who sought secession from the Serbian state, directly threatened the principle of territorial integrity. In the case of Kosovo, Serbian sovereignty was uncontested from the perspective of the Security Council. However, unlike earlier cases in this study, while

disunity among Council members prevented Security Council action in Kosovo, it did not prevent humanitarian intervention. Instead, three permanent members of the Security Council who favored the use of force to stop human rights violations in Kosovo, sought legitimacy for their actions outside of the Council Chamber. Five of the fifteen members serving on the Security Council in 1999 were members of the North Atlantic Treaty Organization (NATO), a military alliance of states in North America and Europe. In March 1999 NATO began bombing targets in the Republic of Serbia in the Federal Republic of Yugoslavia to force a peace agreement and a Serb military withdrawal from Kosovo, provoking a major crisis within the United Nations. Because the Security Council did not authorize the use of force to protect Kosovo's Albanians, Kosovo is a non-case for the purposes of this dissertation. Studying Security Council decision-making on Kosovo helps to delineate the conditions under which humanitarian intervention is and is not possible.

There were two significant barriers to UN authorized intervention in the case of Kosovo. First, significant contestation between permanent members over the causal story of the conflict stymied Security Council action including the use of military force for the protection of Kosovo's Albanians. Second, the issue at stake in Kosovo was state responsibility toward its citizens. Serbia was accused of systematically violating the human rights of its ethnic Albanian population but its sovereignty over the territory of Kosovo was not contested. In this case, the emerging norm of humanitarian intervention directly conflicted with, rather than complemented sovereignty and non-intervention norms. The North Atlantic Treaty Association (NATO) decision to launch a

humanitarian intervention on behalf of ethnic Albanians in absence of Security Council authorization also defined the conditions under which the use of force became possible for NATO members, including France, the United Kingdom and the United States. The most prominent of these factors include: the increasing prominence of human rights norms; unity around an intentional causal story that identifies both perpetrators and victims; the historical experience of ethnic cleansing by Serbs in Bosnia and Herzegovina; and protecting the political and security interests of the alliance.

The NATO intervention significantly advanced the debate on the emerging norm of humanitarian intervention within the international community but it significantly threatened the credibility of the Security Council by illuminating the stark divisions among its members over the relationship between human rights and security. The Kosovo intervention sparked rancorous debate in the Council over the meaning of sovereignty as well as which institution(s) had responsibility for the maintenance of international peace and security. The case of Kosovo marked an important advance for the idea that states no longer had the right to terrorize its own population and sparked an international movement to reconcile the emerging norm of humanitarian intervention with state sovereignty (See Chapter 8). But it also provided those with the fear of humanitarian intervention an example of its illegal use, however legitimate this breach may have seemed according to most states in the international community.

## **Background to the Kosovo Conflict**

The territorial region of Kosovo is central to Serbian mythology of nation-hood. In 1389 Serbian forces were defeated by the Ottoman Empire at the Battle of Kosovo. The mythology and symbolism of this defeat was central to the emergence of Serbian national consciousness and the region became a symbolic part of Serbia's national culture. Kosovo is also the seat of Serbian orthodoxy, making it the religious and cultural heart of Serbia as well, according to Serbian nationalists.<sup>1</sup> In the 1974 Constitution, Kosovo was granted status as an autonomous province within the federal structure of the Yugoslav state. Although geographically part of the republic of Serbia, the Yugoslav constitution demarcated eight constituent units – six republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia) and two autonomous regions (Kosovo and Vojvodina). This autonomous status meant that Kosovo enjoyed direct representation in the main Yugoslav legislative bodies, had its own constitution, and was granted a representative in the Presidency of Yugoslavia. Kosovo enjoyed an equal status with the republics with regards to most forms of economic decision-making and foreign policy decisions.

Albanians made up ninety percent of Kosovo's population of 2 million while Serbs made up less than ten percent.<sup>2</sup> In 1981 student protests over poor conditions at the University of Prishtina ushered in a series of political demonstrations by ethnic Albanians throughout the major regions of Kosovo. The demonstrators were met with violence but

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<sup>1</sup> See Spyros Economides, "Kosovo," in *United Nations Interventionism, 1991-2004* ed. Mats Berdal and Spyros Economides (Cambridge: Cambridge University Press, 2007); Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998); V.P. Gagnon, "Ethnic Nationalism and International Conflict: The Case of Serbia," *International Security* 19 (1994): 2, 130-66.

<sup>2</sup> Also living in Kosovo was a small number of Turks and Roma.

the protests continued resulting in Serb authorities declaring a general state of emergency in Kosovo.<sup>3</sup> These events sparked significant accusations between Serbs and Albanians living in Kosovo about ethnic nationalism and their treatment at the hands of the other group. Kosovo Serbs began to complain loudly to the central government of Serbia about ill treatment. In the period of the late 1980s and early 1990s, following Tito's death and when Yugoslavia and much of central and eastern Europe was undergoing a process of economic liberalization and political democratization, tensions between ethnic Serbs and ethnic Albanians significantly increased.

In April 1987, the Serbian Party President sent his deputy, Slobodan Milosevic to the town of Kosovo Polje to meet with, and attempt to ease the discontent of angry Kosovo Serbs. During his visit, angry Serb protesters began clashing with Albanian police. Milosevic's response which was caught by television cameras catapulted him to fame and eventually the presidency of Serbia. He shouted to the Serbs, "No one should dare to beat you".<sup>4</sup> Milosevic rose to power on a nationalist platform of taking back the symbolic heart of Serbia – Kosovo – from the Kosovo Albanians. He manipulated ethnic mistrust between Serbs and other ethnic groups in Yugoslavia and incited a virulent Serbian ethnic nationalism. Soon after his election to the presidency of Serbia, Kosovo's ethnic Albanian population lost their political and civil rights. On March 23, 1989 Serbian authorities revoked Kosovo's autonomous status within Serbia. Shortly after, ethnic Albanians were purged from positions of authority within the region and a system of

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<sup>3</sup> Financial Times 3 April 1981 and Times, 4 April 1991, in Noel Malcolm *Kosovo*, 335.

<sup>4</sup> Malcolm, *Kosovo*, 341.

ethnic apartheid was installed by the Serbian regime.<sup>5</sup> Human Rights Watch began reporting on human rights abuses in Kosovo at the hands of Serb authorities in 1989. The organization criticized the growth of a police state in Kosovo in which the rights of ethnic Albanians were systematically repressed.<sup>6</sup> Yet the systematic human rights violations against ethnic Albanians in Kosovo garnered little international attention.

Yugoslavia dissolved in 1991, in part because Serbia's treatment of the Kosovo Albanian population threatened the other republics who feared similar Serbian expansionism into their territories and repression against their people. The constituent republics of Slovenia, Croatia and Bosnia and Herzegovina declared their independence from Yugoslavia and the other republics between 1991 and 1992. Conflicts occurred between Serbia and the autonomous region of Kosovo (1989-1999); Serbia and Slovenia (1991); Croatia and its Serb population backed by Serbia (1991-1993); and in the territory of Bosnia-Herzegovina (1992-1995). In a 1992 report on the systematic human rights violations taking place in Kosovo, Human Rights Watch contends that it might have been possible to avoid the wars in Croatia and Bosnia and Herzegovina had Milosevic been penalized by the international community for its actions against the Albanians in Kosovo.<sup>7</sup>

On 7 September 1990, the dissolved Albanian assembly members adopted a Constitution and created "underground" institutions of government.<sup>8</sup> In September 1991,

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<sup>5</sup> Ibid., 327.

<sup>6</sup> Human Rights Watch World Report 1989, <http://www.hrw.org/reports/1989/WR89/Yugoslav.htm#TopOfPage>

<sup>7</sup> Human Rights Watch, *Yugoslavia: Human Rights Abuses in Kosovo 1990-1992* (New York: Human Rights Watch, October 1992). <http://www.hrw.org/reports/1992/yugoslavia/>

<sup>8</sup> Ibid.

Albanians living in Kosovo declared a sovereign and independent “Republic of Kosovo.” Although Kosovo’s Serbs boycotted the referendum on independence it is estimated that 87 percent of voters participated in the referendum with 99.7 percent of them voting in favor of independence.<sup>9</sup> On 24 May 1992 Kosovo-wide elections were held and Dr. Ibrahim Rugova, leader of the Democratic League of Kosovo was elected President of the new shadow government in Kosovo – the Kosovo ‘Republic’. Kosovo’s Albanians had engaged in non-violent struggle against the Serb regime since 1989. With Rugova as President, the struggle continued with a three-fold strategy which included preventing outbreaks of violence between Albanians and Serbians; internationalization of the conflict in an effort to gain support for Kosovo’s independence from Serbia; withholding legitimacy from Serbian institutions and the creation of parallel institutions and a state apparatus run by Kosovo Albanians in preparation for eventual statehood.<sup>10</sup> Other non-violent movements emerged among members of the population of Kosovo. During the early 1990s, Milosevic and other Serb leaders greatly exaggerated the scope and nature of human rights abuses against Serbs in Kosovo which they described as genocide. Human Rights Watch reported in 1992 that human rights abuses against Serbs in Kosovo were not widespread or systematic and that claims of genocide were nationalist manipulations by Serb leaders. The report noted that while some human rights violations against Serbs were true in the past, they were no longer meaningful by 1992. The human rights

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<sup>9</sup> Malcolm, *Kosovo*, 347.

<sup>10</sup> Malcolm, *Kosovo*, 348; Carrie Booth Walling, “The History and Politics of Ethnic Cleansing,” *International Journal of Human Rights* 4 (2000): 3/4,73.

violations against ethnic Albanians by the Serb authorities however, were significant and alarming.<sup>11</sup>

While the wars raged between Serbia and Slovenia (1991), and Serbia, Croatia and Bosnia and Herzegovina (1992-1995), the Kosovo Albanians stuck to forms of non-violent resistance rather than the use of military force. As a result they received little international attention. United States President George Bush, however, warned Milosevic on 27 December 1992 that if he started a war in Kosovo the United States would intervene to stop the aggression. President Clinton repeated this warning in January 1993. The United States would consider a war in Kosovo a direct threat to US national interests because it would directly threaten Albania, Greece and Turkey.<sup>12</sup> Despite early support of the Kosovo Albanians from the United States, when the Bosnian peace agreement was being signed in Dayton, Ohio in 1995 by the leaders of the Serbs, Bosnians and Croats, the Kosovo Albanians were denied participation in the Dayton Conference out of fear that it would preclude Serb participation. Rugova and the non-violent movement were severely discredited by their failure to gain international support to end Serb repression of the Kosovo Albanians. The lesson for the Kosovo Albanians seemed to be that the international community did not understand the language of non-violence and would only intervene in response to the use of force.

Also in the mid-1990s, a group of prominent Serbian nationalist intellectuals signed a petition complaining that the Serbs were suffering genocide in Kosovo, responding to the decline in the Serb population of Kosovo. The Serbian Academy of

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<sup>11</sup> Human Rights Watch *Yugoslavia: Human Rights Abuses in Kosovo 1990-1992*  
<http://www.hrw.org/reports/1992/yugoslavia/>

<sup>12</sup> Michael MccGwire, "Why Did We Bomb Belgrade?" *International Affairs* 76 (2000): 1, 5.

Sciences in a 1995 memorandum criticized the 1974 Constitution for carving up the Serbian State into three parts and claimed that the Albanians in Kosovo had been making a war on Serbia since its protests in 1981.<sup>13</sup> Shortly after Dayton, an Albanian insurgency movement began to operate in Kosovo. The Ushtria Çlirimtare e Kosovës (UÇK) or Kosovo Liberation Army (KLA) was formed in 1995. Its ethnic Albanian members agreed to protect their homes and families from Serb aggression using all necessary means including the use of force and they aimed to spark a violent revolution in Kosovo by launching a guerilla campaign against Serb authorities.<sup>14</sup> The result was a cycle of increasing violence and reprisal.<sup>15</sup> Serbian police and military response to KLA attacks was excessive and often included reprisals against Albanian civilians living in the areas surrounding the scene of attack. The Serbian government justified its military action as the legitimate response of a sovereign state to domestic terrorism.

### **Causal Stories in the Security Council about the Conflict in Kosovo**

The first major atrocities of the conflict took place in late February and early March 1998 in the Drenica region of central Kosovo, known as a stronghold of the KLA.<sup>16</sup> Serbian special police forces attacked three villages with heavy artillery. In total, eighty-three people were killed including twenty-four women and children. International public opinion was outraged by the atrocities. Following the attack, the ranks of the KLA grew substantially as more Albanians decided to abandon the non-

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<sup>13</sup> Malcolm, *Kosovo*, 340.

<sup>14</sup> Walling, "The History and Politics of Ethnic Cleansing," 75.

<sup>15</sup> Malcolm, *Kosovo*, 334-56; Walling, "Ethnic Cleansing," 62.

<sup>16</sup> Human Rights Watch, *Humanitarian Law Violations in Kosovo* (Human Rights Watch, New York, 1998), 3.

violent politics of Ibrahim Rugova and join the “liberation movement”.<sup>17</sup> The Serbian offensive against Albanians living in Drenica evoked substantial response from regional and international organizations as well. Following the attack in March, the Contact Group met and agreed upon a political settlement plan for Kosovo, the Organization of the Islamic Conference (OIC) requested that the Secretary-General of the United Nations to take up the issue of Kosovo, and the European Union (EU) enforced an arms embargo against the Federal Republic of Yugoslavia (FRY). When the Security Council became involved in Kosovo the Bosnian peace agreement was in its third year of implementation. The question of humanitarian intervention – so pressing during the conflict of the early 1990s – received less attention in the Security Council in the intervening years between the end of the war in Bosnia-Herzegovina and the start of the Kosovo conflict. The legitimacy of the emerging norm was still in question and its tension with state sovereignty remained unresolved.

On 31 March 1998, the Security Council passed resolution 1160 (1998) imposing an arms embargo against the entire territory of the Federal Republic of Yugoslavia. The resolution condemned both the excessive use of force by Serbian police against civilians and acts of terrorism by the KLA; it reaffirmed the sovereignty and territorial integrity of FRY but demanded immediate compliance with a set of Security Council conditions including the initiation of dialogue on Kosovo with the participation of outside representatives, the withdrawal of its special police forces from Kosovo and the

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<sup>17</sup> Human Rights Watch, “Report Shows Seven Month Pattern of Yugoslav Government Atrocities: Rights Group Seeks Tougher Response from the West.” Human Rights Watch press release, 4 October 1998, [http://hrw.org/english/dos/1998/10/04/serbia1371\\_txt.htm](http://hrw.org/english/dos/1998/10/04/serbia1371_txt.htm).

acceptance of an OSCE monitoring mission, among others.<sup>18</sup> The Russian Federation abstained from voting on the basis that the situation in Kosovo was an internal affair of the Federal Republic of Yugoslavia and did not constitute a threat to regional or international peace and security.<sup>19</sup>

Resolution 1160 (1998) was widely supported in the Security Council. It passed with thirteen votes in favor but two permanent members, China and the Russian Federation, abstained. Divisions among the permanent Security Council members on the nature of the situation in Kosovo immediately emerged. France, the United Kingdom and the United States were joined by six additional elected members in the Council in explicitly stating that the violence in Kosovo constituted a threat to regional and international peace and security. Costa Rica and Sweden argued that the United Nations had a duty to respond to the crisis based on the human rights violations alone. In fact, Costa Rica argued that the violation of fundamental rights was so serious in Kosovo that it constituted, in and of itself this, a threat to international peace and security and the application of the full powers of the Security Council under Chapter VII.

Safeguarding human rights is not solely and exclusively a matter of the internal jurisdiction of States. On the contrary, Costa Rica believes that respect for human rights, and the violation of such rights, are matters of the utmost interest to the international community.<sup>20</sup>

Other members made specific reference to the fragile peace process in Bosnia-Herzegovina Herzegovina, and the historical precedent of ethnic cleansing in Bosnia-Herzegovina at the hands of the Serbs as sufficient justification for labeling Kosovo as a

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<sup>18</sup> S/RES/1160 (1998), 31 March 1998.

<sup>19</sup> S/PV.3868, 31 March 1998, p. 10

<sup>20</sup> Ibid., pp. 3-4.

threat to international peace and security.<sup>21</sup> The Russian Federation and China, however, disagreed. They argued that the events occurring in Kosovo were an internal matter of the Federal Republic of Yugoslavia and did not constitute a threat to regional or international peace and security. Instead, both parties argued that the disagreement should be solved “on the basis of the principle of respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”.<sup>22</sup> The spokesperson for the Federal Republic of Yugoslavia defended its actions in Kosovo as legitimate state behavior; an attempt to root out separatism and terrorism in the province.

It is the right of every state to defend itself from this evil, to protect its territorial integrity, public peace and order and the safety of its citizens. This right is not denied anywhere in the world and it cannot be denied to Serbia and the Federal Republic of Yugoslavia.<sup>23</sup>

Germany, host to 300,000 ethnic Albanian refugees, responded to the remarks by FRY by noting that at the beginning of the war in Bosnia-Herzegovina some had claimed that it was an internal matter as well.<sup>24</sup>

**Figure 6.1: Security Council Membership, 1998-1999**

1998	1999
Bahrain, Brazil, China, Costa Rica, France, Gabon, Gambia, Japan, Kenya, Portugal, Russian Federation, Slovenia, Sweden, United Kingdom, United States of America	Argentina, Bahrain, Brazil, Canada, China, France, Gabon, Gambia, Malaysia, Namibia, Netherlands, Russian Federation, Slovenia, United Kingdom, United States of America

<sup>21</sup> S/PV.3868, 31 March 1998, p. 13 (USA); p. 4 (France); p. 9 (Bahrain); p.7 (Slovenia); p. 27 (Bosnia and Herzegovina); p. 26 (Croatia)

<sup>22</sup> Ibid., p. 10-11 (Russian Federation); pp. 11-12 (China).

<sup>23</sup> Ibid., p. 16.

<sup>24</sup> Ibid., p. 19.

Members of the Security Council also were divided on their conceptualization of the conflict. The Russian Federation noted that while Serbian police had used excessive force in Kosovo, they were responding to acts of violence by “Kosovo terrorists” – the KLA, an organization Russia described as a “manifestation of extremism”.<sup>25</sup> Most Council members described both sides as guilty of rights violations in Kosovo and called on both parties to enter into negotiations towards a political settlement. Members criticized the Serb authorities for excessive use of force against civilians at the same time that they criticized acts of terrorism by the KLA. A few states including Gambia (an elected member), Italy, and the USA, made a careful distinction between the terrorist activities of the Kosovo Liberation Army and the peaceful protests of ethnic Albanians led by Ibrahim Rugova committed to non-violent political change in Kosovo.<sup>26</sup> Croatia, while condemning terrorism in all its manifestations warned Council Members that state terrorism was the most dangerous form of terrorism.<sup>27</sup> Slovenia criticized what it described as attempts to use the term ‘terrorism’ for “reasons of political convenience” rather than based on facts, noting that “there are forms of struggle that, albeit undesirable, are not terrorism and ought not to be labeled as such”.<sup>28</sup>

At least five of the fifteen members of the Council (Brazil, France, UK, USA and Slovenia) characterized the conflict using an intentional causal story in which Serb authorities were repressing Kosovo’s Albanians. Slovenia urged the Council Members to take important lessons from Bosnia, including the importance of accurately and honestly

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<sup>25</sup> S/PV.3868, 31 March 1998, p. 11

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., p. 26.

<sup>28</sup> Ibid., p. 8.

conceptualizing the conflict. Specifically, Slovenia criticized attempts to apportion blame equally among unequal parties to the violence.

The attempts to obscure that threat by various techniques of what commentators call ‘an even distribution of guilt – techniques that were amply on display in international discussions on some other situations in the recent past – would again bring only harm and suffering and would delay the solutions. The techniques of ‘an even distribution of guilt’ say little about the actual facts of the situation concerned and speak volumes about the lack of agreement at the level of the international community.<sup>29</sup>

The United States remarked that the passage of resolution 1160 (1998) clearly indicated that the international community would not accept “ethnic cleansing” and would not repeat its past mistakes in responding too slowly to violence in the former Yugoslavia.<sup>30</sup> Bosnia, though not a member of the Council reiterated this sentiment by calling on the Security Council to prevent future acts of ethnic cleansing by Serbia.

Bosnia and Herzegovina itself cannot morally, politically or legally remain silent; as our former colleague, Secretary of State Madeline Albright so appropriately put it, ‘the Belgrade authorities will not be allowed to do in Kosovo what they can no longer get away with in Bosnia and Herzegovina.’ Ethnic cleansing is intolerable for all, but those of us who have been victims and overcome must be especially clear and add our voices to the vigilant chorus of ‘Never Again.’<sup>31</sup>

Despite lack of agreement on the character of the conflict, the Council was unanimous in its commitment to preserving the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. The political solution to the Kosovo problem, for the Members, was autonomy for the Kosovo Albanians with substantial self-administration but within the existing borders of Serbia. Many Security Council members wanted to protect human rights but were unwilling to challenge Serbia’s state sovereignty or territorial integrity.

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<sup>29</sup> S/PV.3868, 31 March 1998, p. 7.

<sup>30</sup> Ibid., p. 13.

<sup>31</sup> Ibid., p. 27.

Six months later, on 23 September 1998, when the Security Council passed resolution 1199 (1998), the divisions between the permanent members persisted. China continued to argue that the question of Kosovo was an internal matter to be solved by the Yugoslav people based on the universally recognized principle of respect for and maintenance of the sovereignty and territorial integrity of states.<sup>32</sup> The Russian Federation, who had substantial political, religious and cultural ties to Serbia, continued to draw attention to terrorist actions undertaken by Kosovo's Albanians but also criticized the escalation of violence including the use of heavy weapons by the Serb authorities.<sup>33</sup> The UK acknowledged that the KLA has contributed to the escalating crisis but identified President Milosevic as bearing direct responsibility for the repression of Kosovo's Albanians. According to the UK, Resolution 1199 (1998) put President Milosevic on notice that he would be held accountable for his actions in Kosovo and that the international community would respond vigorously for failure to end the conflict.<sup>34</sup> The United States demanded that Belgrade immediately cease its offensive actions against the Kosovar Albanians and warned that planning at the North Atlantic Treaty Organization for military operations was nearing completion should Belgrade fail to comply with the demands of the international community with regards to Kosovo.<sup>35</sup>

The language of Resolution 1199 (1998) reflects these mixed views, showing elements of both an inadvertent causal story about internal conflict or civil war, where all parties to the conflict were culpable, and an intentional causal story, where the Serb

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<sup>32</sup> S/PV.3930, 23 September 1998, p. 3.

<sup>33</sup> *Ibid.*, p. 2.

<sup>34</sup> S/PV.3930, 23 September 1998, p. 4.

<sup>35</sup> *Ibid.*, p. 5.

perpetrators were identified as intentionally harming the civilian Albanian population. The preamble expresses the Council's grave concern over the "excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army" which has resulted in numerous casualties and substantial displacement of persons from their homes; but also "condemns all acts of violence by any party and the use of terrorism in pursuit of political goals by any group or individual." Notably however, the perpetrators of terrorism were not specifically named in this resolution as they had been previously. The resolution both reaffirmed "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia" and argued that "the deterioration of conditions in Kosovo constitutes a threat to peace and security in the region." The operative paragraphs demand a ceasefire by all parties and calls for leaders on both sides to improve the humanitarian situation and enter into meaningful negotiations. Further demands are made on the Federal Republic of Yugoslavia however, including the withdrawal of security units used for civilian repression, acceptance of international monitors, and facilitation of the safe return of refugees. The resolution also insisted that the Kosovar Albanian leadership condemn all terrorist action and commit itself to the peaceful pursuit of its political goals.<sup>36</sup> The largely equal treatment of the parties to the conflict in the resolution satisfied the Russian delegation, gaining its support. China abstained from voting based on its position that internal conflicts should be dealt with domestically.

Three days after the passage of resolution 1199 (1998) by the Security Council, Serb Government security forces massacred 21 members of a single family in Gornije

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<sup>36</sup> S/RES/1199 (1998), 23 September 1998.

Obrinje including children as young as eighteen months old. Human rights organizations and international media outlets broadcast the images of the mutilated bodies worldwide. Human Rights Watch classified the conflict in Kosovo as a war waged by the Serb authorities against Albanian citizens – a war that they argued could have been prevented by the West.

It's been clear for seven months that the government is conducting a brutal war against civilians in Kosovo but they are operating in a climate of impunity. The atrocities we see today are taking place because the West failed to respond forcefully enough to Serb repression from the very beginning.<sup>37</sup>

Expert testimony and forensic evidence added strength to the intentional causal explanation of the conflict and members of the Security Council came under increasing pressure to respond more decisively to breaches of Security Council resolutions than they had in Bosnia. On 13 October, only 7 months after Kosovo appeared on the agenda of the Security Council, members of the NATO alliance agreed to use military force to compel a settlement in Kosovo. Two days later on 15 October, the Federal Republic of Yugoslavia entered into an agreement with NATO which would provide air verification of Serbian compliance with international agreements. On 16 October, FRY agreed to the establishment of the Kosovo verification Mission (KVM) under the auspices of the OSCE to monitor FRY compliance with its agreements on the ground. The Security Council met to endorse the NATO and OSCE verification agreements with the Federal Republic of Yugoslavia on 24 October. Resolution 1203 (1998) condemned the violence in Kosovo and called for full implementation of the international agreements between the

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<sup>37</sup> Statement by Holly Cartner, executive director of the Europe and Central Asia division of Human Rights Watch, 4 October 1998. See press release “Report Shows Seven Month Pattern of Yugoslav Government Atrocities: Rights Group Seeks Tougher Response from the West.” [http://hrw.org/english/docs/1998/10/04/serbia1371\\_txt.htm](http://hrw.org/english/docs/1998/10/04/serbia1371_txt.htm).

Federal Republic of Yugoslavia and the OSCE, NATO, and the Contact Group. The language of the resolution still conceived of the conflict in terms of the civil war frame where both parties were responsible for meeting the demands of the international community. There was however, greater emphasis on the systematic rights violations by Serb authorities and more responsibilities to fulfill on the part of the Federal Republic of Yugoslavia.<sup>38</sup>

The debate in the Council on 24 October 1998 reflected growing concerns among its members of a looming humanitarian crisis given the large number of Kosovo Albanians displaced from their homes at the approach of winter. Formal discussion continued to reveal deep divisions on the nature of the conflict despite limited agreement among most Council Members that it was threatening enough to peace and security to warrant a Security Council response under Chapter VII. The discussion was also characterized by a debate over whether or not regional organizations were permitted to use force outside of Security Council authorization. Disunity in the Council about Serb responsibility for the violence was complemented by disunity over the NATO threat to use force against the FRY in absence of Security Council authorization. Speaking on behalf of the OSCE, the delegation from Poland welcomed the agreement between the OSCE and the FRY on verification but argued that resolutions 1160 (1993) and 1199 (1993) had not fully been complied with and asked the Security Council for continued decisive action in responding to the Kosovo crisis.<sup>39</sup> Brazil similarly argued that the

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<sup>38</sup> S/RES/1203 (1998), 24 October 1998.

<sup>39</sup> S/PV/3937, 24 October 1998, p. 2.

**Figure 6.2: Organizations active in Negotiations  
with the Federal Republic of Yugoslavia and the Kosovo Albanians, 1998-1999**

<b>Organization</b>	<b>Membership</b>
Contact Group	France, Italy, Russian Federation, UK, USA
G8	Canada, France, Germany, Italy, Japan, Russian Federation, UK, USA
NATO	Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey, UK, USA
EU	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, UK
OSCE	46 States representing Europe and Eurasia (see appendix for complete list)

“Council cannot allow itself to be seen as showing complacency about non-compliance or even incomplete compliance with its resolutions”.<sup>40</sup> This concern – about the ability and willingness of the Security Council to respond decisively to breaches of its demands – increased among Council Members oriented toward international law, as more members came to adopt the intentional causal story and press for military action with or without Security Council authorization. For example, Costa Rica was a strong proponent of an intentional causal story about the ethnic cleansing of the Albanian civilian population of Kosovo by authorities of Serbia and the Federal Republic of Yugoslavia

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<sup>40</sup> S/PV.3937, 24 October 1988, p. 10.

and supported “a position of political firmness vis-à-vis the Belgrade government”.<sup>41</sup>

However, Costa Rica also stressed the importance of use of force adhering to the rule of law and the tenets of the Charter of the United Nations.

The Security Council alone can determine whether there has been a violation of its resolutions adopted in the exercise of its mandated powers. Only the Security Council can authorize the use of force to ensure compliance with its resolutions, in exercise of its primary responsibility for the maintenance of international peace and security.<sup>42</sup>

Similarly, Brazil argued that “Kosovo has become the focus of the same pattern of ethnic violence that has already shattered countless lives throughout the region” and that the “Council cannot allow itself to be seen as showing complacency about non-compliance or even incomplete compliance with its resolutions”.<sup>43</sup> Nonetheless, Brazil, like Costa Rica, argues that the use of force can only be used in self-defense or with Security Council authorization under Chapter VIII Article 53 of the Charter.<sup>44</sup> Brazil worried that circumventing Security Council authorization by NATO could lead to the creation of a two-tiered security system where the Council would cease to bear primary responsibility for maintenance of international peace and security in only part of the world.<sup>45</sup> China, on the other hand, continued to deny that the Kosovo situation threatened peace and security and expressed its regret that “a regional organization” decided to interfere in the internal affairs of FRY without consulting the Security Council or seeking authorization. The United States and Sweden, however, argued that the credible threat of use of force was

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<sup>41</sup> S/PV.3937, 24 October 1988, p. 7.

<sup>42</sup> Ibid., p. 7.

<sup>43</sup> Ibid., p. 10.

<sup>44</sup> Chapter VIII article 53 of the Charter of the United Nations reads, in part, The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...

<sup>45</sup> S/PV.3937, 24 October 1988, pp. 10-11.

necessary to achieving agreement between the FRY and the OSCE and NATO and is a necessary component of ensuring their implementation. Further, the United States maintained that the regional organization had the necessary authority to use force.

The NATO allies, in agreeing on 13 October to the use of force, made it clear that they had the authority, the will and the means to resolve the issue. We retain that authority. We will not tolerate the continued violence that has resulted in nearly a quarter of a million refugees and displaced persons and thousands of deaths, and has jeopardized the prospects for peace in the wider Balkans.<sup>46</sup>

The quick adoption of the intentional causal story and the willingness to use force outside of the Council by France, the United Kingdom and the United States, three permanent members of the Security Council, can be explained in large part by the past experience of the UN involvement in Bosnia and Herzegovina and particularly President Milosevic's history of unfulfilled commitments to international agreements.<sup>47</sup>

The Security Council remained notably quiet on the issue of Kosovo over the next three months, despite increasing violence on the ground, lack of progress toward a political solution, and the Yugoslav government's intransigence with regard to Security Council resolutions. The "watershed moment" for international involvement in Kosovo however, came in January 1999. On 8 January, the Kosovo Liberation Army ambushed a group of Serbian police officers around the area of the village of Racak, killing 3 officers and wounding one. Two days later, the KLA again ambushed a Serbian police patrol killing one policeman. In the days following the KLA attacks, a significant Yugoslav military build-up occurred in the region. On the morning of 15 January, Federal Republic of Yugoslavia security forces and uniformed members of the Federal Republic of

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<sup>46</sup> S/PV.3937, 24 October 1988, p. 15.

<sup>47</sup> Ibid., p. 13.

Yugoslavia armed forces and Serbian special police engaged KLA fighters at their headquarters near the village of Racak. Following the conclusion of the firefight, Yugoslav authorities surrounded the village of Racak and a large group of officers entered the village. By the time that the authorities left Racak, forty-five villagers were dead including at least two female civilians and a young boy.<sup>48</sup> The Kosovo Verification Mission was initially prevented from entering the village by Yugoslav authorities. The KVM did gain access to the village later in the day, however, and identified the victims as civilians. It identified Federal Republic of Yugoslavia security forces and uniformed members of the Federal Republic of Yugoslavia armed forces and Serbian special police as responsible for massacring civilians.<sup>49</sup> The Yugoslav Government defended its police action arguing that those killed were either KLA soldiers or civilians caught in the crossfire.<sup>50</sup> President Milosevic declared the Head of the OSCE mission a person non grata and demanded that he leave Kosovo. Milosevic also denied the ICTY prosecutor access to Racak and retrieved the bodies for Yugoslav authorities to conduct their own forensic investigation. Human Rights Watch later confirmed the findings of the OSCE mission and on 29 January 1999 accused the Serbian police and Yugoslav army of indiscriminately attacking civilians, torturing detainees and committing summary executions. The report also found evidence to suggest that the forces had direct orders to kill male inhabitants of the village over the age of fifteen.<sup>51</sup>

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<sup>48</sup> Human Rights Watch, "Yugoslav Government Crimes in Racak," <http://www.hrw.org/press/1999/jan/yugo0129.htm>

<sup>49</sup> S/PRST/1999/2, 19 January 1999.

<sup>50</sup> <http://hrw.org/english/docs/1999/01/29/serbia756.htm>

<sup>51</sup> Human Rights Watch, "Human Rights Watch Investigation Finds: Yugoslav Forces guilty of War Crimes in Racak, Kosovo," Human Rights Watch press release, 1/29/99, <http://hrw.org/english/docs/1999/01/29/serbia756.htm>

International response to the massacres was quick and determined. On 19 January, the Security Council issued a presidential statement in which it strongly condemned the massacre of Kosovo Albanians in the village of Racak. Citing the report of the Organization for Cooperation and Security in Europe (OSCE) Kosovo Verification Mission (KVM), the statement identified and named the branches of the Yugoslav security and armed forces and Serbian police forces as bearing responsibility for the massacres of civilians. The Council identified the events in Racak as “the latest in a series of threats to the efforts to settle the conflict through negotiations and peaceful means.” In addition to condemning Yugoslav authorities for their actions, the statement warned the KLA against actions that are contributing to the tensions in Kosovo.<sup>52</sup> On 28 January, the North Atlantic Treaty Organization issued a solemn warning to the Federal Republic of Yugoslavia and the Albanians that an air attack was impending. On 29 January, the leaders of the Contact Group met and summoned the leaders of the parties to political negotiations in Rambouillet, France. Later that night in a presidential statement, the Security Council welcomed the agreement of the Contact Group on its framework for reaching a political settlement in Kosovo. The Council reiterated its support for international efforts to facilitate a political settlement on the basis of substantial autonomy and equality for all citizens and ethnic communities in Kosovo within the sovereign territory of the Federal Republic of Yugoslavia.<sup>53</sup> But despite these actions, human rights organizations, like Human Rights Watch began to publicly criticize the

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<sup>52</sup> S/PRST/1999/2, 19 January 1999.

<sup>53</sup> S/PRST/1999/5, 29 January 1999.

**Figure 6.3: Timeline of Key events, Kosovo (1989-1999)**

<b>1989</b>	Kosovo's autonomy is revoked; decade long non-violent movement begins
<b>1992-1995</b>	War in Bosnia and Herzegovina
<b>1995</b>	Kosovo Albanians left out of Dayton peace process; Kosovo Liberation Army emerges
<b>Feb-March 1998</b>	Violence between KLA and Serb authorities escalates; Serb offensive in Drenica region
<b>March 1998</b>	Contact Group Meeting on political settlement for Kosovo; EU arms embargo; Resolution 1160 imposes arms embargo and condemns excessive use of force and terrorist acts in Kosovo
<b>May 1998</b>	Serbs launch major offensive in Kosovo – after agreeing to political talks
<b>June 1998</b>	Russian Federation and F.R.Y. announce commitments
<b>July 1998</b>	ICTY mandate includes Kosovo
<b>September 1998</b>	Resolution 1199 demands immediate withdrawal of Serb forces; Government massacres 21 members of a family in Gornije Obrinje including children under age 2.
<b>October 1998</b>	NATO countries decide to use military force; F.R.Y. signs agreement for NATO air monitoring and OSCE ground verification; Resolution 1203 calls for full implementation of agreements; acts under Chapter VII
<b>January 1999</b>	Racak massacre verified by KVM; massacres condemned by Security Council; NATO warns of impending air attack
<b>February 1999</b>	First round of Rambouillet talks end in agreement on principle of autonomy
<b>March 1999</b>	Kosovo Albanians sign Rambouillet accords; Serbs refuse; launch massive ethnic cleansing campaign; OSC observers withdrawn; Holbrooke negotiations fail; NATO bombing begins; resolution condemning NATO bombing fails; ethnic cleansing intensifies
<b>April 1999</b>	NATO rejects F.R.Y. ceasefire offer
<b>May 1999</b>	More than 800,000 refugees have fled Kosovo; G8 adopts principles for political resolution of conflict; NATO bombs Chinese embassy in F.R.Y.; resolution 1239 passes on humanitarian crisis; ICTY indicts Milosevic for crimes against humanity
<b>June 1999</b>	G8 principles presented to and accepted by Serbia; Serbs sign peace agreement; NATO bombing ends; resolution 1244 establishes civil and military presence in Kosovo
<b>September 1999</b>	Secretary-General speech to General Assembly on changing conceptions of sovereignty

international community's handling of the Kosovo crisis accusing it of weak enforcement and acquiescence in the face of partial implementation, in an effort to shame the

international community into taking effective action to end the violations of human rights and humanitarian law in Kosovo.

The pattern is familiar. The international community expresses moral outrage about an atrocity and promises “decisive action,” including a possible military intervention. Milosevic responds with a temporary pull-back of his forces and some vague commitments. But no one is willing to take the necessary steps to hold Milosevic to his commitments. The most common refrain is the “serious threat” of NATO action against Yugoslav government forces or installations, most likely in the form of airstrikes...But so far, measures by the international community have been weakly enforced, and sometimes rescinded when Milosevic makes concessions on actions that he should not have undertaken in the first place.<sup>54</sup>

The leaders of the Kosovo Albanians and representatives of the Federal Republic of Yugoslavia entered political negotiations in Rambouillet under the auspices of the Contact Group. The first round of talks lasted from 3-23 February and ended with a verbal agreement between the parties on a plan for substantial autonomy for the Kosovo Albanians within Serbia. However, when the Rambouillet talks resumed on 15 March to discuss implementation, agreement broke down. Under pressure from the United States and its European partners to accept the peace deal which guaranteed Kosovar autonomy but delayed the question of independence, the leaders of the Kosovo Albanians, including both leaders of the non-violent shadow government and the KLA, signed the Rambouillet Accords on 18 March. The Serb party refused to accept the agreement and launched a massive ethnic cleansing campaign against the Kosovo Albanians in Kosovo the very next day. The OSCE withdrew its observers from Kosovo on 19-20 March. On 22 March, US envoy Holbrook flew to Belgrade in a final effort to broker an agreement with

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<sup>54</sup> Human Rights Watch, *a Week of Terror in Drenica: Humanitarian Law Violations in Kosovo* (Human Rights Watch: New York, 1 February 1999), <http://www.hrw.org/reports/1999/kosovo/Obrinje6-05.htm#P886>143719>.

President Milosevic. He left unsuccessful. On 24 March, the North Atlantic Treaty Organization (NATO) began bombing positions in the Federal Republic of Yugoslavia.

Ethnic cleansing hastened after the start of NATO military strikes. At the end of February the Serbian government had 25,000 troops on the ground in Kosovo. By 24 March the number of Serbian troops in Kosovo had climbed to 36,000 and an additional 8,000 troops were in transit to Kosovo.<sup>55</sup> An estimated 800,000 Albanians were pushed out of Kosovo by Serb forces in an effort to make the minority question in Kosovo irrelevant by purging as much of the Albanian population as possible.<sup>56</sup> The guiding principles for NATO's conduct of the military operation included attempting to impact and disrupt Yugoslav ground forces and police activity in Kosovo but also to protect NATO forces by minimizing loss of aircraft and protecting NATO forces on the ground in Bosnia-Herzegovina.<sup>57</sup> Milosevic's strategy included the systematic cleansing, street by street of ethnic Albanians from Kosovo as well as attempts to provoke regional instability by coordinating attacks on NATO troops stationed in Bosnia on the ground and from the air.<sup>58</sup>

NATO's military intervention in Kosovo was unprecedented. The North Atlantic Treaty Organization is a collective defense organization. Never before had it used military force out of area nor had it used force offensively in defense of human rights principles without authorization from the Security Council like it had in Bosnia-Herzegovina. It was not new that NATO offered humanitarian justifications for its use of

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<sup>55</sup> MccGwire, "Why Did We Bomb Belgrade?" 10.

<sup>56</sup> Economides, "Kosovo," 229; Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lesson Learned* (Oxford: Oxford University Press, 2000), 89-92.

<sup>57</sup> Alex J. Bellamy, *Kosovo and International Society* (London: Palgrave MacMillan, 2002), 160.

<sup>58</sup> *Ibid.*, 164-5.

military force, states have frequently done so regardless of motivation, but it is new that it did not also rely on traditional self-defense justifications.<sup>59</sup>

Disunity among permanent Security Council members over the character of the conflict in Kosovo was the primary barrier to effective and unified Security Council action to halt the increasing violence. Security Council members not only disagreed whether the violence was intentional, perpetrated by the State against a repressed population, they also disagreed on whether it was a relevant matter for Security Council discussion in the first place or whether it was a fundamentally domestic matter of a sovereign state. In the case of Kosovo, the positions of the five permanent Security Council members were irreconcilable; an insurmountable barrier to UN authorized humanitarian intervention. China and the Russian Federation are ardent defenders of the sovereignty and non-intervention norms. China and the Russia alike, have internal conflicts that are characterized by violations of human rights and international humanitarian law, according to human rights organizations like Amnesty International and Human Rights Watch. The use of military force against a perpetrator government directly threatens their vital interests. China tends to oppose all forms of humanitarian intervention but the Russian Federation has proved willing to authorize the use of military force in intra-state conflicts, but not against a sovereign state. The Russian Federation also was an ally, albeit reluctantly, of the Federal Republic of Yugoslavia. France, the United Kingdom and the United States identified the Kosovo conflict as a

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<sup>59</sup> Jules Lobel, "Benign Hegemony? Kosovo and Article 2(4) of the U.N. Charter," *Chicago Journal of International Law* 19 (2000), 27.

continuation of the conflict in Bosnia-Herzegovina for which they had determined the Serbs were responsible.

The second barrier to Security Council authorization for the use of force in Kosovo had to do with state sovereignty. Somalia had been a case in which there was an absence of sovereign authority. Bosnia-Herzegovina had been a case of contested sovereignty. Both Rwanda and Kosovo, however, were cases in which state sovereignty was not in question and the perpetrator of atrocities was the sovereign state. The desire of much of the Kosovo Albanian population for secession from the Federal Republic of Yugoslavia brought human rights norms into direct conflict with the fundamental norms of state sovereignty and territorial integrity. Many Security Council members wanted to defend the human rights of Kosovo's Albanians but were unwilling to alter the boundaries of the Federal Republic of Yugoslavia. Divisions between ethnic Albanians committed to non-violent political change and those committed to the use of force further made Kosovo's Albanians a complicated victim and partner for peace.

### **Security Council Divisions over Authority to Use Force in Defense of Human Rights**

It is indeed tragic that diplomacy has failed but there are times when the use of force may be legitimate in the pursuit of peace. In helping maintain international peace and security, Chapter VII of the United Nations Charter assigns an important role to regional organizations, but as Secretary-General, I have many times pointed out, not just in relation to Kosovo, that under the Charter, the Security Council has primary responsibility for maintaining international peace and security and this is explicitly acknowledged in the North Atlantic Treaty. Therefore, the Council should be involved in any decision to resort to force.<sup>60</sup>

- statement by Kofi Annan,  
Secretary-General of the United Nations, 24 March, 1999

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<sup>60</sup> <http://video.aol.com/video-detail/kofi-annan-endorses-natos-bombing-of-yugoslavia/547730224>;  
[www.historychannel.com](http://www.historychannel.com).

In a series of emergency meetings of the Security Council (24 and 26 March 1999) called by the Russian Federation in response to the NATO bombing of the Federal Republic of Yugoslavia, five members of the Council who were also NATO members (Canada, France, the Netherlands, the United Kingdom and the United States), justified their military action according to the following principles: the protection of human rights norms; the duty to stop Yugoslav forces from ethnic cleansing the Kosovo Albanian population (intentional causal story); the failure of the Federal Republic of Yugoslavia to live up to its commitments and legal responsibilities; and Security Council inaction. The United States summed up the case for NATO humanitarian intervention:

We and our allies have begun military action only with the greatest reluctance. But we believe that such action is necessary to respond to Belgrade's brutal persecution of Kosovar Albanians, violations of international law, excessive and indiscriminate use of force, refusal to negotiate to resolve the issue peacefully and recent military build-up in Kosovo – all of which foreshadow a humanitarian catastrophe of immense proportions.<sup>61</sup>

The United States identified Belgrade's systematic policy of undermining agreements and its violation of its international legal responsibilities including the international law of human rights.<sup>62</sup> Similarly, Canada argued that the NATO intervention was motivated by humanitarian considerations noting,

We cannot simply stand by while innocents are murdered, an entire population is displaced, villages are burned and looted, and a population is denied its basic rights merely because the people concerned do not belong to the 'right' ethnic group.<sup>63</sup>

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<sup>61</sup> S/PV.3988, 24 March 1999, p. 4.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid., p. 6.

The United Kingdom also justified NATO's intervention on the grounds of "overwhelming humanitarian necessity" and France specifically stated that both peace in Europe and human rights were at stake. Both the United Kingdom and France echoed the intentional causal story about Yugoslav repression of the Albanians advanced by Canada and the United States noting that the countries' experiences with the Yugoslav government during the Bosnian war significantly strengthened their conceptualization of the conflict as well as their decision to resort to force.<sup>64</sup> NATO members on the Security Council also noted that the inability of the Security Council to undertake humanitarian intervention made NATO intervention a necessity. There was simply no other choice. The Netherlands explained that although NATO would have preferred a Security Council authorization for its actions, such a resolution was unattainable given the opposition of "one or two permanent members." According to the Netherlands, Council disunity does not justify allowing a humanitarian catastrophe to occur so NATO acted on the legal basis that was available to it.<sup>65</sup>

Statements by the majority of elected Security Council members and those participating in the formal meeting suggested widespread concurrence with NATO justifications. For example, Argentina argued that there was a humanitarian obligation to end the violence in Kosovo based on solid legal foundations.

Argentina also wishes to stress that the fulfillment of the legal norms of international humanitarian law and human rights is a response to universally recognized and accepted values and commitments. The obligation to protect and ensure respect for these rights falls to everyone and cannot be debated. That obligation is all the more urgent given that it has been alleged, witnessed and proven that, in that region, extremely serious international crimes have been

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<sup>64</sup> S/PV.3988, 24 March 1999, pp. 8-9 (France); p. 11 United Kingdom)

<sup>65</sup> Ibid., p. 8.

committed, including acts of genocide, some of which are being tried in a special tribunal established by this Council.<sup>66</sup>

The intentional causal story about the ethnic cleansing of Kosovo's Albanians at the hands of Yugoslav authorities was similarly adopted by Bahrain and Malaysia, both elected members of the Council who argued that the systematic repression was reminiscent of the policy of ethnic cleansing carried out in Bosnia and Herzegovina.<sup>67</sup> Malaysia argued that combating "so-called acts of terrorism in Kosovo does not in any way justify gross human rights violations or the failure to respect international norms and international humanitarian law".<sup>68</sup> The most forceful defense of NATO military intervention in defense of human rights was made by Bosnia and Herzegovina who participated in the debate. The Bosnian delegation argued that they would still be suffering the consequences of war had military intervention not been undertaken in 1995.

For three and a half years in Bosnia and Herzegovina, people promoted talks, and for three and a half years, the war, the genocide, the aggression and the ethnic cleansing continued. Only after military intervention took place did diplomacy succeed.<sup>69</sup>

The power of the intentional causal story about ethnic cleansing in Kosovo was compounded by the recent tragic experience of Bosnia and Herzegovina. The advocates of humanitarian intervention in Kosovo justified the use of force in defense of international principles of humanitarian and human rights law, and in particular, the failure of the Federal Republic of Yugoslavia to uphold them.

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<sup>66</sup> S/PV.3988, 24 March 1999, pp. 7-8.

<sup>67</sup> Ibid., p. 7 (Bahrain); p. 9 (Malaysia).

<sup>68</sup> Ibid. p. 9.

<sup>69</sup> Ibid., pp. 18-19.

The most powerful opponents of NATO intervention on the Security Council were the Russian Federation and China, both permanent members who argued that the intervention was illegal, unjustified and created a negative precedent that would shake the very foundations of international relations. The Russian Federation described its “profound outrage” over the NATO bombing describing it as a violation of the Charter of the United Nations and international law because it lacked the authorization of the Security Council. Not only did Russia demand an immediate cessation of military force it reserved the right to take its own military measures to ensure its own and common European security.<sup>70</sup> Russia reminded the NATO members sitting on the Council that they were also members of the United Nations and obligated to follow the rules of the Charter including Article 103 which establishes the priority of Charter obligations over any other international obligations.<sup>71</sup> Like the Russian Federation, China argued that only the Security Council can determine whether a situation threatens peace and security and can take the appropriate action. China characterized the NATO intervention as the use of power politics to bully the weak and reiterated its opposition to all forms of interference in the internal affairs of other states.<sup>72</sup> These permanent members dismissed the intentional causal story about Kosovo. Instead, they continued to maintain that the Federal Republic of Yugoslavia had the right to fight terrorism and defend its sovereignty and territorial integrity. For its part, the Federal Republic of Yugoslavia called the NATO intervention a “brutal and unprovoked aggression” against a sovereign state.

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<sup>70</sup> S/PV.3988, 24 March 1998, p. 4.

<sup>71</sup> Ibid., p 2. Chapter XVI article 103 reads: In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

<sup>72</sup> Ibid., p. 12.

The Federal Republic of Yugoslavia has not threatened any country or the peace and security of the region. It has been attacked because it sought to solve an internal problem and use its sovereign right to fight terrorism and prevent the secession of a part of its territory that has always belonged to Serbia.<sup>73</sup>

On 26 March 1999, the Russian Federation introduced a draft resolution that would have defined the use of force by NATO against the Federal Republic of Yugoslavia as a threat to international peace and security under Chapter VII of the Charter of the United Nations. The resolution also demanded an immediate cessation of the use of force. Only China, Namibia and the Russian Federation voted in favor of the resolution. The remaining thirteen Security Council Members voted against the resolution, arguably legitimizing the humanitarian intervention.<sup>74</sup> These Security Council members included: Argentina, Bahrain, Brazil, Canada, France, Gabon, Gambia, Malaysia, Netherlands, Slovenia, United Kingdom and the United States of America.

The debate over the draft resolution condemning NATO for its intervention highlighted the disunity among Council members on the character of the Kosovo conflict that led to the intervention in the first place. The debate also brought into sharp relief divisions within the international community regarding the authority of the Security Council and the conditions under which the use of military force is justified. Responding to the accusations that NATO's actions were illegal because they were not sanctioned by the Charter, the United States countered,

The United Nations Charter does not sanction armed assaults upon ethnic groups, or imply that the international community should turn a blind eye to a growing humanitarian disaster.<sup>75</sup>

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<sup>73</sup> S/PV.3988, 24 March 1998, p 13.

<sup>74</sup> S/1999/328, 26 March 1999.

<sup>75</sup> Ibid., p. 5.

Defenders of the NATO intervention justified its authority to use force on the basis of Security Council inaction in the face of massive human rights violations and the international obligations of other actors. Elected members who supported NATO intervention, like Slovenia, the Netherlands and Canada, argued that disunity among permanent members stymied humanitarian intervention. Slovenia argued,

We regret the fact that not all permanent members were willing to act in accordance with their special responsibility for the maintenance of international peace and security under the United Nations Charter. Their apparent absence of support has prevented the Council from using its powers to the full extent and from authorizing the action which is required to put an end to the violation of its resolutions.<sup>76</sup>

The Netherlands went further, specifically accusing the Russian Federation of acting in ways that made the international pressure on the Federal Republic of Yugoslavia less credible, necessitating the NATO military response.<sup>77</sup> Slovenia argued, “The Security Council has primary, but not exclusive responsibility for the maintenance of international peace and security.” That primacy, according to Slovenia, is earned.

It very much depends on the Security Council, and on its ability to develop policies that will make it worthy of the authority it has under the Charter, whether the primacy of its responsibility will actually be the reality of the United Nations.<sup>78</sup>

Speaking on behalf of the European Union, Germany argued that countries of the European Union had a moral obligation to censure the gross human rights abuses and indiscriminate violence that characterized the Kosovo conflict.

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<sup>76</sup> S/PV.3988, 24 March 1999, pp. 6-7.

<sup>77</sup> S/PV.3989, 26 March 1999, p. 4.

<sup>78</sup> S/PV.3988, 24 March 1999, pp. 19-20; see also S/PV.3989, 26 March 1999, p. 4.

We are ultimately responsible for securing peace and cooperation in the region which will guarantee the respect of our basic European values, i.e., the respect of human and minority rights, international law, democratic institutions and the inviolability of borders.<sup>79</sup>

Bosnia-Herzegovina also referred to the values of respect for human rights and international law in its remarks. Bosnia noted that although its delegation was ‘concerned by the implications of NATO military action being undertaken without the sanction of the United Nations Security Council, it “would be even more concerned and dismayed if the Security Council were blocked and there were no response to the humanitarian crisis and to the legal obligation to confront ethnic cleansing and war crimes abuses”.<sup>80</sup> Permanent and elected members of the Council and their supporters justified NATO intervention on multiple bases of authority including human rights law, international humanitarian law, and the obligations of regional organizations. Canada noted before the vote on the draft resolution that those who would support the censure of NATO for its intervention would “place themselves outside the international consensus, which holds that the time has come to stop the continuing violence perpetrated by the Government of the Federal Republic of Yugoslavia against its own people”.<sup>81</sup> It is through the deliberate act of acting inappropriately (intervening without authority) that the members of NATO attempted to redefine the standards of appropriate military action. In regard to Kosovo, NATO members had an interest in preventing a humanitarian crisis, protecting regional stability and preserving the NATO alliance and transatlantic values. The actions of NATO members reflected a growing consensus that it was morally

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<sup>79</sup> S/PV.3988, 24 March 1999, p. 17.

<sup>80</sup> S/PV.3989, 26 March 1999, pp. 14-15.

<sup>81</sup> Ibid., p. 3.

acceptable to use force to prevent or end humanitarian issues but new standards of what was morally right remained in tension with existing norms of what was permissible.<sup>82</sup>

Gambia and Malaysia took a middle position with regard to NATO military intervention. They argued that Security Council authorization is required for the use of military force but that the exigencies of particular situations may require decisive action when authorization is absent. In short, they argued that the humanitarian intervention by NATO was technically illegal but legitimate by international legal standards. The international community cannot permit humanitarian crises to occur when irreconcilable differences between permanent members prevent Security Council action, they argued.<sup>83</sup> Russia and India disputed the justifications of the NATO supporters on the Council. Russia argued that it was false to claim that NATO's actions became necessary because particular permanent members blocked Security Council action when no proposals on the topic or draft resolutions were introduced.<sup>84</sup> Indeed, no resolutions had been vetoed by Russia but it had indicated to Council members during informal discussion that it would not support the use of military force against the Federal Republic of Yugoslavia. India accused France, the UK and the USA of casting votes of national interest in the Security Council rather than in the interest of common humanity.

They [NATO] say they are acting in the name of humanity. Very few members of the international community have spoken in this debate, but even among those who have, NATO would have noted that China, Russia and India have all opposed the violence which it has unleashed. The international community can hardly be said to have endorsed their actions when already representatives of half of humanity said that they do not agree with what they have done.<sup>85</sup>

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<sup>82</sup> Economides, "Kosovo," 231.

<sup>83</sup> S/PV.3988, 24 March 1999, p. 7 (Gambia); p. 10 (Malaysia)

<sup>84</sup> *Ibid.*, p. 13.

<sup>85</sup> S/PV.3989, 26 March 1999, p. 16.

The debate in the Security Council on the NATO bombing hardened the very irreconcilable differences among its members that were the cause of the NATO intervention.

The tensions in the Security Council were further exacerbated in early May by the NATO bombing of the Chinese Embassy in the Federal Republic of Yugoslavia.<sup>86</sup> On 7 May 1999, NATO B-2 bombers attacked the Chinese embassy in Belgrade. Three Chinese journalists were killed. According to NATO the intended target was the Federal Procurement and Supply Directorate for the Federal Republic of Yugoslavia. The bombing of the embassy was a mistake. China was outraged and called an emergency meeting of the Security Council. The Council meeting began at 3:40am – within hours of the attack. China accused NATO of a deliberate attack on its embassy for strategic purposes and for violating Chinese sovereignty. It stated that it reserved the right to take appropriate action.<sup>87</sup> The NATO members of the Council expressed their regret and announced the initiation of an investigation into the bombing. Russia argued that the bombing was further evidence that NATO ‘is using the humanitarian banner as a cover for its attempts to destroy the present world order’ (based on respect for international law and the Charter of the United Nations).<sup>88</sup> On 14 May 1999, the members of the non-aligned caucus of the Security Council attempted to restore unity and authority to the Council around Kosovo through the adoption of a resolution responding to the overwhelming humanitarian crisis that had developed by mid-May. More than 800,000

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<sup>86</sup> S/PV.4000, 8 May 1999.

<sup>87</sup> *Ibid.*, p. 2.

<sup>88</sup> *Ibid.*, p. 3.

refugees had fled FRY, not counting the numbers of internally displaced within Kosovo and the exodus was causing a humanitarian disaster. Despite their efforts however, the meeting showed the remaining stark and angry division among permanent Security Council Members. Although resolution 1239 (1999) passed with thirteen votes, China and the Russian Federation abstained. Discussion of the resolution centered on debating the unresolved causes of the humanitarian crisis rather than discussing how to best respond to it. China and the Russian Federation backed by the Ukraine, Belarus and Cuba (none of which were elected members of the Council) argued that the NATO intervention was the cause of the humanitarian crisis. Seven Security Council Members, including the USA, argued that Slobodan Milosevic and his policy of ethnic cleansing was responsible for the humanitarian crisis. They were supported by numerous members of the non-aligned movement and the Organization of the Islamic Conference who were also in attendance.<sup>89</sup> Albania argued that NATO through its intervention was “saving exactly the same values that the United Nations was created to defend”.<sup>90</sup>

The provisions of resolution 1239 (1999) included support for the efforts of humanitarian organizations and reaffirmation of the right of refugee return. The resolution also emphasized that the humanitarian situation would continue to deteriorate in absence of a political solution to the conflict. In its preamble, resolution 1239 (1999) specifically cited numerous provisions of international humanitarian and human rights law including the Charter of the United Nations, the Universal Declaration of Human

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<sup>89</sup> Members of the Security Council included: Argentina, Bahrain, Canada, Gambia, Malaysia, the Netherlands and the USA. Members of the non-aligned movement included: Pakistan, Qatar, Saudi Arabia, Egypt and Albania.

<sup>90</sup> S/PV.4003, 14 May 1999, p. 20.

Rights, the international covenants and conventions on human rights, the Conventions and Protocol relating to the status of Refugees, the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, as well as other instruments of international humanitarian law.<sup>91</sup> In Kosovo, at the end of May the military campaign was escalating. NATO strengthened its air campaign and supported a KLA offensive against Serbian troops on the ground. A meeting of defense Ministers from NATO countries was held on 27 May in Cologne in which they agreed to discuss invasion plans and troop contributions for a potential land campaign against the Serbs.<sup>92</sup> Only days earlier on 24 May, Milosevic had been indicted by the International Criminal Tribunal for the former Yugoslavia for “planning, instigating, committing or aiding, ‘the campaign of violence conducted by the forces of the FRY and Serbia in Kosovo’.”<sup>93</sup> The US and Russia also came to an agreement during informal consultations on an acceptable text for a Security Council resolution.

In early June 1999, the G8 presented to the Federal Republic of Yugoslavia its principles for political resolution of the Kosovo conflict that it had adopted the month before. The National Assembly of Serbia voted to accept the G8 principles on 3 June and by 10 June Serb forces had begun to withdraw from Kosovo. Also on 10 June, the Security Council passed resolution 1244 (1999), the resolution negotiated between the US and Russia. Resolution 1244 (1999) endorsed a political solution for Kosovo based

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<sup>91</sup> S/RES/1239 (1999), 14 May 1999.

<sup>92</sup> Bellamy, *Kosovo and International Society*, 196.

<sup>93</sup> Bellamy, *Kosovo and International Society*, 197 citing Marc Weller, ‘The Kosovo Indictment of the International Criminal Tribunal of Yugoslavia’ in *The Kosovo Tragedy: The Human Rights Dimensions* ed. Ken Booth, (London: Routledge, 2000), 209; see also Indictment by the International Criminal Tribunal for the Former Yugoslavia Against Yugoslav Leaders, 22 May 1999, 22 May 1999, [www.icty.org](http://www.icty.org).

on the principles established by the G8 and the Rambouillet talks. Only China abstained. The resolution also established an international civil and military presence for Kosovo<sup>94</sup> and marked effective re-engagement of the Security Council on the situation in Kosovo. Resolution 1244 (1999) reaffirmed the sovereignty of the Federal Republic of Yugoslavia but also called for autonomy and meaningful self-administration for Kosovo.

The debate in the Council on 10 June was about much more than resolution of the Kosovo conflict. The discussion focused on the meaning of sovereignty and its relationship to human rights. China set the tone of the debate by arguing that ethnic problems within States should be settled by its own government and peoples. Respect for sovereignty and non-interference in internal affairs, according to China, are the foundation of modern international society.

Since the end of the cold war, the international situation has undergone major changes, but those principles are by no means outdated. On the contrary, they have acquired even greater relevance. At the threshold of a new century, it is even more imperative for us to reaffirm those principles. In essence, the ‘human rights over sovereignty’ theory serves to infringe upon the sovereignty of other States and to promote hegemonism under the pretext of human rights. This totally runs counter to the purposes and principles of the United Nations Charter. The international community should maintain vigilant against it.<sup>95</sup>

Responding to China, Slovenia conceded that international organizations must respect the principle of the sovereignty of States but argued that “it is at least equally clear that State sovereignty is not absolute and that it cannot be used as a tool of denial of humanity resulting in threats to peace.”<sup>96</sup> The Netherlands argued that the protection of human rights is consistent with the principles of the United Nations Charter. Since the Charter

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<sup>94</sup> S/RES/1244 (1999), 10 June 1999.

<sup>95</sup> S/PV.4011, 10 June 1999, p. 9.

<sup>96</sup> *Ibid.*, p. 11.

protects both sovereignty and human rights, there is a need to find a way to reconcile them.

The Charter, to be sure, is much more specific on respect for sovereignty than on respect for human rights, but since the day it was drafted the world has witnessed a gradual shift in that balance, making respect for human rights more mandatory and respect for sovereignty less absolute. Today, we regard it as a generally accepted rule of international law that no sovereign State has the right to terrorize its own citizens. Only if that shift is a reality can we explain how on 26 March the Russian-Chinese draft resolution branding the NATO air strikes a violation of the Charter could be so decisively rejected by 12 votes to 3.<sup>97</sup>

Canada agreed that there is a significant relationship between the maintenance of international peace and security and the protection of human rights and argued that the latter must be given new weight in the Council's definition of security and its decisions about when and how to engage conflicts.<sup>98</sup> Finally, the Netherlands suggested that the Security Council should devote a debate to the balance between respect for national sovereignty and territorial integrity on the one hand and respect for human rights and fundamental freedoms on the other hand. The Netherlands acknowledged that all States have difficulties dealing with the shift from sovereignty to human rights but warned that "times have changed, and they will not change back."<sup>99</sup>

In his annual report to the General Assembly later that year (September 1999), Secretary-General, Kofi Annan confirmed the existence of a developing international norm of military intervention to protect civilians from slaughter. He argued that state sovereignty was being redefined by the forces of globalization and international cooperation to include a state responsibility for the welfare of its people. Annan argued

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<sup>97</sup> S/PV.4011, 10 June 1999, p. 12.

<sup>98</sup> *Ibid.*, p. 13.

<sup>99</sup> *Ibid.*, pp. 12-13.

that the core challenge for the Security Council and to the United Nations as a whole in the twenty-first century is “to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand”.<sup>100</sup> He illustrated the dilemma by comparing the cases of Rwanda and Kosovo. He asked member States to consider what horrors might have been prevented in Rwanda should a regional organization have intervened to stop the genocide in absence of Security Council action. He also asked member States to consider the dangerous precedent set by the Kosovo case of using military force in absence of Security Council authorization and how it might threaten to undermine the international security system by abandoning some of the very values that the system was created to preserve. Great power unilateralism not only threatened the credibility and legitimacy of the United Nations, it threatened international order, peace and stability. In short, Annan issued a challenge to the United Nations Member States – to find a way to reconcile, in practice, human rights principles with the tradition of state sovereignty. In principle, he argued that the spirit of the Charter of the United Nations affirms fundamental human rights and the difficulty for member States was applying Charter principles to a new era – “an era when strictly traditional notions of sovereignty can no longer do justice to the freedoms and aspirations of peoples everywhere to attain their fundamental freedoms”.<sup>101</sup>

The acrimony between permanent members of the Security Council on the tension between sovereignty and human rights however, prevented this debate from occurring.

The stalemate on Kosovo interrupted the progression of the emerging norm of

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<sup>100</sup> Kofi Annan, “The Secretary-General presents his Annual Report to the General Assembly,” 20 September 1999 <http://www.un.org/News/press/docs/1999/19990919.sgsmr99.htm>

<sup>101</sup> Annan, “Annual Report to the General Assembly”.

humanitarian intervention from reaching the consensus needed to reach a tipping point that would lead to widespread acceptance.<sup>102</sup> Instead, because of the divisions within the Security Council, norm entrepreneurs had to find a new way to act and a new organizational platform from and through which they could promote the norm of humanitarian intervention because the Security Council was closed to further debate on the use of military force against sovereign states, regardless of their perpetrator status. The emerging norm of humanitarian intervention found a new organizational platform in the Independent International Commission on Intervention and State Sovereignty, which will be the subject of chapter 8. Security Council agreement was possible however, on an intentional causal story in Sierra Leone, in which its Government was under assault by rebel forces that were brutalizing the population. Because of the lack of conflict with sovereignty, Security Council authorized humanitarian intervention became possible in Sierra Leone when it had not in Kosovo.

## **Conclusions**

The case of Kosovo provoked the most direct confrontation among Security Council Members over the place of human rights norms and the norms of sovereignty and territorial integrity in Security Council deliberations about the use of force. Indeed, disunity among permanent Council Members on both the character of the conflict in Kosovo and the character of sovereignty provoked a major crisis in the international community with regard to humanitarian intervention, particularly within the United Nations Security Council. Humanitarian intervention was not authorized by the United

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<sup>102</sup> Finnemore and Sikkink, "Norm Dynamics and Political Change," 899.

Nations Security Council in the case of Kosovo because Council Members could not agree on the fundamental rights and responsibilities of States with regard to their populations and because its exercise would directly threaten the sovereignty norm. China and the Russian Federation argued that the Kosovo conflict was an internal matter of the Federal Republic of Yugoslavia and defended the state's right to repress unruly elements of its population. France, the United Kingdom and the United States argued that the Kosovo conflict was a threat to international peace and security because it was characterized by ethnic cleansing. Lack of agreement among permanent members of the Security Council on an intentional causal story about the conflict in Kosovo stymied humanitarian intervention, even in the face of increasing evidence of civilian casualties and the historical experience of Bosnia-Herzegovina.

Yet in Bosnia-Herzegovina the support of three permanent members for the intentional causal story of conflict was sufficient to trigger the use of force; why not so in Kosovo? In the case of Kosovo, China and Russia threatened to veto military action which they did not do in Bosnia. The reason that the case of Kosovo is different than the case of Bosnia is that the latter was a case of contested sovereignty while sovereignty in the former was not in question. Humanitarian intervention in Bosnia protected and preserved sovereignty whereas humanitarian intervention in Kosovo would directly challenge it. In Kosovo, the perpetrator was the state acting against its own civilians. In Bosnia, the Serbian state was also perpetrator but its victim was a sovereign state member of the United Nations. Defending Bosnia against external aggression and internal human rights abuses reinforced Bosnia's sovereignty. Defending Kosovo's Albanians against

Serbian violence would have violated the sovereignty of the Federal Republic of Yugoslavia. The success of an intentional causal story when contested is mediated in part by the extent to which the exercise of humanitarian intervention in a particular case would bring human rights norms into conflict with sovereignty.

Although the Security Council did not authorize humanitarian intervention for Kosovo, examination of the case shows the increasing strength of human rights norms and the growing desire among large numbers of states to reconcile principles of human rights with the practice of sovereignty. In absence of Security Council action in defense of Kosovo's Albanians, humanitarian intervention was undertaken by the North Atlantic Treaty Organization (NATO). The NATO intervention, although widely interpreted as illegal because of its lack of Security Council authorization, was widely accepted as legitimate or necessary in absence of Security Council action. NATO members of the Security Council defended their actions on the basis of shared human rights norms and a moral duty, indeed, even legal obligation to prevent ethnic cleansing. President Clinton claimed that it was a war to protect values, not interests.

I think that there is an important principle here that I hope will be now upheld in the future...And that is while there may be a great deal of ethnic and religious conflict in the world – some of it might break out into wars – that whether within or beyond the borders of a country, if the world community has the power to stop it, we ought to stop genocide and ethnic cleansing.<sup>103</sup>

Nevertheless the United States had at least two overlapping interests in Kosovo: prevention of a civil war/humanitarian crisis; and demonstration of the utility and

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<sup>103</sup> Ivo H. Daalder and Michael E. O'Hanlon, "Unlearning the Lessons of Kosovo," *Foreign Policy* 1999, 128.

potential of NATO.<sup>104</sup> The evidence presented here suggests that NATO members were motivated by humanitarian reasons to intervene to protect Kosovo's Albanians but the evidence also suggests that human rights norms shape rather than replace national interests. NATO members also had an interest in protecting regional stability and the nascent peace process in Bosnia which would be threatened by another war in the region. Further, the Kosovo crisis provided a crucial test of NATO credibility.<sup>105</sup> After the significant trials of Bosnia, NATO members needed to demonstrate the continuing strength and relevance of the NATO alliance. Ethnic cleansing in Kosovo coincided with the 50<sup>th</sup> birthday of NATO and in wake of the failure of the NATO-led Rambouillet talks due to the intransigence of the Serbs NATO faced international humiliation.<sup>106</sup> NATO opted for military intervention to save Albanian lives but also to illustrate the utility and the potential of the NATO alliance, particularly given its bad experience with multilateralism in Bosnia-Herzegovina.<sup>107</sup>

Intervention was possible, despite Security Council inaction, because the members of the North Atlantic Treaty Organization shared a conceptualization of the conflict in Kosovo as a case of ethnic cleansing. They articulated an intentional causal story with identifiable and intentional perpetrators (Serb authorities) who were committing gross crimes (ethnic cleansing) against a specific population (Kosovo's Albanians). The members of NATO also made a distinction between the recognized leader, Ibrahim Rugova, of Kosovo's non-violent movement and the Kosovo Liberation

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<sup>104</sup> MccGwire, "Why Did We Bomb Belgrade?" 19.

<sup>105</sup> DiPrizio, *Armed Humanitarians*, 139.

<sup>106</sup> MccGwire, "Why Did We Bomb Belgrade?" 14.

<sup>107</sup> Economides, "Kosovo," 229.

Army in an effort to bolster support for the conflict's victims. The case of Kosovo also provokes the question of whether intervention is more difficult in absence of a strategic partner on the ground. Causal stories require an intentional perpetrator that is deliberately harming a specific victim group, but international action may also require the presence of a "good guy" on whose behalf the intervention is undertaken. The debate among Security Council Members over whether Kosovo Albanian military action constituted terrorism made it more difficult to win support for the Kosovo Albanians from Security Council Members who argued that the conflict as a police action in response to terrorism. Canada, France, the Netherlands, the UK and the USA more easily identified Milosevic as the root cause of the violence because of their past experience in Bosnia and because of their guilt over the genocide at Srebrenica.

It is also important to note a limiting factor on humanitarian intervention that seems to be developing as part of the norm itself. The prospect for a successful outcome – the ability to do more good than harm – may help to explain why humanitarian intervention happens. This explanation links human rights principles with national interests. Kosovo was a low-cost intervention for NATO which did not suffer a single military casualty during the air-war. Given its effectiveness and low cost, Operation Allied Force has been called "probably the most successful use of strategic bombardment in the history of warfare".<sup>108</sup> But airpower had coercive utility because it was supported by military forces on the ground (KLA) and was targeted against a state. In contrast, more than three quarters of the civil wars of the 1990s took place in Africa where there were few strategic targets available to target from the air and crimes were frequently

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<sup>108</sup> Daalder and O'Hanlan, "Unlearning the Lessons of Kosovo," 131.

committed by rebel forces without vulnerabilities to airpower. Most of the conflicts in which gross and systematic human rights violations are occurring require the use of ground forces to stop them. This is significantly more costly for the interveners and success is harder to achieve.<sup>109</sup> The case of Rwanda showed that there are limits to the costs in terms of blood and treasure that states are willing to incur for strangers. The cases of both Rwanda and Kosovo demonstrate that there are barriers to Security Council authorized humanitarian intervention when the perpetrators of mass killing are states. Kosovo also shows however, the increasing legitimacy of the idea that members of the international community have an obligation to stop and prevent ethnic cleansing and genocide and that it is in their interest to do so. The evidence from the formal meetings of the Security Council in 1998 and 1999 demonstrate the existence of an emerging norm of humanitarian intervention. Its increasing ability to shape the decisions of Security Council members sparked a schism in the Security Council between those that wish to see the norm develop and strengthen and those that wish to see it fail.

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<sup>109</sup> Daalder and O'Hanlan, "Unlearning the Lessons of Kosovo," 132.

## **Chapter 7**

### **Council Unity, Humanitarian Intervention and Justice in Sierra Leone**

Civil war had been raging in Sierra Leone since March 1991 but Security Council involvement in the war did not begin until March 1995. Forced to compete for attention with ongoing crises in Bosnia and Somalia and to appeal to the United Nations for financial and military assistance in the shadow of recent UN debacles in Africa, namely Somalia and Rwanda, the crisis in Sierra Leone did not fully capture the attention of the Security Council until the end of the decade. Sierra Leone experienced a dramatic increase in violence against civilians in early 1999 much at the same time that a response to ethnic cleansing in Kosovo was being debated in the Security Council. Comparing the different responses of the Security Council and its permanent members to simultaneously occurring crises illustrates the important interplay between sovereignty norms and human rights norms.

In the case of Kosovo, there was a direct conflict between the protection of state sovereignty and the protection of human rights which blocked Security Council authorization for humanitarian intervention. In Kosovo the perpetrator of mass killing was a state whose sovereign authority of its territory and people was legally uncontested. In Sierra Leone, however, the democratically-elected Government of Sierra Leone was the victim, rather than the perpetrator, of gross human rights violations. This eliminated the tension between the protection of sovereignty and the protection of human rights. Instead, the Security Council could preserve sovereignty through the promotion of human

rights protection. Unified behind an intentional causal story about the conflict, in which armed rebel groups were attacking civilians and the sovereign authority of the democratically-elected Government, Council Members were able to defend and advance human rights norms at the same time that they affirmed the sovereignty of the Sierra Leonean State.

Comparing the Sierra Leone and Kosovo cases also illustrates the interplay of national interests with human rights norms. Although humanitarian intervention by the Security Council was not possible in the case of Kosovo, systematic violations of human rights and humanitarian law in Kosovo received a quicker, more robust military response than in the case of Sierra Leone, albeit outside the decision-making capacity of the Security Council. The United States and European states characterized the continuing conflict in Kosovo as an impending humanitarian disaster and a direct affront to their national security interests, in large part because of their deep involvement in the related conflict in Bosnia-Herzegovina. These interests, when combined with their military capacity and the increasing power of human rights norms, made humanitarian intervention possible for France, the UK and the USA, even in the absence of a Security Council mandate. In contrast, despite sustained engagement on the question of Sierra Leone, permanent Council members did not identify core national security interests in the region. The regional powers, whose stability was threatened by the conflict, were highly engaged in the conflict but lacked the robust military capacity to intervene decisively in absence of the political, military and financial support provided by the Security Council. Intervention in the case of Sierra Leone was slow but determined, eventually reversing

the gains made by the rebel movement. The simultaneous occurrence of these two conflicts and the different means of resolving them provoked numerous comparisons between the two cases among Security Council Members, the broader membership of the United Nations, and even among refugees on the ground in Sierra Leone who leveled accusations of unequal treatment. But it is precisely the of lack of Great Power interests in Sierra Leone that more forcefully illustrates the increasing power of human rights norms within the United Nations Security Council.

Security Council members were largely motivated by human rights concerns when they placed the situation in Sierra Leone on the Security Council agenda in 1995. Although Council members had a vested interest in later condemning violations of Sierra Leone's sovereignty, the case ushered in monumental changes to UN peacekeeping and peace enforcement operations. These changes included the creation of a civilian protection mandate under Chapter VII of the Charter and the establishment of human rights monitors and child protection standards for peacekeeping operations. These innovations marked important advances for the principles of human rights. Formal meetings on the situation in Sierra Leone also illustrated the increased commitment to the principles of democracy and the rule of law among Council Members. Security Council members were less active in Sierra Leone's civil war during the period it was ruled by a military government. Following the democratic election of a new President, however, the Security Council became more involved in trying to end the fighting, particularly after the democratically elected government was deposed by a military coup. The Security Council endorsed the use of force by ECOWAS troops to reinstall the democratically

elected President of Sierra Leone. The United Nations vividly signaled its preference for justice over impunity with regards to past human rights violations when the Special Representative for Sierra Leone amended the Lomé Peace Accords to allow international prosecution for the crimes of genocide, war crimes and crimes against humanity despite a domestic amnesty provision. Indeed, under great pressure from its permanent members, the Security Council authorized the Secretary-General to negotiate the creation of a Special Court for Sierra Leone with the Government to complement the negotiated truth and reconciliation commission.

Finally, the Sierra Leone case is notable because of the Council's attempt to deal with the underlying sources of conflict, rather than its symptoms, through its resolutions. Long committed to evaluating each conflict on an individual basis, the Security Council began to move toward conceptualizing the conflict in Sierra Leone in regional terms. Unable to bring the rebel movement in Sierra Leone to the bargaining table through promises of power-sharing, the Security Council sought to eliminate their external support for continuing the war. The Security Council created a Commission of Experts to study the relationship between illegal arms transfers, the trade in rough diamonds and rebel movements in West Africa, and particularly Sierra Leone. The result was a monumental resolution mandating a certification process for the trade in rough diamonds, the public naming and shaming of a sitting African head of state and punitive action taken by the Security Council against a third party for its external involvement in the Sierra Leone conflict. In sum, the case of Sierra Leone signaled an important advancement for human rights norms and marked a shift, like in the case of Kosovo,

toward a broader conception of state sovereignty that included state responsibility for the protection of human rights. Unlike Kosovo, however, the use of military force was authorized by the Security Council because permanent members of the Security Council shared an intentional causal story about the conflict and the exercise of humanitarian intervention in this case complemented state sovereignty.

### **Security Council Involvement in the Sierra Leone Conflict, (1995-2005)**

The United Nations first became involved in the conflict in Sierra Leone in March 1995 when the Secretary-General appointed a Special Representative to the conflict. Later that same year, the Security Council called for an end to the fighting that had characterized Sierra Leone since March 1991 when the Revolutionary United Front (RUF) initiated cross-border warfare against the Sierra Leone Government. The war started by the RUF raged against 3 successive governments and accelerated decades of state disintegration before officially ending in January 2002.<sup>1</sup> There were three major turning points with regard to Security Council action in the Sierra Leone conflict including the military coup led by the Armed Forces Revolutionary Council (AFRC) against the democratically elected president in May 1997; the January 1999 RUF invasion of Freetown; and the May 2000 RUF abduction of 500 United Nations personnel. At each of these points the Security Council had the opportunity to either increase its resolve to end the war through robust action or to diminish its presence in absence of progress toward peace. Though critics might argue that Security Council

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<sup>1</sup> John Hirsch, "Sierra Leone" in *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century* ed. David E. Malone (Lynne Rienner Publishers, 2004), 521.

action was both little and late in the case of Sierra Leone, its steady and determined response to the crisis illustrated the Council's renewed commitment to peace operations in Africa.

In 1991 when the Revolutionary United Front (RUF) offensive started, Major General Joseph Momoh was president of the single-party state of Sierra Leone. But in April 1992, junior officers who were discouraged with the lack of financial compensation coupled with inadequate medical care carried out a bloodless coup against Momoh. The officers formed the National Provisional Ruling Council (NPRC) and selected Captain Valentine Strasser as their Chairperson. The war continued despite the change of regime and the RUF targeted the civilian population in its war against the Government in an effort to demonstrate to the people of Sierra Leone that the Government could not protect them. In 1995, the Government of Sierra Leone hired Executive Outcomes, a private South African security firm, to assist the army in fighting the RUF rebels. Peace negotiations between the NPRC and the RUF began in 1995 and the parties agreed to schedule multi-party elections to be held in February 1996. Despite an internal coup replacing Strasser as Chairman, the NPRC agreed to maintain the agreed-upon election schedule. Prior to the February 1996 elections, however, the RUF began amputating the hands of civilians in an effort to dissuade them from voting for the Government in the upcoming elections. Despite continuing violence, democratic elections were successfully held in February and March 1996. The results were sanctioned by the international community and the Security Council congratulated the people of Sierra Leone on their

courage and commitment to democracy.<sup>2</sup> The newly elected President, Ahmad Tejan Kabbah, continued Government negotiations with the RUF culminating in the Abidjan Peace Agreement in November 1996. The United Nations Security Council welcomed the agreement and become one of its four moral guarantors, along with the Organization for African Unity (OAU), the Commonwealth, and the Economic Community of West African States (ECOWAS). It seemed as if the conflict might be at an end. But in March 1997, the RUF resumed military operations against Kabbah's Government.

*Figure 7.1: Key Actors in the Sierra Leone Crisis (1995-2002)*

AFRC	Armed Forces Revolutionary Council
CDF	Civil Defense Forces
ECOWAS	Economic Community of West African States
ECOMOG	Military Observer Group of Economic Community of West African States
NPRC	National Provisional Ruling Council
OAU	Organization of African Unity
RUF	Revolutionary United Front
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNAMSIL	United Nations Mission in Sierra Leone

In May, Kabbah was overthrown by a military coup d'état organized by junior military officers. Following its successful takeover of the Government, the Armed Forces Revolutionary Council (AFRC), invited the RUF to join the newly established Government. International condemnation of the military coup was quick and universal.

Immediately, African heads of State unanimously condemned the military coup and demanded the re-instatement of President Kabbah. The Security Council issued a

<sup>2</sup> S/PRST/1996/12, 19 March 1996.

presidential statement condemning the coup and demanding the immediate restoration of constitutional order.<sup>3</sup> During an open meeting of the Security Council in July 1997, the representative of Zimbabwe, speaking on behalf of the Organization of African Unity (OAU) argued that the coup was a direct challenge to the international community. According to the OAU, all of Africa was united in standing behind the Government of President Kabbah of Sierra Leone. The OAU condemned the coup but also called on the Security Council to support both ECOWAS and the OAU in “seeking the non-recognition and demise of the military regime in Sierra Leone and working for the restoration of the democratically elected Government in that country.”<sup>4</sup> Nigeria gave a statement to the Council on behalf of ECOWAS. In his remarks, the representative from Nigeria noted that the coup in Sierra Leone not only threatened the people of that country, but also the precarious efforts at building peace in neighboring Liberia and the stability of Guinea. During its June 26 meeting, ECOWAS created several objectives related to resolving the Sierra Leone crisis and elected four countries to serve as a ministerial committee on Sierra Leone: Nigeria, Guinea, Cote D’Ivoire and Ghana. ECOWAS sought endorsement from the Council of its plan to reinstate President Kabbah, return peace and security to Sierra Leone and resolve the problem of refugees and internally displaced persons (IDPs) through a combination of dialogue, the imposition of sanctions and an arms embargo and the use of force.<sup>5</sup> The Security Council expressed its support for the joint OAU – ECOWAS efforts in a presidential statement that defined the crisis in Sierra Leone as a

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<sup>3</sup> S/PRST/1997/29, 27 May 1997

<sup>4</sup> S/PV.3797, 11 July 1997.

<sup>5</sup> Ibid.

threat to the peace, security and stability of the entire region.<sup>6</sup> A month later, the Security Council specifically condemned the military junta in Sierra Leone for its failure to negotiate with ECOWAS in good faith and threatened,

“The Security Council will, in the absence of a satisfactory response from the military junta, be ready to take appropriate measures with the objective of restoring the democratically elected government of President Kabbah.”<sup>7</sup>

In an open meeting of the Security Council in October 1998, African states again noted their universal condemnation of the military coup in Sierra Leone. Nigeria noted that the UN, OAU and ECOWAS had jointly demanded that the military junta step down so that the democratically elected government could be restored.<sup>8</sup> Referring to the statement of the OAU summit in June, Kenya noted,

Africa was saying, and the international community was supporting the clear statement, that military coups overthrowing democratically elected Governments were no longer going to be accepted.<sup>9</sup>

Egypt noted that the unanimous refusal to recognize the military junta marked an important turning point in the history of Africa,

It is thus perfectly clear that there is a new, unanimous African position regarding military coups in the countries of the continent.<sup>10</sup>

The delegations of Kenya, Chile, and Sweden, each quoted a recent statement of the Secretary-General with regard to the coup in Sierra Leone, showing the diverse international coalition of support for Sierra Leone’s democratically-elected Government.

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<sup>6</sup> S/PRST/1997/36, 11 July 1997.

<sup>7</sup> S/PRST/1997/42, 6 August 1997.

<sup>8</sup> S/PV.3822, 8 October 1997, p. 4

<sup>9</sup> Ibid., p. 5.

<sup>10</sup> Ibid., pp. 12-13.

At stake is a great issue of principle, namely, that the efforts of the international community for democratic governance, grounded in the rule of law and respect for human rights, shall not be thwarted through illegal coups.<sup>11</sup>

The Security Council unanimously passed resolution 1132 (1997) which determined that the situation in Sierra Leone constituted a threat to international peace and security. The resolution, under Chapter VII of the Charter, demanded that the military junta relinquish power and restore the democratically-elected government, called for an end to violence, and created a travel, petroleum and arms embargo against the junta, authorizing ECOWAS to enforce it.<sup>12</sup> The Security Council further affirmed the legitimacy of the democratically-elected Government of Sierra Leone by allowing its representatives in exile to represent the State during Security Council meetings on the conflict.

Despite the signing of a peace plan between ECOWAS and the junta in Conakry in October 1997, by February 1998, the Military Observer Group of Economic Community of West African States (ECOMOG) had forced the military junta from Freetown with the full support of the Security Council.<sup>13</sup> This ended their nine-month military rule, which was characterized by widespread human rights abuses and suspension of the rule of law.<sup>14</sup> By March, President Kabbah had returned to Sierra Leone and immediately embarked on a program of national reconciliation aimed at restoring peace and security to Sierra Leone. Despite Kabbah's efforts and the framework for peace provided by the Abidjan and Conakry agreements, the RUF and the

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<sup>11</sup> S/1997/776, p. 2 in S/PV.3822, 8 October 1997.

<sup>12</sup> S/RES/1132 (1997), 8 October 1997.

<sup>13</sup> S/PRST/198/5, 26 February 1998.

<sup>14</sup> Human Rights Watch, "Sierra Leone", Human Rights Watch Annual World Report 1999 <http://www.hrw.org/worldreport99/africa/sierraleone.html>

remnants of the deposed military junta continued their campaign of terror against the civilian population including widespread rape, bodily mutilation, slaughter and the forced conscription of children into the rebel army. In July, the Security Council authorized the United Nations Observer Mission in Sierra Leone (UNOMSIL). This mission was unique because it reflected the growing cooperation between the United Nations and regional organizations like ECOWAS and was only the 3<sup>rd</sup> peacekeeping operation authorized in over two years.<sup>15</sup> Resolution 1181 (1998) outlined the tasks of UNOMSIL including monitoring the military and security situation in the country, the disarmament and demobilization of former combatants and respect for international humanitarian law.<sup>16</sup>

Six months later, In January 1999, the RUF and ex-Sierra Leone army officers invaded Freetown. The shocking atrocities committed by members of the RUF against the civilian population throughout Sierra Leone, were perpetrated for the first time in the capitol city as civilians were randomly targeted for rape, murder, and bodily mutilation. Human Rights Watch described the three-week RUF occupation of Freetown as “the most intensive and concentrated period of human rights violations in Sierra Leone’s eight-year civil war”.<sup>17</sup> More than 7,000 people were killed including approximately 100 Nigerian soldiers.<sup>18</sup> During the fighting between ECOMOG soldiers and the rebels, the former engaged in summary executions while the latter used civilians as human shields.

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<sup>15</sup> S/PV.3902, 13 July 1998, pp. 4-5.

<sup>16</sup> S/RES/1181 (1998), 13 July 1998.

<sup>17</sup> Human Rights Watch, “Sierra Leone”, Human Rights Watch World Report 2000, <http://www.hrw.org/wr2k/Africa-09.htm#TopOfPage>.

<sup>18</sup> Adekeye Adebajo and David Keen, “Sierra Leone,” in *United Nations Interventionism, 1991-2004* ed. Mats Berdal and Spyros Economides (Cambridge: Cambridge University Press, 2007), 257.

Human Rights Watch documented more than 3,000 missing children in the aftermath of the RUF withdrawal from Freetown.<sup>19</sup> The RUF was widely known for its practice of kidnapping children and training them to become rebel soldiers.

The Lomé Peace Accords were signed by the Government of Sierra Leone and the leaders of the RUF in July 1999. The accords included a program for the disarmament, demobilization and reintegration of rebel fighters and members of the Civil Defense Forces (CDF) fighting for the Government, broad power-sharing between the parties and a blanket amnesty for crimes and human rights violations committed during the civil war. Rebel leader, Foday Sankoh, who had been imprisoned in Nigeria, was awarded the position of vice-president and the chairmanship of a Commission for the Management of Strategic Resources which gave him control of the diamond mines his rebel group had been using to finance their insurgency against the Government. The warlords were given “political power in exchange for military peace”.<sup>20</sup> In an historically unprecedented move, however, the Secretary-General’s Special Representative for Sierra Leone Francis Okelo, appended a hand-written disclaimer to the peace agreement stating that the United Nations would not recognize the amnesty provision as applying to international crimes -- genocide, crimes against humanity and war crimes.

In October 1999, the United Nations Security Council established the United Nations Mission in Sierra Leone (UNAMSIL) with a mandate to assist the parties to the Lomé Accords with implementation of the peace agreement including among other tasks, the disarmament, demobilization and reintegration of former combatants (DDR),

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<sup>19</sup> Human Rights Watch, “Sierra Leone.”

<sup>20</sup> Adebajo and Keen, “Sierra Leone,” 257.

monitoring of the cease-fire and facilitating the delivery of humanitarian assistance. Resolution 1270 (1999) was innovative in its authorization of self-defense and civilian protection capacities for UNAMSIL, marking an important precedent for human rights protection in peacekeeping operations.

Between November 1999 and April 2000, repeated cease-fire violations, continuing rebel atrocities against civilians, slow progress on implementation of the DDR programme, and increasing obstruction of UNAMSIL caused the Security Council to increasingly call into question the commitment of the RUF to peace and national reconciliation in Sierra Leone. Finally, in May 2000, RUF rebels abducted 500 United Nations personnel. As a result, the peace process collapsed. The Security Council issued a statement condemning the armed attacks by RUF against UNAMSIL and demanded they stop immediately. The statement also directly named Foday Sankoh, leader of the RUF and vice president, responsible for the continued violence in Sierra Leone and obstruction of the UNAMSIL mission.<sup>21</sup> Massive civil society protests by the residents of Freetown broke out on 8 May. When angry protesters surrounded Sankoh's house, his security fired indiscriminately into the crowd killing several protesters. Sankoh was forced to flee and was arrested several days later by a Sierra Leonean soldier. In the immediate aftermath of the hostage crisis, the United Kingdom responded forcefully by sending in 600 British Forces and a Royal Navy Task force to Freetown. Originally intended to rescue foreign nationals, the British troops stayed on to secure the airport and defend the city. The presence of the British troops provided the necessary support for

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<sup>21</sup> S/PRST/2000/14, 4 May 2000.

UNAMSIL to regroup and the UK later took an active role in promoting the adoption of an expanded and strengthened UNAMSIL and mandate.<sup>22</sup>

At the Security Council, the attacks against UNAMSIL ushered in a debate among members and troop contributors whether the mandate for Sierra Leone was insufficient for its environment or whether UNAMSIL was short on capacity with regards to its mandate. In the end, the Security Council recommitted itself to matching mission capability to mission mandate, voting to expand the military personnel level of UNAMSIL and to sufficiently supply it.<sup>23</sup>

In June 2000, the Security Council passed a landmark resolution noting the link between illegal arms transfers, the trade in rough diamonds and the continuing conflict in Sierra Leone. Resolution 1306 (2000) prohibited the import of diamonds from Sierra Leone and established a Certificate of Origin trade regime in Sierra Leone. In July, the Council determined that the terms of the Lomé peace accord had been violated and noted that those responsible for violating the agreement would be brought to justice.<sup>24</sup> The Council also began to address the conflict in Sierra Leone in regional rather than in strictly state-based terms. In another break with tradition, the Security Council and many of its members publicly named Liberia and its sitting head of State, Charles Taylor, as supporters of the RUF rebels and violators of the Council-mandated arms embargo. The accusations against Liberia as trafficking in arms and diamonds were repeated into the new year finally resulting in the adoption of resolution 1343 (2001) which demanded that

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<sup>22</sup> Hirsh, "Sierra Leone," 529.

<sup>23</sup> See S/PV.4139, 11 May 2000 and S/RES/1299 (2000), 19 May 2000.

<sup>24</sup> S/PV.4168, 5 July 2000.

Liberia cease its support of the RUF and enacted a sanctions regime against Liberia.<sup>25</sup>

This regional orientation would persist and influence the Security Council response for the remainder of the conflict.

The Council also authorized the creation of a special Court for Sierra Leone to bring to trial those individuals most responsible for the violations of human rights and humanitarian law in Sierra Leone.<sup>26</sup> Almost two years later, Liberian President, Charles Taylor, was served a sealed indictment by the Special Court for his financial and material support of crimes against humanity in Sierra Leone. In May 2001 the Government signed the Abuja II agreement with the rebel leaders. In January 2002, President Kabbah declared that civil war had ended in Sierra Leone. President Kabbah was re-elected in successful democratic elections in May 2002. The dual-track strategy of ECOWAS and the UN – political negotiations combined with strengthening of forward advancement of UNAMSIL – was largely credited with resolving the crisis.

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<sup>25</sup> S/RES/1343 (2001), 7 March 2001.

<sup>26</sup> S/RES/1315 (2000), 14 August 2000.

*Table 7.1 Security Council Support for Resolutions on Sierra Leone*

<b>Resolution</b>	<b>Subject</b>	<b>Votes in Favor</b>	<b>Abstentions</b>	<b>Votes Against</b>
<b>1181 (1998)</b>	Authorized UNOMSIL	Bahrain, Brazil, <b>China</b> , Costa Rica, <b>France</b> , Gabon, Gambia, Japan, Kenya, Portugal, <b>Russian Federation</b> , Slovenia, Sweden, <b>UK, USA</b>	None	None
<b>1270 (1999)</b>	Authorized UNAMSIL; Authorized self-defense and civilian protection capacities under Chapter VII	Argentina, Bahrain, Brazil, Canada, <b>China</b> , <b>France</b> , Gabon, Gambia, Malaysia, Namibia, Netherlands, <b>Russian Federation</b> , Slovenia, <b>UK, USA</b>	None	None
<b>1306 (2000)</b>	Prohibited import of rough diamonds from Sierra Leone and established Certificate of Origin Regime	Argentina, Bangladesh, Canada, <b>China</b> , <b>France</b> , Jamaica, Malaysia, Namibia, Netherlands, <b>Russian Federation</b> , Tunisia, Ukraine <b>UK, USA</b>	Mali	None
<b>1315 (2000)</b>	Authorized the creation of a Special Court for Sierra Leone	Argentina, Bangladesh, Canada, <b>China</b> , <b>France</b> , Jamaica, Mali, Malaysia, Namibia, Netherlands, <b>Russian Federation</b> , Tunisia, Ukraine <b>UK, USA</b>	None	None
<b>1343 (2001)</b>	Condemned Liberian support of the RUF and placed sanctions on Liberia	Bangladesh, <b>China</b> , Colombia, <b>France</b> , Ireland, Jamaica, Mali, Mauritius, Norway, <b>Russian Federation</b> , Singapore, Tunisia, Ukraine, <b>UK, USA</b>	None	None

### **Unity around Causal Story of Conflict**

Humanitarian intervention became possible in Sierra Leone because Security Council members were united around a single intentional causal story about conflict. The formal meetings on the situation in Sierra Leone are distinguished from other cases

described in the dissertation, specifically because of the lack of contestation among Council Members about the causal story of conflict in Sierra Leone. Very little time in formal meetings was dedicated to defining the conflict and identifying its perpetrators precisely because there was widespread agreement that the situation constituted a threat to regional and/or international peace and security and that rebel military forces, particularly the RUF, were perpetrating gross human rights violations against the civilian population at the same time that it sought to undermine the sovereignty of a democratically-elected Member State of the United Nations. So while civil war was happening it was characterized by rebel aggression against a legitimate state.

The Security Council's first statements about the situation in Sierra Leone following the military coup d'état of the democratic Government of President Kabbah in 1997 denied the military junta any mark of legitimate authority and demanded immediate and unconditional restoration of constitutional order.<sup>27</sup> By August 1997, the Council threatened,

The Security Council will, in the absence of a satisfactory response from the military junta, be ready to take appropriate measures with the objective of restoring the democratically elected government of President Kabbah.<sup>28</sup>

Council Members identified the legitimate and sovereign Government of Sierra Leone and its people as the primary victims of rebel violence. In Sierra Leone it was the combination of the existence of gross human rights violations and the overthrow of a democratically elected President that motivated Security Council action. The Government of Sierra Leone was committed to values that the Security Council argued

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<sup>27</sup> S/PRST/1997/29, 27 May 1997; S/PRST/1997/36, 11 July 1997; S/PRST/1997/42, 6 August 1997

<sup>28</sup> S/PRST/1997/42, 6 August 1997.

were linked to the maintenance of international peace and security. These values included respect for human rights and democratic rights, protection of the rule of law and commitment to political reconciliation with rebel groups. The United States recognized that although a military coup had occurred, a simultaneous and related civil war was also ongoing. The U.S. representative connected the previous six years of “insurgency” and “domestic terrorism” by the Revolutionary United Front (RUF) to the military coup. The United States threatened that the Security Council was willing to use Chapter VII enforcement powers to demand restoration of the legitimate Government to state power.<sup>29</sup> Security Council Members, permanent and elected, and from diverse geographic locations, including Bahrain, Sweden, China, Kenya the Russian Federation and Brazil, all identified the Revolutionary United Front, ousted members of the military junta and their supporters as the perpetrators of horrible atrocities against the civilian population in Sierra Leone. Resolution 1181 (1998) which established the United Nations Observer Mission in Sierra Leone, specifically condemned “the continued resistance of remnants of the ousted junta and members of the Revolutionary United Front (RUF) to the authority of the legitimate government and the violence they are perpetrating against the civilian population of Sierra Leone, and demands that they lay down their arms immediately;<sup>30</sup> The identification of intentional perpetrators became even more specific in March 2000 when Council Members shifted to more frequent and direct identification of the RUF and

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<sup>29</sup> S/PV.3822, 8 October 1997, pp. 16-7.

<sup>30</sup> S/RES/1181, 13 July 1997.

particularly its leader, Foday Sankoh, as responsible for obstructing the peace process and increasing violations of international human rights and humanitarian law.<sup>31</sup>

In Sierra Leone the intentional causal story framing joined with the characterization of the conflict as a civil war. Although there were two main parties to the conflict they were not equally culpable, according to the Security Council. In fact, in this case, the civil war story described aggression against the civilian population and its representative government. This framing of civil war in which the parties do not necessarily bear equal responsibility might have been useful for characterizing the Rwanda conflict. Such a framing was not possible in Rwanda however because in Rwanda the rebel group aggression against the state did not line up with the culpability for atrocities. Instead, the state was the aggressor against civilians while the rebels were challenging state sovereignty.

There was some objection to the civil war framing of the conflict, however, but only by a couple members of the Council who questioned the utility of conceptualizing the conflict in terms of a civil war when one party, the RUF, lacked a political platform or a domestic constituency. Slovenia, for example, described a “spiral of senseless violence, power struggles, coups and counter-coups” as occurring in Sierra Leone over the previous seven years.

...Sierra Leone is not suffering a civil war. The RUF has no viable political support or even an identifiable constituency, which is why it has in the past refused repeated invitation to join the political process. Together with the remnants of the military junta, it now constitutes an amorphous formation which has no clear leadership structure. The violence against the civilian population in

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<sup>31</sup> S/PV.4111, 13 March 2000 p. 6 (UK); p. 7 (Malaysia); p. 8 (the Netherlands); p. 10 (China); and S/PV.4111, resumption 1, 13 March 2000, p. 4 (Argentina); p. 5 (USA); and p. 9 (Bangladesh).

Sierra Leone, as horrible as it is, has therefore not undermined the foundations of the country.<sup>32</sup>

In December 1998, while Sweden described the conflict in Sierra Leone as civil war, albeit characterized primarily by rebel violence against civilians, the United Kingdom described the situation as a campaign of violence perpetrated by the rebels against the people of Sierra Leone.

The people of Sierra Leone have to be protected from what is really a campaign of murder, terror and horrific abuse of human rights.<sup>33</sup>

Gambia characterized the conflict, like Slovenia, as a rebel assault by a military organization without a political agenda.<sup>34</sup> Despite some distinction among Council Members in the terms used to describe the fighting in Sierra Leone – whether or not it should be called a civil war – there was widespread agreement that it was not another conflict along ethnic, religious or cultural lines. It was distinctive from many of the intra-state crises occupying the Security Council agenda. Mr. Olara Otunnu, Special Representative of the Secretary-General for Children and Armed Conflict, drew attention to this distinction in his briefing before the Council in October 1999.

...the diabolical atrocities committed in Sierra Leone were not the result of mass violence or inter-communal upheavals along ethnic or religious lines, as we have seen in other situations of conflict. Rather, it was the work of a small segment of the population – well armed, deeply alienated and bitter – unleashing organized and indiscriminate terror on the rest of society.<sup>35</sup>

Otunnu's description of the conflict was consistent with that offered by Slovenia the year before – a description that would be repeated in its most forceful formulation by the

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<sup>32</sup> S/PV.3902, 13 July 1998, p. 7.

<sup>33</sup> S/PV.3957, 18 December 1998, p. 13.

<sup>34</sup> S/PV.3986, 11 March 1999, p. 11.

<sup>35</sup> S/PV.4054, 22 October 1999, p. 4.

Government of Sierra Leone itself. In July 2000 during a formal meeting on the regional dimensions of the conflict in Sierra Leone, the Government representative for Sierra Leone forcefully explained that the fighting should not be conceptualized as civil war. Consistent with earlier depictions of the rebels as lacking a political base of support, Sierra Leone noted that rebel attacks were perpetuated only through external intervention rather than through domestic support of any segment of the Sierra Leonean people. Rather than pursuing a political, social or economic agenda for a segment of the Sierra Leonean population, the rebels were pursuing personal aggrandizement, according to the Government.

We have always maintained that the conflict in Sierra Leone is not about ideology or tribal or regional differences. It has nothing to do with the so-called problem of marginalized youths. Nor is it, as some commentators have characterized it, an uprising by the rural poor against the urban elite. The root of the conflict is, and remains diamonds, diamonds, diamonds. All along, we have been telling the international community that ours is not a civil war, but a rebel war based on brutality, supported by regional, subregional and international surrogates and, more importantly, financed by illicit trade in Sierra Leone's diamonds. At last, the Security Council has come to realize that the war in Sierra Leone is cast in gemstones.<sup>36</sup>

In July 2001, a Panel of Experts, commissioned by the Security Council to study the relationship between the trade in arms and the trade in diamonds in Sierra Leone, found that that the conflict in Sierra Leone was motivated by the desire on the part of the rebels to control the diamond mines in Sierra Leone. Mauritius responded,

It is not without a sense of revulsion that we note from the Panel's findings that the misery inflicted on the people of Sierra Leone is not really for a legitimate political, social or economic or humanitarian cause championed by the rebel forces, but actually for the self-enrichment of individuals and their friends, at home and elsewhere, utilizing the natural resources of the country and diamonds

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<sup>36</sup> S/PV.4168, 5 July 2000, p. 2.

from Sierra Leone in particular. It is indeed outrageous that the lives of so many innocent Sierra Leonean children, women and men have been extinguished and so many others have been condemned to live miserably for ever with vital limbs cut off simply because a powerful few have entertained a sinister dream to amass unlimited wealth through illegitimate means.<sup>37</sup>

Despite some variation in the naming of the conflict in Sierra Leone – civil war or rebel war – the distinction between these terms had little impact on decision-making in the Security Council. Both characterizations stuck to the intentional framework and had all three elements of an intentional causal story. Council Members converged around an intentional causal story where the Government and people of Sierra Leone were victims of the intentional and identifiable perpetrators (the RUF, its leader Foday Sankoh and remnants of the former military junta) who sought to overthrow the State, abuse its population and seize control of its natural resources. Although different terms were used by Security Council members to describe the situation in Sierra Leone, the substantive meaning behind the terms was largely consistent over time. Despite a few instances in which States called upon “the parties” to uphold the peace process and live up to their commitments, Security Council Members credited the Government for its efforts at national reconciliation and criticized the RUF for committing atrocities and its obstruction of the peace process.<sup>38</sup> In short, members used two different terms to describe a similar phenomenon. There was widespread agreement within the Council on the appropriate response - pursuing a two-track approach comprised of political dialogue with the RUF accompanied by forward deployment of the United Nations Mission in Sierra Leone (UNAMSIL) - for solving the conflict. Unity around a causal story of

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<sup>37</sup> S/PV.4264, 25 January 2001, p. 17.

<sup>38</sup> See for example, S/PV.4078, 10 December 1999, p. 13 (USA).

conflict with regard to Sierra Leone provided a permissive context in which humanitarian intervention by UNAMSIL became possible; but the framing of the conflict by Council Members lacked any independent causal impact.

### **The Increasing Power of Human Rights Norms**

The increasing influence of human rights norms on Security Council decision-making was evident in the adoption of significant human rights elements of UNOMSIL and UNAMSIL mission operations and mandates, including a significant commitment to civilian protection under Chapter VII of the Charter of the United Nations, as well as in the creation of a Special Court to address violations of human rights and humanitarian law in Sierra Leone. Although early Security Council reaction to the crisis initiated by the military overthrow of Sierra Leone's democratically-elected Government was primarily concerned with the return of legitimate state authority and the protection of the sovereignty norm, these statements also addressed the Council's concerns about the humanitarian consequences. After President Kabbah had been restored to his position as President, however, the Council's concern with rebel violations of human rights and humanitarian law was central to explaining the Council's continued engagement with the conflict in Sierra Leone. On 20 May 1998, the Security Council issued a strongly worded presidential statement that condemned the atrocities carried out by the RUF and the deposed military junta against members of the civilian population, particularly women and children. In it the Council called for the full respect of international law including

human rights and humanitarian law.<sup>39</sup> These humanitarian demands were to be repeated in subsequent resolutions and presidential statements of the Council.

The Security Council unanimously passed resolution 1181 (1998) establishing the United Nations Observer Mission in Sierra Leone (UNOMSIL) in July 1998. The mandate included monitoring respect for international humanitarian law and human rights. Council Members called not only for the end of fighting against the Government of Sierra Leone, they called on all factions to respect human rights and abide strictly by the rules of humanitarian law.<sup>40</sup> Brazil declared, for example, that the observance of humanitarian law was essential both to the establishment of lasting peace and to the proper functioning of democracy”.<sup>41</sup> Following the increased violence against civilians in the wake of the RUF siege and then withdrawal from Freetown in early 1999, Security Council Members once again denounced both the “scale and grotesque nature of attacks on civilians” by members of the AFRC and RUF.<sup>42</sup> These violations of human rights including torture, amputation, murder, rape, mutilation and forcible recruitment of child soldiers were alternately described as “unspeakable atrocities,” “heinous acts”, and “a veritable orgy of rape and rapine” by delegations from Canada, Malaysia, Brazil and Slovenia.<sup>43</sup> Argentina noted that the purpose of resolution 1181 (1998) was to send an ethical and moral message: that the Security Council supported democratic legitimacy and the values of freedom and tolerance and condemned atrocities against civilians.<sup>44</sup>

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<sup>39</sup> S/PRST/1998/13, 20 May 1998.

<sup>40</sup> S./PV.3902, 13 July 1998, p. 12 (Portugal & Brazil); p. 11 (Sweden).

<sup>41</sup> Ibid., p. 12.

<sup>42</sup> S/PV.3986, 11 March 1999. p. 11.

<sup>43</sup> Ibid., pp. 5; 7; 9-10.

<sup>44</sup> Ibid., p. 6.

The establishment of the United Nations Mission in Sierra Leone (UNAMSIL) seven months later further illustrated the centrality of human rights concerns to Security Council decision-making on Sierra Leone. Resolution 1270 (1999) authorized UNAMSIL personnel to provide protection for civilians threatened by violence during the discharge of their mandate in accordance with Chapter VII of the Charter of the United Nations.

14. Acting under Chapter VII of the Charter of the United Nations, decides that in the discharge of its mandate UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and ECOMOG;<sup>45</sup>

This civilian protection mandate was not authorized in previous UN peace operations. The resolution also noted the importance of training UNAMSIL personnel in international humanitarian, human rights and refugee law.<sup>46</sup> During the formal debate preceding adoption of resolution 1270 (1999), Mr. Otunnu, Special Representative of the Secretary-General for Children and Armed Conflict, commended Council Members for prioritizing child protection and welfare in UNAMSIL's mandate, for attaching a child-protection advocate to the mission and for providing appropriate training of all peacekeeping personnel on the protection of the rights of children and women into the operation of UNAMSIL.<sup>47</sup> Other states including Malaysia, the Netherlands and Canada, among others, expressed their pleasure at the robust rules of engagement provided to UNAMSIL in order to protect itself and those civilians in areas under their control under

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<sup>45</sup> S/RES/1270, 22 October 1999.

<sup>46</sup> S/RES/1270, 22 October 1999, see operative clause 14 & 15.

<sup>47</sup> S/PV.4054, 22 October 1999, p. 3.

imminent threat of violence. Sierra Leone argued that the adoption of the civilian protection mandate would send a clear message to potential violators of human rights that the international community would not turn a blind eye when innocent civilians are under threat of physical violence.<sup>48</sup> Canada agreed that adoption of the resolution including the Chapter VII authorization for civilian protection would have an important deterrent effect.<sup>49</sup> Argentina noted the significance of this innovative development for peacekeeping operations.

We believe that the protection of civilians under Chapter VII is a pertinent development in the context of the mandate of a peacekeeping operation. This draft resolution is significant in that it introduces a new, fundamental political, legal and moral dimension. This bears on the credibility of the Security Council and shows that the Council has learned from its own experience and that it will not remain indifferent to indiscriminate attacks against the civilian population.<sup>50</sup>

Human rights concerns not only motivated Security Council members to act to help end the conflict in Sierra Leone, it fundamentally informed the character of its intervention.

### **Security Council Commitment to International Justice**

Another important advance for human rights norms was the creation of the Special Court for Sierra Leone under the auspices of the Security Council in August 2000. At the signing of the Lomé Peace Agreement in July 1999, the Government of Sierra Leone and the leaders of the RUF signed a peace deal that included a blanket amnesty provision for crimes committed during Sierra Leone's civil war. Reflecting growing consensus within the United Nations Secretariat and among many Member

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<sup>48</sup> S/PV.4054, 22 October 1999, p. 6

<sup>49</sup> Ibid., p. 17.

<sup>50</sup> Ibid., p. 16.

States of the United Nations that durable peace cannot be built upon impunity, the Special Representative of the Secretary-General for Sierra Leone, appended a handwritten disclaimer. The amnesty would not prevent action by the United Nations against perpetrators of international crimes of genocide, crimes against humanity, war crimes and other serious violations of international law. Despite this qualified endorsement of the peace agreement, several Security Council members expressed concern over the amnesty provision and a strong desire for the perpetrators of human rights abuses to be brought to justice. For example, both Gambia and the Netherlands questioned whether peace could be fostered in absence of justice.

There is no peace without justice, and without accountability for the heinous crimes committed in Sierra Leone there will be no lasting peace for that country.<sup>51</sup>

According to the Netherlands, as a moral guarantor of the accords, the UN had a responsibility to note the limits of impunity and apply the same standards of observance of international law to Sierra Leone as it would in any other part of the world. The Netherlands further argued that the Security Council had unequivocally taken a stand against impunity, on record, citing its presidential statement of 29 June 1998 which stressed the obligation of States to prosecute perpetrators of grave breaches of international humanitarian law and a presidential statement on 12 February 1999 which affirmed the need to bring to justice individuals who cause violence against civilians during armed conflict. Finally, speaking with regard to the Security Council record on Sierra Leone, the Netherlands, noted that resolution 1231 (1999) authorized the appropriate authorities to investigate allegations of human rights violations in Sierra

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<sup>51</sup> S/PV.4035, 11 August 1999, p. 13 (the Netherlands).

Leone for the purposes of future prosecution.<sup>52</sup> Other Council Members also expressed a preference for accountability for serious violations of international humanitarian and human rights law wherever they occur, but recognized the necessity of pursuing peace at all costs in the case of Sierra Leone.<sup>53</sup>

On 14 August 2000, the Security Council unanimously passed resolution 1315 (2000) which recommended the establishment of a special court for Sierra Leone and authorized the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent court consistent with the terms established by the Council.<sup>54</sup> These terms included that the court would have jurisdiction over crimes against humanity, war crimes and other serious violations of international law as appended by the Special Representative of the Secretary-General, but the resolution expanded the authorized jurisdiction to also include “crimes under relevant Sierra Leonean law.” The Council also recommended that the special court have jurisdiction over persons bearing the greatest responsibility for the commission of these crimes including leaders who have threatened the establishment and implementation of the peace process in Sierra Leone.<sup>55</sup> In the preamble of the resolution the Security Council reaffirmed the importance of compliance with international humanitarian law and stated that the international community will “exert every effort” to bring those responsible for violations to justice. Finally, the Security Council stated its view that ending the culture of impunity in Sierra Leone was necessary to establishing durable peace.

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<sup>52</sup> S/PV.4035, 11 August 1999, p. 13; see also S/PRST/1998/18, 29 June 1998; S/PRST/1999/6, 12 February 1999; and S/RES/1231 (1999), 11 March 1999.

<sup>53</sup> S/PV.4035, 11 August 1999, p. 6, 10, 14 (Argentina, Gambia, USA, Namibia; see also Sierra Leone).

<sup>54</sup> S/PV.4186, 14 August 2000; S/RES/1314 (2000), 14 August 2000.

<sup>55</sup> S/RES/1314 (2000), 14 August 2000; operative clause 2 and 3.

*Recognizing* that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace...<sup>56</sup>

In sum, the establishment of robust civilian protections and human rights standards for the peacekeeping mission and the establishment of a special court to try perpetrators for international crimes in Sierra Leone illustrated the increasing importance of human rights norms to Security Council Members and their perceived link to the maintenance of international peace and security. Security Council learning from its decade of experience in ongoing intra-state conflicts led to the emergence of a multi-faceted institutional approach to addressing gross human rights violations and re-establishing a society committed to the rule of law.

In the case of Sierra Leone, the legitimization of human rights norms in Security Council documents was possible because the affirmation of human rights principles was consistent with the Council's affirmation of state sovereignty. These landmark developments with regards to linking human rights and international security advanced the emerging norm of state responsibility for the protection of its population without threatening the sovereignty of the Sierra Leonean State. In the case of Sierra Leone, attacks against the civilian population also represented attacks against the State's sovereignty over its territory and population. The principles advanced by the Security Council through the establishment of the Chapter VII civilian protection precedent and the creation of the special court were not anywhere proscribed from situations where the State is the perpetrator of human rights abuse; however, it is unlikely that their passage

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<sup>56</sup> S/RES/1314 (2000) 13 August 2000; 3rd preambulatory clause.

by the Security Council would have been possible in a context in which the State was the perpetrator rather than the victim of aggression. Evidence from the formal meetings of the Security Council on Sierra Leone illustrate that human rights norms matter to most Security Council Members; however these records also show that human rights norms intersect with and interact with power politics.

### **National interests and human rights**

Evidence from the case of Sierra Leone shows that national interests affect Security Council decisions about humanitarian intervention; but that national interests are shaped by human rights norms. In early May 2000 the rebel forces of the RUF kidnapped 500 UN peacekeeping personnel setting of a chain of events that would eventually lead to the defeat of the RUF and their removal from power-sharing in the governance of Sierra Leone. The most robust military response of the international community shortly followed this event – by the United Kingdom who sent its own military forces under national command to secure Freetown and assist UNAMSIL and by the Security Council who finally increased the capability of UNAMSIL forces to match their mandate. The intensification of the second track – forward advancement of UNAMSIL – of the two track approach to conflict resolution in the months following the embarrassing attacks against the UN begs the question of whether the use of force is more likely when the United Nations is directly threatened, despite the scope of human rights abuses against civilian populations. Human rights principles were subordinated to the interests of international security when perpetrators of gross and systematic violations

of human rights in Sierra Leone were given important government posts based on the belief that accountability would prolong the war. This failure of accountability is what led to the crisis of the kidnapped peacekeepers in May, according to the Netherlands.<sup>57</sup>

The capture of 500 peacekeepers from India and Kenya and including an entire Zambian battalion by the RUF brought up sore memories of the United Nations' failures in conflicts in Bosnia-Herzegovina and Somalia where peacekeepers had been similarly humiliated by kidnappings and armed attacks.<sup>58</sup> Speaking on behalf of the OAU, Algeria argued that "What is happening today in Sierra Leone is one of the most serious crises ever to face the United Nations".<sup>59</sup> The actions of the RUF not only threatened the credibility of UN peacekeeping in Africa, the kidnappings threatened to reduce the authority and role of the Security Council in conflict settlement and the maintenance of international peace and security.<sup>60</sup> Secretary-General, Kofi Annan, told the Members of the Council that their reaction to the crisis was "a crucial test for the fundamental solidarity between peoples, rising above race and above geography, which is the most basic guiding principle of this Organization" [the United Nations].<sup>61</sup> How the Council responded to the crisis would test its resolve to stand by the commitments it made with regard to conflict resolution. Failure of UNAMSIL, according to the representative of Namibia, would be a collective failure. The consequences of which would be far-reaching: the continuation of a brutal conflict that could engulf the entire region and

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<sup>57</sup> S/PV.4139, 11 May 2000, p. 12.

<sup>58</sup> Ibid., pp. 5, 15.

<sup>59</sup> Ibid., p. 4.

<sup>60</sup> Ibid., pp. 6, 20, 22, 4.

<sup>61</sup> Ibid., p. 3.

contribute to future reluctance to support peacekeeping operations in Africa, and reduction of the role of the UN.<sup>62</sup> Security Council Members were largely united in their concern about organizational credibility and that their response should be steady and firm. Withdrawal was not advanced as an option by a single member of the Council. Council Members and contributors to UNAMSIL however, were divided on how best to respond to the crisis. The debate in the Council centered on whether UNAMSIL soldiers should be given a more robust Chapter VII mandate; or whether the mission mandate provided sufficient authorization for the use of military force but that UNAMSIL lacked capacity.

The African states argued that the Security Council should engage in enforcement action against the rebels in Sierra Leone. They proposed, along with the following elected Members (Mali, Bangladesh, Namibia, Jamaica, Tunisia and Ukraine) that UNAMSIL should be brought entirely under the umbrella of Chapter VII. In fact, Mali went so far as to call for the application of all means necessary to oppose the RUF including military force. If the RUF attempted to invade Freetown, Mali warned, West African states would respond with the use of force – whatever the cost.<sup>63</sup> These members and advocates wanted the fundamental character of UNAMSIL to change to one of peace enforcement, rather than maintaining the status quo which only authorized UNAMSIL personnel to use force in self-defense or in defense of civilians in their care. In contrast, the United States, United Kingdom and Russian Federation, all permanent members, argued that the problem leading to the abductions of peacekeepers was insufficient

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<sup>62</sup> S/PV.4139, 11 May 2000, p. 6 (UK), 11 (USA), and 14 (Namibia).

<sup>63</sup> Ibid., p. 6.

military capacity and ineffective exercise by the military contingents on the ground of the mandate it was given, rather than an insufficient mandate.<sup>64</sup> This position was backed by the elected members of Canada and Argentina and unelected participants to the debate including Jordan, India, Pakistan and the European Union. Portugal, speaking on behalf of the European Union, argued that UNAMSIL already had the authority to ensure security and freedom of movement of its personnel and the protection of civilians whenever possible. Instead it issued an appeal to fellow members,

In this crisis, let us back words with deeds, and mandates with the resources needed to make them work.<sup>65</sup>

The remaining permanent members, China and France, were open to a review of the mandate but would not advocate a change in mandate in absence of such review.

The mismatch between the mandate and capacity of UNAMSIL brings into question the depth of the Security Council's commitment to human rights. Although the mandates for UNOMSIL and UNAMSIL reflected a strong commitment to human rights through the protection of civilians and the unwavering commitment to the re-establishment of peace in Sierra Leone, the mission was understaffed and under-equipped, largely as a result of lack of donations of personnel and supplies on the part of United Nations Members. The contrast between an under-funded peacekeeping mission and reconstruction effort in Sierra Leone with a fully operational and well financed reconstruction plan for Kosovo caused States like Djibouti to accuse the Security Council of attempting "peacekeeping on the cheap" in Sierra Leone. Djibouti echoed the

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<sup>64</sup> S/PV.4139, 11 May 2000, p. 16.

<sup>65</sup> Ibid., p. 22.

concerns of average Sierra Leonean citizens who began to perceive the international community response as unequal to the efforts made to assist the Kosovars. Djibouti argued that the peacekeepers in Sierra Leone are lightly armed, ill-equipped, poorly coordinated and outmanned in comparison to the rebel movement whereas “mammoth efforts in power, arms and resources are seen in Kosovo, East Timor or Bosnia”.<sup>66</sup> For example, Security Council resolution 1244 (1999) established a United Nations protectorate for Kosovo that was fully operated by the United Nations.

The timing of the crisis in Sierra Leone coincided with the crisis in Kosovo. Although Sierra Leone received a more sustained response from the Security Council than did the Kosovo crisis over which the Council was bitterly divided, the response to systematic and gross human rights violations in Kosovo was more swift and robust despite lack of Council unity because of the commitment of Western states to intervention through NATO. The Government and citizens of Sierra Leone were painfully aware that they had to compete for international attention and assistance with the Albanians of Kosovo. In August of 1999, after the NATO military intervention had ended and Kosovo was being administered by the United Nations, President Kabbah of Sierra Leone complained that the conflict in Sierra Leone was being assessed in the context of the recent crisis in Kosovo and that Sierra Leone had to compete with Kosovo in generating resources for post-conflict reconstruction.<sup>67</sup> By October, the comparisons between the United Nations’ reconstruction effort and troop commitment to Kosovo compared to that of Sierra Leone occupied much of the time in the Council chamber. In

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<sup>66</sup> S/PV.4139, 11 May 2000, p. 26.

<sup>67</sup> S/PV.4035, 11 August 1999, p. 4.

his briefing before the Council, the Special Representative of the Secretary-General for Children in Armed Conflict reported to the Council that “Sierra Leoneans at all levels are remarkably well informed about Kosovo.” He continued,

Everywhere I went, I was challenged to explain perceived discrepancies in the attitude and response of the international community with regard to the needs of children in the two situations.<sup>68</sup>

The representative of the Government of Sierra Leone noted that its people were beginning to ask whether the Security Council has relegated their concerns to the bottom of the Council’s agenda.<sup>69</sup> Gambia stated that prior to the establishment of UNAMSIL it had feared that peacekeeping in Africa was no longer an interest of the Council.<sup>70</sup> The United Nations continued to be plagued by accusations of unequal concern with the problems of Africa because its strongest members lacked national security interests there. The presence of Western security interests in Kosovo led to increased commitment of resources there. The United States responded to the criticism of uneven international attention to the conflicts in Kosovo and Sierra Leone by arguing that the two conflicts were coequal in importance.

I have mentioned the Sierra Leone issue as coequal in importance with East Timor and Kosovo in every discussion with every member of Congress, and have stressed to them that there is no double standard in the United States concerning African peacekeeping – that Sierra Leone is as important to us as Kosovo and East Timor.<sup>71</sup>

Similarly, the United Kingdom argued that establishment of UNAMSIL would prove that the Security Council has a commitment to conflict resolution in Africa as much as in

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<sup>68</sup> S/PV.4054, 22 October 1999, p. 4.

<sup>69</sup> Ibid., p. 5.

<sup>70</sup> Ibid., p. 12.

<sup>71</sup> Ibid., p. 10.

other places.<sup>72</sup> This anger about neglect of Sierra Leone was directed at the permanent members of the Security Council but most particularly at France, the United Kingdom and the United States. However, if we apply the a priori definition of national interests to Sierra Leone we find that the conflict was neither a direct threat to the security of member states or their strategic allies nor provided a compelling opportunity for Security Council members to strengthen their military or economic power in either absolute or relative terms. Domestic interest in democratically elected states in the fighting in Sierra Leone was limited. Populations were horrified by the grotesque nature of the human rights abuses and the image of small children with amputated limbs provided provoked outrage. Nonetheless, the pressure on states to intervene from their domestic populations was not the principle factor in motivating Security Council intervention.

### **Diamonds, Arms and the Regional Dimensions of the Sierra Leone Conflict**

Another historic change with regard to Security Council response to internal conflicts occurred in July 2000 when the Council passed a landmark resolution that sought to address the underlying causes of the continuing rebel assault against the Government of Sierra Leone and sought to draw attention to the regional character of the conflict. The Security Council deviated from its traditional approach of recognizing every conflict as unique and examining it on a case by case basis toward a more regional conception of the violence in Sierra Leone. Recognizing that the rebel movement was supported by external military and financial support primarily through the illegal trade in rough diamonds from the occupied diamond mines in Sierra Leone, the Security Council

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<sup>72</sup> S/PV.4054, 22 October 1999, p. 8.

unanimously passed resolution 1306 (2000) prohibiting the import of rough diamonds from Sierra Leone and requesting the establishment of a Certificate of Origin trade regime for Sierra Leone's diamonds. In addition to addressing the causes of the fighting in Sierra Leone by recognizing the arms-diamonds nexus, some Security Council Members broke with diplomatic tradition by "naming and shaming" publicly those who sustained the war in Sierra Leone through their support of the RUF. Specifically, both the United Kingdom and Canada mentioned evidence suggesting that diamonds were leaving Sierra Leone through Liberia.<sup>73</sup>

Six months later in January 2001, the Security Council met to discuss the sources of external support of the rebel invasion in Sierra Leone in response to a report submitted to the Council by the Panel of Experts created to collect information on the possible violations of resolution 1171 (1998) and the link between the trade in diamonds and the trade in arms. The panel identified Charles Taylor, sitting President of neighboring Liberia, as actively fueling the conflict through the financial and military support of the RUF.<sup>74</sup> In response, the UK and US cosponsored a draft resolution that would impose sanctions against Liberia, including a ban on Liberian rough diamonds, ban on flights by Liberian-registered aircraft, an arms embargo, selective travel restrictions for Senior Liberian leaders and an embargo on the export of Liberian timber. Despite widespread agreement among Council Members and participants in the meeting that those responsible for violating sanctions were culpable for the humanitarian crisis in Sierra Leone and that unequivocal evidence had identified the Liberian Government as a

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<sup>73</sup> S/PV.4163, 21 June 2000, pp. 4; 8.

<sup>74</sup> S/PV.4264, 25 January 2001, p. 5.

perpetrator, adoption of the resolution was delayed for two months at the request of ECOWAS. ECOWAS leaders were reluctant to punish an African leader and had hoped that diplomatic measures would work to change Taylor into a responsible leader.<sup>75</sup> Resolution 1343 (2001) was passed unanimously by the Council in March 2001. The resolution demanded that the Government of Liberia cease its support of the RUF and enacted a severe regime of sanctions and embargoes against the Government in an effort to deter their future support.

## **Conclusions**

The Security Council retained unity among its members in responding to the crisis in Sierra Leone for two reasons. First, Sierra Leone was the victim rather than the perpetrator of gross human rights abuses. This meant that conflicts between the promotion and protection of human rights norms and the preservation of sovereignty were avoided. Instead, the Security Council was able to advance human rights principles at exactly the same time that it reaffirmed the foundational norm of state sovereignty. Evidence from previous cases has shown that garnering support in the Security Council for humanitarian intervention is easier when human rights norms and the norms of sovereignty can be reconciled. Second, Security Council Members were united around an intentional causal story of conflict in Sierra Leone. The violence was widely understood as the result of organized yet indiscriminate actions by the rebel movement the Revolutionary United Front and its leader Foday Sankoh, sometimes in cooperation with other rebel elements such as the remnants of the Armed Forces Revolutionary

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<sup>75</sup> Hirsch, "Sierra Leone," 531.

Council. The RUF engaged in gross human rights violations that shocked the consciences of Security Council Members and the citizens of their states including the chopping off of body parts of victims regardless of age, sex, or belief. Indeed, the youngest victims of the violence were only a few months old inciting widespread international outrage. In addition to bodily mutilations, the RUF kidnapped and trained young children to kill their parents and join the ranks of the rebel movement. Children became the primary victims of and significant perpetrators of rebel violence at the same time. They joined the RUF in committing murder, rape, enslavement and mutilation. The shocking nature of the human rights violations emboldened the Security Council response. The violence of the RUF was specifically directed against the civilian population and was the centerpiece of the rebel campaign to discredit the democratic Government of Sierra Leone and gain control of the country's natural resources. Both the Government and its people were the undisputed victims of RUF violence. While some Council members used the classic term "civil war" to describe the violence in Sierra Leone, members did not equate the parties involved as equally culpable for the violence. The Government was also the war's victim. Internal aggression was directed against a sovereign state. The characterizations of the conflict advanced by Security Council members had all the constituent elements of an intentional causal story. This created a permissive environment for humanitarian intervention to become possible.

The case of Sierra Leone marks an important advancement for the norm of humanitarian intervention. Whether Security Council Members were more motivated by the gross atrocities or by solidarity with a legitimate and sovereign state under armed

assault from a domestic faction, through its actions the Security Council promoted the idea that the international community has either a right or a responsibility to protect civilians from violence in the absence of state authority or willingness to do so. Security Council resolutions on Sierra Leone established human rights protections for vulnerable civilians and mandated training for United Nations personnel in the protection and promotion of human rights norms. Resolution 1270 (1999) created a new precedent – a self defense and civilian protection mandate under Chapter VII of the Charter of the United Nations, even in absence of a peace-enforcement mandate. Security Council Members enshrined their belief in the connection between peace and justice through the establishment of a special court for Sierra Leone to try international crimes against the civilian population despite the existence of a domestic amnesty negotiated by the parties to the conflict. Security Council members undertook a regional approach to the conflict and addressed underlying causes of the violence as well as its symptoms when it established a diamond certification regime for Sierra Leone and sanctioned neighboring Liberia for supporting the RUF rebels. Finally, the Security Council established that States could no longer hide behind the diplomatic protocols attached to State sovereignty. The United Nations was willing to punish and shame its Members who violated Security Council resolutions and who fostered conflict amongst its neighbors. Despite these human rights advances, however, the Sierra Leone case illustrates that human rights norms necessarily interact with and are shaped by power politics. As the comparison to the Kosovo case shows, it is easier to garner the financial and military support necessary to respond to intra-state crises when the national or regional interests of powerful states

are involved. Norms about human rights both shape and are shaped by the national interests of state actors.

## Chapter 8

### **The Responsibility to Protect Norm and Non-intervention in Darfur, Sudan (2003-2004)**

At the beginning of the twenty-first century there was a concerted effort by scholars, generals, UN officials and former heads of state from around the world to reconcile the tensions between sovereignty and human rights norms and in particular the emerging norm of the use of military force in defense of human rights. In December 2001, the International Commission on Intervention and State Sovereignty (ICISS) submitted its report, *The Responsibility to Protect*, to the Secretary-General of the United Nations. This chapter explores the modern formulation of sovereignty as responsibility and the core principles developed by the Commission to guide military action for human protection. The chapter demonstrates by examining key documents produced by the United Nations Secretariat and resolutions passed by the Security Council that the members of the United Nations are increasingly accepting the new norm of the responsibility to protect. Despite evidence of an increasing acceptance within the UN that the Security Council has the responsibility, and the authority, to protect civilians from ethnic cleansing of mass killing when they are not protected by their state, however, the Security Council has not authorized military intervention to stop the violence in Darfur, Sudan.

The case of Darfur illustrates that the adoption of the emerging norm of the responsibility to protect by the Security Council is insufficient to evoke military action in cases of widespread killing. The norm of the responsibility to protect must be

accompanied by the unified political will of the international community expressed through an intentional causal story and by the capacity to respond. This is even more necessary when the state is a principle perpetrator of gross human rights violations. In the case of Darfur, Security Council members remain divided over the character of the conflict and the human rights violations that have accompanied the fighting. As previous cases have shown, contestation between competing causal stories prevents effective military action for human protection purposes. It is only when the majority of the Security Council including most of its permanent members articulate an intentional causal story to explain the violence that humanitarian intervention becomes possible. As the cases of Rwanda and Kosovo have shown, humanitarian intervention becomes even more difficult for the Security Council when the use of force in defense of human rights conflicts with traditional conceptions of state sovereignty because the perpetrator is a state member of the United Nations. The responsibility to protect norm, however, is meant to reconcile the tensions between humanitarian intervention and state sovereignty. This chapter examines the evolving relationship between sovereignty and human rights norms and argues that humanitarian intervention in Sudan remains unattainable, despite the emergence of this new and growing norm not because the international community lacks the political will to stop ethnic cleansing but because lack of unity on the causal story has hampered the development of an effective and coherent strategy for implementation of R2P and because consent for the use of force matters when the international community has a limited ability to deploy troops and is faced by a strong perpetrator state.

On the occasion of the centennial anniversary of the first International Peace Conference in May 1999, Secretary-General Kofi Annan noted that those assembled were ‘meeting at a time of war to reflect on the price of peace’.<sup>1</sup> He was referring to the ongoing war in Kosovo in which mass killings and the expulsion of the Albanian population by Serb authorities was occurring. This ethnic cleansing had motivated a military humanitarian intervention by the North Atlantic Treaty Organization (NATO) in absence of Security Council authorization, causing a dramatic rift among permanent members of the Security Council. Annan called on the members of the United Nations to reconcile the institution of state sovereignty, which helped to preserve international order and peace among nations, with the protection and promotion of human rights and fundamental freedoms.

On the eve of a new millennium, it is this United Nations we seek – responsible to a dynamic and changing world, respectful of the sovereignty of States, and resilient in its determination to advance the rights and freedoms of the peoples of the world.<sup>2</sup>

In his Annual Report to the General Assembly on 20 September 1999, former Secretary-General Kofi Annan addressed the prospects for human security and intervention in the twenty-first century again in response to the dramatic events caused by the NATO intervention in Kosovo. During his speech, Kofi Annan argued that state sovereignty was being redefined by the forces of globalization and international cooperation.<sup>3</sup> He argued that sovereignty implied a commitment of the State to serve its people. According to

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<sup>1</sup> Secretary-General Kofi Annan, Speech in the Hague, May 18, 1999, UN Press Release SG/SM6997.

<sup>2</sup> Ibid.

<sup>3</sup> Secretary-General Kofi A. Annan, General Assembly, 20 September 1999, “Secretary-General presents his Annual Report to the General Assembly,”

[http://www.un.org/News/press/docs/1999/19990920\\_sg\\_annan\\_report.html](http://www.un.org/News/press/docs/1999/19990920_sg_annan_report.html)

Annan, the failure of the Security Council to authorize humanitarian intervention in the face of “the universally recognized imperative” of stopping gross human rights violations revealed the core challenge for the Security Council in the next century:

To forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand.

Annan recognized that “the developing international norm in favour of intervention to protect civilians from wholesale slaughter” was controversial and perceived as threatening in some quarters. But he argued that the international community must confront the challenge that humanitarian intervention poses because its use represents “a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it”.<sup>4</sup>

The controversy over the international community’s responses to mass violence in Rwanda, Kosovo, Bosnia-Herzegovina and Somalia highlighted the basic divisions within the international community on the question of humanitarian intervention. In his 1999 address to the member states of the UN General Assembly, former Secretary-General Kofi Annan challenged the members of the United Nations to “find common ground in upholding the principles of our Charter, and acting in defence of our common humanity,” a challenge which he repeated in his Millennium report to the General Assembly a year later. In direct response to this challenge, the Government of Canada established an independent International Commission on Intervention and State

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<sup>4</sup> Secretary-General Kofi A. Annan, General Assembly, 20 September 1999, “Secretary-General presents his Annual Report to the General Assembly,” [http://www.un.org/News/ossg/sg/stories/statments\\_search\\_rull.asp?statID=28](http://www.un.org/News/ossg/sg/stories/statments_search_rull.asp?statID=28)

Sovereignty (ICISS).<sup>5</sup> The purpose of the Commission was to develop a broader understanding of the issue of humanitarian intervention and attempt to establish a global consensus on how to act in response to gross and systematic human rights violations.

The Commission was balanced in composition consisting of high-level representatives from various professional backgrounds, continents, countries with varied level of development and representing various positions on the intervention-sovereignty debate.<sup>6</sup> In addition, the ICISS hosted meetings and roundtables in almost all continents and most major capitals around the world. The report attempted to incorporate many of the views expressed with regards to conflict prevention, intervention, post-war reconstruction, legitimate authority for intervention and operational procedures.<sup>7</sup>

The Commission noted that sovereignty was established as “a cornerstone of the United Nations”.<sup>8</sup> Despite changes in the exercise of sovereignty and the purposes for intervention since the end of the Cold War, sovereignty still should be protected. But international law and particularly human rights law has created constraints on state behavior. Sovereignty, according to the ICISS, implies a dual responsibility. Externally, states must respect the sovereignty of other states but internally, states must respect the rights and fundamental dignity of its citizens.<sup>9</sup> This understanding of sovereignty as responsibility was central to the Commission’s understanding of the debate over humanitarian intervention. Acceptance of the principle of sovereignty as responsibility

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<sup>5</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Canada: International Development Centre, December 2001), pp. 2-3, paragraphs 1.5 and 1.6.

<sup>6</sup> Ramesh Thankur, “Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS, *Security Dialogue* 33 (December 2002): 3, 326.

<sup>7</sup> Ibid.

<sup>8</sup> ICISS, *The Responsibility to Protect*, 7.

<sup>9</sup> Ibid., 7-8.

meant that in absence of state capability or willingness to protect its population, the responsibility to protect transferred to the international community and specifically to the Security Council.<sup>10</sup> The ICISS put forward a set of principles to guide the practice of military intervention for human protection purposes – eschewing the common but controversial term humanitarian intervention.<sup>11</sup> They noted that intervention should be an exceptional and extraordinary measure and as a result the threshold for triggering it should be the large scale loss of life and ethnic cleansing. Intervention was justified whether or not the state was the perpetrator or guilty of acts of omission.<sup>12</sup> Authority for intervention decisions was to be vested in the United Nations Security Council, whose members, the Commission recommended, should waive their right to veto resolutions authorizing military intervention for protection purposes when it does not impact their vital interests and where there is widespread support in the Council.<sup>13</sup> The Commission also suggested that Security Council authorization be sought in all potential cases prior to the use of military force. In absence of Security Council unity, the Commission suggested that either the General Assembly or a regional organization be granted authority to respond. More specifically, the General Assembly should hold an emergency session under the “Uniting for Peace” procedure or a regional organization may respond in accordance with Chapter VIII of the Charter so long as they seek subsequent authorization. The ICISS established four precautionary principles to guide the

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<sup>10</sup> ICISS, *The Responsibility to Protect*, xi

<sup>11</sup> The International Commission on Intervention and State Sovereignty made a deliberate decision to not adopt the popular usage of the phrase “humanitarian intervention” in response to the very strong opposition of humanitarian agencies, organizations and aid workers to the militarization of the word “humanitarian” and suggestions that it prejudices whether or not an intervention undertaken was defensible on humanitarian grounds. ICISS, *The Responsibility to Protect*, 9 paragraphs 1.39 and 1.40

<sup>12</sup> ICISS, *The Responsibility to Protect*, xii.

<sup>13</sup> *Ibid.*, xiii.

application of military force when the threshold condition of large scale loss of life or ethnic cleansing is met. These principles require that intervention be: motivated by human suffering; a last resort; proportional in the scale, duration and intensity of its response; and have a reasonable prospect for ending human suffering without causing consequences worse than inaction.<sup>14</sup>

### **The United Nations and the Emerging Norm of Responsibility to Protect**

The response to humanitarian intervention and the revised conceptions of sovereignty upon which it is being anchored – sovereignty as responsibility and popular sovereignty – has been decidedly mixed. Western states, including states of Eastern Europe, and those in sub-Saharan Africa have been among the most ardent supporters of these changes. However, many large developing countries like Nigeria, India, South Africa and the states of Latin America are skeptical. Their support is preconditioned upon guarantees of state consultation and consent (which seems to contradict the principle of intervention by definition) as well as the emergence of a more representative Security Council. Many states in the Middle East and Asia as well as Russia and China have been hostile to any weakening of juridical or empirical sovereignty on the basis of human rights.<sup>15</sup> Despite the mixed reception to sovereignty as responsibility and its corollary, the responsibility to protect, the United Nations Secretariat enthusiastically endorsed the report of the ICISS.

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<sup>14</sup> ICISS, *The Responsibility to Protect* xii.

<sup>15</sup> Thomas G. Weiss, "The Politics of Humanitarian Ideas," *Security Dialogue* 31 (2000): 1, 12; Michael Glennon, "Why the Security Council Failed," *Foreign Affairs*, May-June (2003), 19. Mohammed Ayoob, "Third World Perspectives on Humanitarian Intervention and International Administration," *Global Governance* 10 (2004), 107-108.

Secretary-General Kofi Annan and the United Nations were awarded the Nobel Peace Prize in 2001 “for their work for a better organized and more peaceful world”.<sup>16</sup> In his acceptance speech, which coincided with the release of the ICISS report, Annan shared his vision of a United Nations defined by “a new, more profound, awareness of the sanctity and dignity of every human life” which would require looking “beyond the framework of States, and beneath the surface of nations.” The focus should turn to the welfare of individuals living inside of states. As such, state sovereignty should not be used to shield gross human rights violations.<sup>17</sup> In 2003, Kofi Annan put together a high-level panel of eminent and experienced persons to examine the threats to international peace and security facing the members of the United Nations and to propose ways that the UN can more effectively provide collective security in response.<sup>18</sup> The report explicitly adopted the language of sovereignty as responsibility. Sovereignty, according to the report, both bestows privileges on, and exacts responsibilities from, states. State sovereignty, at this point in history, 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>19</sup>. The panel determined,

The principle of non-intervention in internal affairs cannot be used to protect genocidal acts or large-scale violations of international humanitarian law or large-scale ethnic cleansing, which can properly be considered a threat to international security and as such provoke action by the Security Council.<sup>20</sup>

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<sup>16</sup> Gunnar Berge, Chairman of the Norwegian Nobel Committee, “The Nobel Peace Prize 2001 Presentation Speech,” Oslo, Norway, 10 December, 2001.

<sup>17</sup> Kofi A. Annan., Secretary-General of the United Nations, “Nobel Lecture 2001,” Oslo, Norway, 10 December 2001.

<sup>18</sup> High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change*, (United Nations, 2004), p. vii.

<sup>19</sup> *Ibid.*, p. 17, Part C, paragraph 29.

<sup>20</sup> *Ibid.*, p. 65, Part 3, No. 3, paragraph 200.

The report notes the growing acceptance that every state has a responsibility to protect and that that responsibility transfers to the international community when states are unable or unwilling to protect their citizens. The panel also affirmed that,

The Council and the wide international community have come to accept that, under Chapter VII and in pursuit of the emerging norm of a collective international responsibility to protect, it can always authorize military action to redress catastrophic internal wrongs if it is prepared to declare that the situation is a ‘threat to international peace and security’, not especially difficult when breaches of international law are involved.<sup>21</sup>

Evidence of the ICISS language on sovereignty can also be found in the statements of members of the Security Council during formal meetings and in the resolutions passed by the Council on the situation in Darfur, Sudan. Proponents of the responsibility to protect seek its further codification into United Nations documents and particularly resolutions of the Security Council as part of a wider effort to establish the emerging norm as common or customary law.

### **Causal Stories, Sovereignty as Responsibility and Darfur, Sudan (2003-2004)**

Between 2003 and 2004 the Government of Sudan was engaged in peace talks with the Sudan People’s Liberation Movement/Army (SPLM/A) aimed at ending the twenty-year civil war between the north and the south. Fighting broke out in the western region of Darfur in February 2003 when two rebel groups, the Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM) exercised a military challenge against the Government based on local complaints about governmental neglect and lack of development. The fighting resulted in the displacement of hundreds of thousands of

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<sup>21</sup> High-level Panel on Threats, Challenges and Change, *More Secure World*, p. 66, Part 3, Section IX, Part A, No. 3, paragraph 202.

civilians and numerous reports of human rights abuse. By the end of 2003, Human Rights Watch reported that the war had escalated between “government-backed nomadic militias and non-Arab indigenous farmers.”<sup>22</sup> The report of the UN High Commissioner for Human Rights concluded that in early 2003 two armed groups, the Sudan Liberation Army (SLA) and later the Justice and Equality Movement (JEM), emerged and initiated hostilities against the Government in an effort to draw attention to the marginalization and underdevelopment of the Darfur region. The members of these groups share an ethnic background, coming primarily from the Zaghawa, Fur and Masaalit tribes. According to the report, it was the manner of the response to the rebellion by the Government of Sudan that has led to the crisis in Darfur: sponsorship of a loose collection of Arab fighters known as the “Janjaweed” which has been reported as attacking and targeting civilian populations suspected of supporting the rebellion. The Human Rights Commission noted, “What appears to have been an ethnically-based rebellion has been met with an ethnically-based response building in large part on the long-standing, but largely hitherto contained tribal rivalries.”<sup>23</sup> According to Human Rights Watch, the Government of Sudan with support of the Janjaweed militias engaged in a campaign of ethnic cleansing and forced displacement through the bombing and burning of villages. By the end of 2004, Human Rights Watch estimated that 2 million civilians had been forcibly displaced

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<sup>22</sup> Human Rights Watch, Human Rights Watch Annual World Report 2003, <http://hrw.org/english/docs/2004/01/21/sudan6982.htm>.

<sup>23</sup> Report of the High Commissioner for Human Rights: Situation of human rights in the Darfur region of the Sudan, E/CN.4/2005/3,7 May 2004, paragraph 6, p. 4.

by the Government of Sudan and the militias and that 70,000 citizens had died as a result of the conflict.<sup>24</sup>

*Figure 8.1 Sudanese Actors in the Darfur Crisis (2003-2004)*

SLA	Sudan Liberation Army (Darfur rebel group)
JEM	Justice and Equality Movement (Darfur rebel group)
Janjaweed	Arab ethnic militias (government sponsored)
CFC	Ceasefire commission
SPLM/A	Sudan People's Liberation Movement/Army (southern rebel group)
NMRD	National Movement for Reform and Development (Darfur rebel group)

The United Nations' involvement with the crisis in Darfur began soon after the April 2004 signing of a Humanitarian Ceasefire Agreement brokered by the African Union between the major parties to the conflict: the government of Sudan, the SLA and JEM. In May, the Security Council issued a presidential statement expressing its "grave concern over the deteriorating humanitarian and human rights situation" in Darfur.<sup>25</sup> The Government of Sudan entered into an agreement with the United Nations, signing a Joint Communiqué with Secretary-General Kofi Annan on 3 July 2004. The agreement included a government commitment to disarm the Janjaweed militias, end the culture of impunity in Darfur, improve humanitarian access, protect citizen human rights and security, and to seek a political solution to the conflict. Later that same month, the Security Council passed resolution 1556 (2004) demanding that the Government of Sudan comply with all the terms of its agreements. It is also important to note that significant developments to end the 20 year civil war that had been raging in Sudan

<sup>24</sup> Human Rights Watch, Human Rights Watch Annual World Report 2000, <http://hrw.org/english/docs/2001/01/13/sudan9885.htm>.

<sup>25</sup> S/PRST/2004/18, 25 May 2004.

between the north and south was happening simultaneously, culminating in an official agreement by the end of 2004 signed in Nairobi, Kenya. Security Council members have described the north-south peace process and resolution of the conflict in Darfur as indivisible.

Security Council members were divided over the character of the fighting in the Darfur region of Sudan between 2003 and 2004. Only the United States advanced an intentional causal story in which the Government of Sudan was the perpetrator of deliberate and preventable attacks against civilians. According to the United States, the Government of Sudan's "campaign of terror" against its citizens in Darfur also had an ethnic dimension and suggested to Security Council Members that the Government "may be condoning and perpetrating genocide."<sup>26</sup> The United States Government came under pressure from advocacy organizations and Congress who believed that naming the atrocities in Darfur "genocide" would lead to eventual humanitarian intervention.<sup>27</sup> In May 2004, the US State Department launched an investigation into whether atrocities committed by the Government of Sudan constituted genocide and determined that it did.<sup>28</sup> The United States position, supported by the US Congress and key constituencies of the Bush administration, was the most critical of Sudan on the Security Council and the US government actively worked to hold the Government of Sudan accountable for its commitments to the United Nations and particularly the resolutions passed by the

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<sup>26</sup> S/PV.5040, 18 September 2004, pp. 6-7; see also S/PV.5015, 30 July 2004 pp. 3-4.

<sup>27</sup> Rebecca Hamilton and Chad Hazlett. "Not on Our Watch: the Emergence of the American Movement for Darfur," in *War in Darfur and the Search for Peace* ed. Alex de Waal, (Harvard University Press, 2007), 341-2.

<sup>28</sup> Samuel Totten and Eric Markusen. (eds.). *Genocide in Darfur: investigating the atrocities in the Sudan* (London: Routledge, 2006). See also Alex de Waal. "Darfur and the Failure of the Responsibility to Protect" *International Affairs*, 83 (2007):6, 1039-1054.

Security Council. Although most of the Members of the Security Council shared US concerns about the rate of civilian deaths in Darfur and criticized the Government for its failure to protect its citizens, disarm the Janjaweed militias and end the culture of impunity in Darfur, they identified multiple parties as being responsible for the continuing violence. France, the Russian Federation and the United Kingdom along with 6 elected members of the Security Council identified the armed rebellion by the Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM) as the cause of the Government- sponsored violence by the Janjaweed militia and State military action in Darfur. The United Kingdom argued that although the Sudanese government had failed to protect its civilians, the rebels also bear their share of the responsibility for the crisis and demanded that both sides meet the obligations specified in the Humanitarian Ceasefire Agreement and relevant Security Council resolutions. Similarly, Brazil, Germany, Spain, Pakistan, the Philippines and Romania condemned all acts of violence and violations of international humanitarian and human rights law and criticized all parties for the violation of ceasefire provisions. In formal meetings of the Security Council, these States voiced their expectation that the Government of Sudan would disarm militias and bring their leaders to justice; but they also demanded that rebel groups respect the ceasefire, engage in political talks without precondition, and stop their attacks on civilians as well.<sup>29</sup>

Alternatively, China maintained that the international community should only play a secondary role to the Government of Sudan in addressing the crisis in Darfur,

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<sup>29</sup> S/PV.5015, 30 July 1994, pp. 6-10; S/PV.5040, 18 September 2004, pp. 9-12; S/PV.5082, 19 November 2004, pp. 2-4, 13, 22.

arguing that the sovereign Government maintained primary responsibility for addressing the crisis.<sup>30</sup> The Sudanese government defended its actions against the rebels as defense against a local military rebellion supported by external Governments.<sup>31</sup> In short, the crisis in Darfur was an internal affair and the involvement of others was illegitimate.

There was an additional characterization of the Darfur conflict as “complex” because it was intertwined with other conflicts occurring simultaneously in Sudan. Supporters of the complex causal story overlapped with supporters of the civil war (inadvertent causal story) and internal matter conceptions of the conflict. Brazil, Germany, the Russian Federation, Pakistan and China all made references to the ‘complex humanitarian and political situation in Darfur.’<sup>32</sup> Because of this complexity, China argued, the Security Council should be supporting and encouraging the Government of Sudan and not antagonizing it with punitive resolutions like 1556 (2004) and 1564 (2004).<sup>33</sup> Nonetheless, Brazil and Germany fully supported the passage of these resolutions.

The inadvertent causal story treating Darfur as a civil war was clearly the dominant view of the Security Council in 2003-2004, but this view also extended beyond the Security Council Chamber. Despite public outrage against Government-sponsored atrocities in Darfur in many countries, Sudan was elected by its fellow member States to serve on the United Nations Commission on Human Rights in May 2004. Similarly, in November 2004, the General Assembly of the United Nations voted down a resolution

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<sup>30</sup> S/PV.5015, 30 July 1994, p.3.

<sup>31</sup> S/PV.5080, 18 November 2004.

<sup>32</sup> S/PV. 5015, 30 July 1994, p. 6 (Russian Federation), p. 8 (Brazil), p. 9 (Pakistan); S/PV

<sup>33</sup> S/PV.5040, 18 September 2004, p. 4.

condemning Sudan. Also in November, the League of Arab States and the European Union during a special Security Council meeting in Nairobi called for full compliance with agreements and Security Council resolutions by all parties to the crisis in Darfur. The latter criticized the Government of Sudan for not fulfilling its obligations under Security Council resolutions 1556 (2004) and 1564 (2004) but also accused rebel groups of contributing to the escalation in insecurity and human suffering by increasing their attacks against the Government.<sup>34</sup>

In addition to criticizing the Government of Sudan for not living up to its expressed commitments and the requirements of responsible statehood, Security Council resolutions 1556 (2004) and 1564 (2004) identified rebel groups and leaders as sharing culpability with the Government for the continuing violence, including violations of international humanitarian and human rights law. In his first briefing to the Council on Sudan's compliance with the terms of resolution 1556 (2004), the Special Representative of the Secretary-General for Sudan also described a situation in Sudan in which multiple parties were responsible for attacks against unarmed civilians in the context of conflict between the Government and rebel movements agitating for regional development. The Special Representative noted that although the Government had made some progress in providing security and humanitarian access to some specific areas with a high concentration of internally displaced persons (IDPs), it had not met its commitments to stop attacks by Government-supported militias and disarm them or to bring them to justice. Yet he also called on "both parties" to respect the Humanitarian Ceasefire Agreement and noted that the demands of the Security Council applied equally to

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<sup>34</sup> S/PV.5082, 19 November 2004, p. 22.

Government and rebel movements.<sup>35</sup> In October, the Special Representative reported that both sides were violating the cease-fire agreement and described attacks and counterattacks and a cycle of revenge and retaliation.<sup>36</sup> By the beginning of November, he noted that most of the violations of the ceasefire were the result of the SLA movement and he warned Council Members that Darfur might enter a state of anarchy. In short, the Government was losing control over the situation in Darfur.

Darfur may easily enter a state of anarchy – a total collapse of law and order. The conflict is changing in character. The Government does not fully control its own forces. It co-opted paramilitary forces and now it cannot count on their obedience. The genie is out of the bottle and cannot be pushed back in. The border lines between the military, paramilitary and the police are blurred. Within the rebel movements, there is a leadership crisis. There are splits.<sup>37</sup>

By December a new rebel movement, National Movement for Reform and Development (NMRD) had emerged and started attacking villages. The SLA was responsible for instigating Government violence and the Government had used disproportionate force and aerial bombing of villages in retaliation.<sup>38</sup> Clearly, the dominant view in the Security Council was that despite the violations of humanitarian and human rights law perpetrated by the Government of Sudan against its citizens, it was not the only perpetrator of gross human rights abuse in Darfur.

While the Security Council sought to condemn the Government for both its punitive actions and acts of omission in terms of civilian protection, it recognized that the Government was party to a civil war. In their resolutions Council Members re-affirmed the sovereignty, unity, territorial integrity and political independence of the Government

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<sup>35</sup> S/PV.5027, 2 September 2004.

<sup>36</sup> S/PV.5050, 5 October 2004.

<sup>37</sup> S/PV.5071, 4 November 2004, p. 3.

<sup>38</sup> S/PV.5094, 7 December 2004, p. 2.

of Sudan. The United States was the only member of the Council that described the conflict in Darfur as an intentional causal story in which the Government of Sudan was the clear and intentional perpetrator of ethnic cleansing or perhaps even genocide, against members of the ethnic groups that comprised the rebel movements. Yet its version received some support from the United Nations Emergency Relief Coordinator, who during a closed door session in early April described to the Security Council “a sequence of deliberate actions...that seem aimed at achieving a specific objective: the forcible and long-term displacement of the targeted communities, which may also be termed ethnic cleansing”.<sup>39</sup> Secretary-General Kofi Annan repeated this characterization in a speech to the Human Rights Commission. The report of the High Commissioner for Human Rights on the situation of human rights in Darfur reflected both the view that the Government of Sudan was perpetrating massive human rights violations and that the current conflict was initiated by rebel forces of the Zaghawa, Fur and Masaalit tribes who had also violated human rights and humanitarian law.<sup>40</sup> No serious considerations of the use of force to halt the atrocities in Darfur were advanced by members of the Council, not even by the United States. Instead, the Council sought to change the behavior of the Government of Sudan by making repeated references to Article 41 of the Charter which allows the Council to decide which measures short of armed force are to be employed.<sup>41</sup> Sudan’s petroleum sector was the expressed target of such punitive measures.

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<sup>39</sup> Address by Kofi Annan to the Commission on Human Rights, 7 April 2004.

<sup>40</sup> E/CN.4/2005/3, 7 May 2004, p. 21.

<sup>41</sup> See S/PV.5015, 30 July 2004.

## **The Security Council, Responsibility to Protect and Perpetrator States**

While the Security Council was divided over the character of the violence, it was largely united in support of the principle of an international collective responsibility to protect (R2P). Whether the state is the source of the violence or merely unable to protect its population, the R2P norm specifies that the state's sovereign responsibility to protect its population transfers to the international community. In theory, division among Council Members over the role of the Sudanese government in the violence should not interfere with the Council's exercise of its collective responsibility when faced with state inaction. In practice however, Security Council members repeatedly emphasized Sudan's responsibility to protect the people of Darfur as well as the international community's collective responsibility to do so in absence of state success; yet regarded the Sudanese government's consent as necessary to authorizing deployment of outside military forces to Darfur.

Several Security Council Members devoted significant attention during their formal statements on the situation in Sudan to addressing the changing conception of state sovereignty – sovereignty as responsibility – and the corresponding responsibility of the state to protect its citizens. The language of the 'responsibility to protect' was used in the preamble of both resolutions 1556 (2004) and resolution 1564 (2004). These resolutions passed with thirteen and eleven votes of Council Members, respectively reflecting reasonable agreement with the principle that sovereign States have a responsibility to protect their populations. In explaining the message of resolution 1556 (2004) to the Government of Sudan, the United Kingdom stated,

The adoption of this resolution underlines the commitment of the Security Council to ensure that all Governments fulfil that most basic of obligations – the duty to protect their own citizens.<sup>42</sup>

Germany and France described this responsibility to protect, alternatively as the Government's "sacred obligation" and "primary responsibility."<sup>43</sup> Resolution 1556 (2004) stated,

*Recalling* in this regard that the Government of Sudan bears the primary responsibility to respect human rights while maintaining law and order and protect its population within its territory and that all parties are obliged to respect international law.

The representative from the Philippines noted that the Security Council has the moral and legal authority to ensure that State's fulfill their sovereign duties,

Sovereignty also entails the responsibility of a State to protect its people. If it is unable or unwilling to do so, the international community has the responsibility to help that State achieve such capacity and such will and, in extreme necessity, to assume such responsibility itself. We voted in favour of resolution 1556 (2004) in that context.<sup>44</sup>

The Special Representative of the Secretary-General noted that this responsibility included the prevention of attacks on civilians whether or not the state had influence over the perpetrators. He argued that a government has a responsibility to seek assistance from the international community if it cannot fulfill this duty on its own.<sup>45</sup> Finally, he noted that the obligation to protect civilians extended to would-be Governments as well

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<sup>42</sup> S/PV.5015, 30 July 2004, p. 5.

<sup>43</sup> Ibid., pp. 7 & 9.

<sup>44</sup> S/PV.5015, 30 July 2004, pp. 10-11; see also S/PV.5040, 18 September 2004, p. 12 on the passage of resolution 1564 (2004).

<sup>45</sup> S/PV.5027, 2 September 2004, p. 3.

as formally recognized Governments, noting that both alike “are bound by the same principles of humanitarian law.”<sup>46,</sup>

The language of the responsibility to protect was even more specific in resolution 1564 (2004), reflecting the “grave responsibility” that Secretary-General Kofi Annan contends falls to the Security Council when a sovereign State appears unable or unwilling to protect its own citizens.<sup>47</sup>

*Recalling* that the Sudanese Government bears the primary responsibility to protect its population within its territory, to respect human rights, and to maintain law and order and that all parties are obliged to respect international humanitarian law;<sup>48</sup>

Benin linked the concept of sovereignty as responsibility to the renewed commitment of the United Nations to human dignity, arguing that fundamental rights and the dignity and worth of the human being are principles enshrined in the Charter of the United Nations.<sup>49</sup> It is a puzzle then, that despite the endorsement of the international responsibility to protect, the Security Council has not authorized, or even publicly discussed the use of external military force for protection purposes in Darfur.

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<sup>46</sup> S/PV.5071, 4 November 2004, p.5.

<sup>47</sup> S/PV/5080, 18 November 2004, p. 4

<sup>48</sup> S/RES/1564 (2004), 18 September 2004.

<sup>49</sup> S/PV.5040, 18 September 2004, p. 9.

*Table 8.1: Security Council Resolution Votes, Darfur Sudan (2004)*

<b>Resolution</b>	<b>Subject</b>	<b>Votes in Favor</b>	<b>Abstentions</b>	<b>Votes Against</b>
<b>1556 (2004)</b>	Demands Sudan fulfill its commitments to disarm Janjaweed militias and bring rights abusers to justice; Affirms Sudan's responsibility to protect its citizens	Algeria, Angola, Benin, Brazil, Chile, <b>France</b> , Germany, Philippines, Romania, <b>Russian Federation</b> , Spain, <b>UK, USA</b>	<b>China</b> , Pakistan	None
<b>1564 (2004)</b>	authorized establishment of International Commission of Inquiry to identify perpetrators; affirms Sudan's responsibility to protect its citizens	Angola, Benin, Brazil, Chile, <b>France</b> , Germany, Philippines, Romania, Spain, <b>UK, USA</b>	Algeria, <b>China</b> , Pakistan, <b>Russian Federation</b>	None

### **Human Rights, National Interests and the Responsibility to Protect Norm**

General Romeo Dallaire, former general in command of the United Nations forces in Rwanda, in an opinion editorial in the *New York Times* likened the response of Western governments to Darfur to that of Rwanda in 1994 – reflective primarily of their national interests. The self-interestedness of the five permanent members permeates the Security Council, he argued, resulting in the failure to intervene.<sup>50</sup> In Darfur, however, there is significant evidence of human rights norms shaping the national interests of members of the Security Council. Unlike in Rwanda, most members of the international

<sup>50</sup> Romeo Dallaire, "Looking At Darfur, Seeing Rwanda" *New York Times*, October 4, 2004.

community do not lack political will for solving the crisis in Darfur, even absent strategic or national interests. The United States, the United Kingdom and the Netherlands along with intergovernmental organizations like the African Union have engaged in continuous and determined diplomacy with the Sudanese government to stop the atrocities in Darfur.<sup>51</sup> Albeit late, the Security Council began serious discussion of the crisis in Darfur in mid-2004 and has maintained a sustained level of engagement with the Darfur crisis. Less than 30 days after the Sudanese Government signed a joint communiqué with the Secretary-General, the Security Council passed resolution 1556 (2004) demanding immediate compliance with the agreement, enacting an arms embargo against the parties and threatening sanctions if the resolution was not complied with. Resolution 1564 (2004) called for the establishment of an international commission of inquiry to immediately investigate human rights and humanitarian law violations and determine whether acts of genocide occurred.

There are three types of explanations for the Security Council's unwillingness to use force to stop the killing in Darfur despite increasing acceptance of the responsibility to protect norm: 1) the broader geo-political context; 2) the character of the responsibility to protect norm itself; and 3) the nature of Security Council decision-making around questions of humanitarian intervention. Each of these explanations interacts with and is intricately connected to one another. The Security Council has been actively engaged with the conflict in Darfur as well as the Naivasha peace process that has been occurring simultaneously. The Security Council must balance its desire to stop the killing in Darfur

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<sup>51</sup> Hugo Slim, "Dithering over Darfur? A preliminary review of the international response" *International Affairs*, 80: 5, 813.

with its unwillingness to endanger the fragile Naivasha peace process. Security Council members are concerned that coercive military force in Sudan would endanger the progress of the fragile North-South peace agreement that if implemented, would end more than 20 years of brutal civil war.<sup>52</sup> Evidence from the formal meetings of the Security Council indicate that Council Members and the Secretariat alike view peace in Sudan as indivisible – peace between the north and south is inextricably linked to peace in Darfur as well as peace in the eastern region. Williams and Bellamy (2005) have argued persuasively that Western leaders fear that an intervention in Darfur might provoke further insurgencies throughout Sudan and threaten a process that has made significant progress in dealing with longstanding grievance in Sudan.<sup>53</sup>

Another factor of the geo-political context has to do with the broader US war on terror and more specifically its wars in Iraq and Afghanistan. Western powers lack the military capacity to intervene militarily as a result of troop commitments in Afghanistan and Iraq and without the support of Western troops other military forces are ill-equipped and lack the will to confront the Sudanese Government and the numerous rebel factions. African nations in particular are overstretched by their multiple peacekeeping commitments. The international community imposing its will on Sudan by force of arms has been considered naïve, impractical and dangerous according to AU and UN security specialists.<sup>54</sup> It is an irony, however, that those Western states that have advocated most

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<sup>52</sup> See Slim “Dithering over Darfur?”; De Waal, “Darfur and the Failure of the Responsibility to Protect”. This finding was also confirmed in interviews with senior political officials from the United Kingdom and New Zealand.

<sup>53</sup> Paul D. Williams and Alex J. Bellamy, “The Responsibility to Protect and the Crisis in Darfur,” *Security Dialogue* 36 (2005): 1, 27-47.

<sup>54</sup> De Waal, “Darfur and the Failure of the Responsibility to Protect.”

forcefully for the normative shift toward the responsibility to protect, find themselves militarily and politically incapable of launching military operations in Darfur.<sup>55</sup>

The preventive and unilateral invasion of Iraq also generated fears among developing states that the doctrine of humanitarian intervention was becoming too easily turned to unilateral purposes. The war in Iraq has been viewed by many governments around the world as illegitimate. Opponents of responsibility to protect have interpreted the invasion in Iraq as evidence of western interventionism driven by national interests, an interpretation aided by participants' statements seeking to justify the invasion of Iraq according to R2P principles.<sup>56</sup> One of the biggest dangers to the successful adoption and implementation of the responsibility to protect norm are false friends who threaten to dilute the power of the norm by applying it too broadly or in a manner contrary to its precautionary principles.<sup>57</sup>

These points about capacity and legitimacy are related to the inherent limitations of the responsibility to protect norm. It is important to note that the responsibility to protect does not justify coercive military intervention in every case of large-scale loss of life.<sup>58</sup> Military enforcement of the international responsibility to protect needs to be weighed against the prospects for a successful outcome. The precautionary principles established by the ICISS note that there must be a reasonable prospect of success in

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<sup>55</sup> Touko Piiparinen, "The Lessons of Darfur for the Future of Humanitarian Intervention," *Global Governance* 13 (2007): 3, 365-90.

<sup>56</sup> Gareth Evans, "International Law and the United Nations: The Use of Military Force," keynote address to Heinrich Boll Foundation, 5<sup>th</sup> Annual Foreign Policy Conference, Berlin, 24 June 2004. <http://www.crisisgroup.org/home/index.cfm?id=2832&1=1>

<sup>57</sup> Interviews with academics and government officials associated with the ICISS.

<sup>58</sup> Gareth Evans, "The Limits of State Sovereignty: The Responsibility to Protect in the 21<sup>st</sup> Century." Eighth Neelam Tiucheivam Memorial Lecture, President, International Crisis Group, Colombo, 29 July 2007. <http://www.crisisgroup.org/home/index.cfm?id=4967>.

averting the suffering which justifies military intervention and that the consequences of the use of military force must not be worse than inaction.<sup>59</sup> In short, military intervention must do more good than harm. Using force against Sudan without consent would have serious negative political and humanitarian implications. Consent matters when intervening states have a limited ability to deploy troops and must literally fight their way in to protect civilians. Consent then, becomes a practical necessity.<sup>60</sup>

Finally, the Security Council's decision to not authorize humanitarian intervention in Darfur is consistent with a broader pattern of Security-Council decision-making on humanitarian intervention. There is a need for greater consensus within the Security Council over who the victims and perpetrators are in Darfur. There are no clear good guys in Darfur and a myriad of perpetrators of human rights abuse. Military action occurs in clear cases of intentional violence where most members agree which actor is responsible.<sup>61</sup> Evidence from Security Council behavior in other cases of mass killing examined in this dissertation shows that Security Council unity around an intentional causal story with identifiable perpetrators and clear victims is a necessary, if permissive rather than sufficient, condition for humanitarian intervention. In the case of Darfur, Security Council Members were divided on the cause of the conflict and the character of the violence, despite their shared condemnation of human rights abuses and commitment to civilian protection. At least three different causal stories were advanced by Security Council members to explain the large-scale loss of life in Darfur: an intentional causal story about ethnic cleansing and potential genocide by the Sudanese Government; an

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<sup>59</sup> ICISS, *The Responsibility to Protect*.

<sup>60</sup> Interviews with senior British, Canadian and New Zealand political officials.

<sup>61</sup> Interview with member of the ICISS.

inadvertent causal story about a civil war in which multiple rebel groups and the Sudanese Government were fighting each other and violating the rights of civilians; and a complex causal story which described multiple conflicts (economic, ethnic, regional, tribal, civil and environmental) characterized by shifting alliances and splintering factions without identifiable victim groups or consistent perpetrators. When it comes to authorizing the use of force, contestation between Security Council members over the causal story of conflict and the character of the violence prevents authorization for military action.

The success of any particular causal story is mediated by the extent to which humanitarian intervention in that case reconciles principles of human rights with traditional notions of state sovereignty. When a sovereign government is considered to be one of the principle perpetrators of human rights abuse, it is more difficult for the nascent norm of humanitarian intervention encapsulated in the responsibility to protect to win out over the stronger and more internalized norm of non-intervention. The Security Council has not yet authorized humanitarian intervention in cases where the perpetrator has been a State Member of the United Nations.

Yet the norm of the responsibility to protect is based on a conceptualization of sovereignty as responsibility. As a result, it might be argued that adoption of R2P erases the tension between human rights and sovereignty principles. However, the responsibility to protect is a nascent norm. Its increasing codification into the formal record of the United Nations General Assembly and its adoption by Security Council members illustrates its growing strength. There was considerable movement among

Security Council members to reconcile human rights norms with sovereignty norms in the case of Darfur, rather than to argue that sovereignty norms were primary. The case of Darfur, Sudan illustrates the increasing significance of human rights norms to Security Council deliberations about sovereignty and the use of force. Nonetheless, it takes time for new norms to be adopted and internalized into the practice of states and some new norms fail. The case of Sudan shows that there has been significant movement in the *language* of Security Council members to reconcile human rights norms with sovereignty. Future research should examine the degree to which the emerging norm of a “collective international responsibility to protect, exercisable by the Security Council authorizing military intervention” has been translated into political practice in situations of mass atrocity since the dissemination of the principle by the ICISS in December 2001.

***Afterword:***

Developments in the Security Council on the situation in Darfur in 2005 and 2006 have confirmed the principle findings of this dissertation: Security Council members must converge around an intentional causal story about human rights violations and war; and United Nations authorized humanitarian intervention is more likely when humanitarian intervention in a particular case complements rather than conflicts with the highly internalized norms of state sovereignty and non-intervention.

The disunity among Security Council Members about the causal explanation for the massive killing in Darfur that characterized Council meetings in 2004 continued in 2005 and 2006. Contestation over the causal explanation of the conflict continued to

divide Security Council members preventing the use of military force in defense of human rights in Darfur. Indeed, a complex causal story emerged in February 2005. The Special Representative of the Secretary-General to Sudan described the conflict in Darfur as having characteristics of a conflict that is “economic, cultural, sometimes religious, sometimes ethnic or tribal, and resource-driven, as well as political”.<sup>62</sup> He advanced a story of complex causation to explain the atrocities in Darfur.

The conflict in Darfur is very complicated. It has political, economic, environmental and cultural dimensions. It is more than a civil war between a Government and rebel movements. It also encompasses a multitude of tribal conflicts – inter-tribal, as well as intra-tribal and clan fights. It certainly has some of the characteristics of a confrontation between Arabs and Africans...But it is also a struggle for survival between economic lifestyles – peasants and nomads – and the borderline between those two is not the same as that between Arabs and Africans. The economic struggle has environmental dimensions. There is population pressure and economic pressure – related to cattle raising, for instance – and competition for ever scarcer resources, such as land and water.<sup>63</sup>

Recognizing that lack of agreement on the nature of the conflict was preventing effective action by the Security Council, the Special Representative of the Chairperson of the Commission of the African Union on Sudan appealed to the Council to strengthen their commitment to bring peace to Sudan, arguing that disagreement about what to call the serious violations of human rights and humanitarian law committed in Darfur should not stand in the way of bringing their perpetrators to justice or acting to end the conflict.<sup>64</sup>

Later that same month, however, the findings of the Commission of Inquiry established by resolution 1564 (2006) strengthened the inadvertent causal story operating in the Council. On 16 February, the United Nations High Commissioner for Human

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<sup>62</sup> S/PV.5120, 8 February 2005, p. 13.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid., p. 17.

Rights characterized the human rights violations committed by the Sudanese Government this way,

...the Commission found that large-scale war crimes and crimes against humanity had been committed by Sudanese Government officials and by the Janjaweed militia...the Government forces and militias had, throughout Darfur, engaged in indiscriminate attacks against civilians, murder, torture, enforced disappearances, the destruction of villages, rape, pillage and forced displacement. Those acts took place on a very large scale and in a systematic manner, and may therefore amount to crimes against humanity.<sup>65</sup>

The Commission did not find evidence that the Government of Sudan had pursued a policy of genocide, however, in contrast to the findings of the United States.<sup>66</sup> The Commission also determined that rebel groups had committed serious violations of human rights that may amount to war crimes but that these violations were not systematic.<sup>67</sup> Thus the commission report gave support to the inadvertent causal story.

The continuing contestation between causal stories in the Security Council on Darfur did not prevent the establishment of the United Nations Mission in Sudan (UNMIS) to assist the Government and the Sudan People's Liberation Movement with implementation of the Comprehensive Peace Agreement that ended their long-standing civil war. It did, however, prevent the deployment of UNMIS troops to the Darfur region despite repeated ceasefire violations by all parties and the continuation of gross human rights abuses.

The complex causal story gained support in the Security Council in 2006. In April, the Chief Mediator for the Inter-Sudanese Peace Talks on Darfur described the complexity of the conflict.

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<sup>65</sup> S/PV.5125, 16 February 2005, p. 3.

<sup>66</sup> Ibid., p. 4.

<sup>67</sup> Ibid.

Let us be clear: the war in Darfur is not a conventional war between contending armies, or even a war between conventional State armed forces and a guerrilla movement. Darfur is home to a myriad of armed and dangerous militias, including the Janjaweed, armed movements that are fragmenting, bandits of sorts, foreign combatants and tribal forces.<sup>68</sup>

In June, the Representative of the UK headed a Security Council mission to Sudan. In his briefing to the rest of the Council on his return he underlined the increasing complexity of the conflict.

During its visit, the mission found that the conflict was not fully understood by the international community. It found, for example, that the terms “Government”, “rebel”, “Arab”, and “African” were often oversimplifications of a more complex situation on the ground, where alliances between tribes and groups often shift. The porous – or non-existent – border with Chad exacerbates. A number of the Council’s interlocutors described the situation in Darfur as a traditional conflict between herdsman and farmers over limited national resources.<sup>69</sup>

Clearly, the division among Security Council members over the cause and character of the violence in Darfur continued during 2005-2006. The failure of the Security Council to unite in support of an intentional causal story and instead converge around a complex causal story of conflict has created a circumstance in which Security Council authorized humanitarian intervention is not possible. The status of the Sudanese Government as a significant perpetrator in the conflict has also meant that the use of military force in protection of civilians in this case would bring human rights norms into direct conflict with sovereignty norms. During the early 1990s the practice of humanitarian intervention was ahead of the establishment of an accepted norm. At the start of the twenty-first century, the new norm of responsibility to protect is ahead of its political practice.

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<sup>68</sup> S/PV.5413, 18 April 2006, p. 4.

<sup>69</sup> S/PV.5462, 15 June 2006, p. 2.

## Chapter 9

### **Intentional Causal Stories, Human Rights Norms & the Reformulation of State Sovereignty**

At the start of the twenty-first century, there was a growing acceptance within the United Nations of the idea that Governments have a responsibility to protect their citizens and when they fail to do so, the responsibility for civilian protection transfers to the international community. In 2004, the Secretary-General's High-level Panel on Threats, Challenges and Change endorsed the "emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent".<sup>1</sup> This dissertation traces the emergence of this new norm of humanitarian intervention and the course of its evolution (1991-2004). Principally, the dissertation examines how Security Council action and inaction have defined the contours of this norm of humanitarian intervention – military intervention for protection purposes – and the conditions for its use. This chapter summarizes the principle findings of each case examined in the dissertation about the conditions necessary for Security Council authorized humanitarian intervention to occur. It draws attention to the principle factors that explain Security Council decision-making about human rights, state sovereignty, and the use of force. The chapter also

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<sup>1</sup>High-level Panel on Threats, Challenges and Change, *A More Secure World*, Part 3, Chapter 3, paragraph 203, p. 66.

examines recent developments (2005-2007) regarding the codification of the responsibility to protect norm in UN documents and in particular the Security Council response to the continuing violence in Darfur in light of those developments. I conclude that the new norm of sovereignty as responsibility, despite its growing legitimacy and increasing international codification, remains ahead of political practice. Nonetheless, further evidence from Darfur illustrates the increasing significance of human rights norms to Security Council deliberations about the use of force. The chapter concludes by examining the tensions between individual rights, the state and sovereignty. I argue that there has been considerable movement within the Security Council to reconcile human rights norms with sovereignty norms. At the start of the twenty-first century, the practice of humanitarian intervention, rather than challenging the norm of state sovereignty, is a direct result of the reformulation of sovereignty to include state responsibility to protect human beings from mass slaughter. Through the principle of the responsibility to protect, the grundnorm of international society – state sovereignty – has been reconceptualized in a way that merges it with the norm of humanitarian intervention. The centrality of state sovereignty to international politics has been reaffirmed but its substantive meaning had evolved to include the protection of human rights.

### **Summary of Findings**

The cases examined in this dissertation show that for humanitarian intervention to occur, members of the Security Council must share a common story about the character of the conflict and its resultant human rights violations. After the case of Somalia (1992-

1995), however, it began to matter what type of causal explanation of conflict the Security Council members united around. The lesson of Somalia was that situations of complexity and chaos are not amenable to military intervention. *Security Council Members, including most of its permanent Members, must accede to a particular frame for understanding the conflict on the agenda and its resultant human rights violations – an intentional causal story with clear victims and identifiable and intentional perpetrators.* In absence of Security Council convergence around an intentional causal story of conflict, the Council will not authorize the use of military force to stop the atrocities. Evidence from the cases also shows that it is easier to garner the political will necessary for the use of force if in addition to identifying a bad guy or perpetrator Security Council Members identify a “good guy” or a meaningful strategic partner on the ground to work with in the aftermath of the crisis.

In some cases, unity does not exist among Security Council Members and instead there is significant contestation within the Security Council between competing causal explanations for the conflict and human rights abuse. *The success of any particular causal story is mediated by: the extent to which humanitarian intervention in that particular case would conflict with the highly internalized norms of state sovereignty and non-intervention; the presence of Great Power leadership; and the coherence between causal stories and expert testimony, forensic evidence, and media imagery on the cause and character of the conflict.*

My research findings also show that *sequencing and timing of conflicts matter* with regards to Security Council decision-making about the use of force. Each

intervention or decision not to intervene by the Security Council sets and clarifies the conditions under which future humanitarian interventions will and will not be possible. For example, it was in the case of northern Iraq in 1991 that the Security Council for the first time defined the consequences of domestic human rights violations as a threat to international peace and security and suspended the exercise of sovereignty rights by a State Member of the United Nations.

Alternatively, in the case of Somalia (1992-1995), the Security Council defined a humanitarian crisis, in and of itself, a threat to international peace and security. The case of Somalia demonstrated that the Security Council was willing to use force to stop human rights violations in the absence of state authority. It was the case of Bosnia-Herzegovina (1992-1995) that expanded the possibility of humanitarian intervention to cases of contested sovereignty, not just in the absence of a legitimate state. Humanitarian intervention became possible in Bosnia-Herzegovina when the majority of Security Council Members including most of its permanent Members united around a story of conflict in which the Government of Bosnia-Herzegovina and its population were the victims of inter-state aggression and ethnic cleansing respectively.

In cases of contested sovereignty it is even more difficult to build consensus to use force against a sovereign state, even if that state is a perpetrator of genocide, as in Rwanda (1994). This can be explained by the relative strength of the sovereignty and non-intervention norms when compared to human rights norms. When human rights norms and sovereignty norms conflict, in most cases the latter wins out. Human rights norms ultimately triumphed in Bosnia-Herzegovina (1992-1995) because their

application complemented state sovereignty. Since Bosnia-Herzegovina was a state member of the United Nations the promotion of human rights to protect its population and the traditional conceptions of state sovereignty were not in conflict. In the case of Rwanda (1993-1994), where humanitarian intervention would have brought human rights norms and sovereignty norms into direct conflict, sovereignty norms trumped human rights. In the case of Kosovo (1998-1999), lack of unity among permanent Security Council members around an intentional causal story of conflict prevented the Security Council from authorizing humanitarian intervention. Just like in Rwanda in 1994, in Kosovo in 1999 it remained difficult to garner the political will among Security Council Members necessary to mount a humanitarian intervention against a perpetrator state. However, the increasing strength of human rights norms meant that the use of military force by NATO to stop ethnic cleansing in Kosovo was considered legitimate by most state members of the United Nations, even if it was technically illegal because of the absence of Security Council authorization.

The clash between human rights and sovereignty norms and debates about the legitimate use of force in the case of Kosovo evoked a crisis within the United Nations, culminating in a call by the Secretary-General for states to work toward reconciling the principles of sovereignty and human rights. The emerging responsibility to protect norm which authorizes the Security Council to protect citizens from states that are perpetrators or unwilling or unable to protect them from systematic violations of their rights, emerged out of the Security Council failure in Kosovo. In Sierra Leone, in contrast, Council Members were united in their support for the Government of Sierra Leone and its citizens

– victims of violence perpetrated by rebel gangs. Sierra Leone (1996-2004), like Bosnia-Herzegovina before it, was a case in which the state along with its citizens, were victims rather than perpetrators of most gross human rights abuses. In this case, Security Council Members were simultaneously able to promote the human rights and fundamental freedoms of individuals as well as the sovereignty rights of the state. Finally, in the case of Darfur, Sudan (2003-2004), the failure of the member states to unite around an intentional causal story and the conflict between state sovereignty and human rights has prevented serious consideration of humanitarian intervention to halt mass killing. Nonetheless, there is evidence in the Sudan case that members of the Security Council are increasingly coming to adopt the conceptualization of sovereignty as responsibility in which states bear the primary responsibility to protect their population as a condition of their sovereignty. At the beginning of the twenty-first century, then, the humanitarian intervention norm (now encapsulated in the responsibility to protect) and the sovereignty norm are being reformulated simultaneously. Security Council decision-making in Darfur has reaffirmed the fundamental importance of the norm of state sovereignty but has illustrated that the substance of what sovereignty means has changed to incorporate the protection of human rights. The new norm of the responsibility to protect seeks to ease the tension that emerged between these two norms over the course of the 1990s.

#### *Northern Iraq (1991-1992)*

In the case of northern Iraq, there was widespread agreement among Members of the Security Council on the character of the ongoing violence within Iraq's borders but Members disagreed whether or not state repression constituted a threat to regional and

international peace and security. Resolution 688 (1991) was groundbreaking because the Security Council criticized a sovereign government for its repression of its citizens arguing that the consequences of that repression constituted a threat to international peace and security.<sup>2</sup> This resolution was only cautiously passed by the Security Council however, with 10 states voting in favor, 3 states opposed (Cuba, Yemen and Zimbabwe) and 2 states abstaining from the vote (China and India).<sup>3</sup> Even the resolution's supporters carefully articulated their continuing support for the principle of non-interference in the internal affairs of states enshrined in Article 2 (7) of the Charter of the United Nations. The language of resolution 688 (1991) also re-affirmed the principles of state sovereignty and non-intervention at the same time that it demanded access to Iraq's sovereign territory and an end to state violations of human rights. Specifically, the resolution condemned the repression of the civilian population, especially the Kurds, arguing that the consequences of those violations – massive refugee flows and the use of force across state borders – threatened to destabilize the entire region. Resolution 688 (1991) demanded that Iraq end its repression of its citizens, begin a process of political dialogue aimed at the human rights protection of its population and provide immediate access to its territory and population for the purposes of humanitarian relief.

During the formal debates on the situation of Iraqi civilians in the aftermath of the Gulf War, the Special Rapporteur of the Commission on Human Rights addressed the

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<sup>2</sup> It is important to note defining repression as a threat to international peace and security occurred earlier in other organs of the United Nations such as the Human Rights Commission where this argument was used to justify the United Nations' work in Chile in the late 1970s and late 1980s, making the Security Council significantly later in its reformulation of what constitutes a threat to international peace and security.

<sup>3</sup> The ten state members of the Security Council that voted in favor of resolution 688 included: Austria, Belgium, Cote d'Ivoire, Ecuador, France, Romania, the Russian Federation, the United Kingdom, the United States, and Zaire

Security Council. This was a monumental development and sparked disagreement among Council Members as to the appropriateness of human rights discussions to the maintenance of international peace and security. The Special Rapporteur's participation was approved under rule 39 of the provisional rules of procedure but he was allowed to brief the Council only in his personal capacity and not in his position affiliated with the Commission on Human Rights.<sup>4</sup> Nonetheless, his report to the Council was entirely on the human rights situations in Kuwait and Iraq. Despite these important changes in favor of the advancement of human rights, however, the Security Council paid little attention to Iraq's domestic human rights practices prior to the invasion of Kuwait in 1990, illustrating the way in which human rights norms interact with national security interests. For example, the Iraqi Government gassed the Kurdish population in northern Iraq in 1987 and 1988, without a punitive response from the international community. In fact, it was only after Iraq had violated the foundational norm of state sovereignty by invading Kuwait in 1990 that the Security Council took an interest in Iraq's treatment of its own citizens. And it was the cross-border impact of these human rights violations that made them a threat, not the human rights violations in and of themselves. Indeed, only a small number of European states argued that external interference was justified in the case of Iraq based on the nature of the atrocities alone. Instead, it was the extraordinary nature of the Iraqi situation that justified Security Council action to address the root cause of

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<sup>4</sup> Rule 39 of the United Nations Security Council Provision Rules of Procedure (S/96/Rev.7) reads: The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence. [www.un.org/Docs/sc/scrules.htm](http://www.un.org/Docs/sc/scrules.htm).

regional instability within the borders of Iraq, not a change in the normative standing of the sovereignty or non-intervention principles.

Resolution 688 (1991) did not challenge Iraqi statehood. Instead, Iraqi sovereignty rights were temporarily suspended. The Government was not permitted to exercise its sovereign authority over its people and territory as a result of its own violations of the international sovereignty and non-intervention norms. Resolution 688 (1991) did not explicitly authorize the use of force in defense of human rights but permanent Members of the Security Council including France, the United Kingdom and the United States, justified the use of force to stop Iraqi repression under the legal authority granted by the *previous* Chapter VII military action undertaken by the Security Council to reverse Iraq's aggression against Kuwait.

In sum, the case of northern Iraq was an important development for the emergence of a norm of humanitarian intervention. It was the first time that a humanitarian crisis had been defined as a regional threat to international peace and security. And it demonstrated that the Security Council was willing to define internal human rights violations as a threat to international peace and stability when they have trans-border effects. The internal human rights violations in themselves, however, despite their significance were not a cause for international concern. It was only when the *effects* of Iraq's human rights abuses negatively impacted its state neighbors that the Security Council embarked on this significant and far-reaching response to Iraqi repressions. Had Iraqi refugees not crossed the borders into Turkey and Iran but remained suffering within the territorial boundaries of the Iraqi state, the use of force to

halt the repression would not have been forthcoming. Humanitarian intervention on behalf of the Iraqi Kurds and Shia's protected the sovereignty and territorial integrity of Turkey and Iran at the same time that it temporarily suspended Iraqi sovereignty and protected human rights.

*Somalia (1992-1995)*

The Security Council authorized the use of force for humanitarian purposes in Somalia in 1992, making it a case of humanitarian intervention for the purposes of this dissertation. The Somalia case is also one in which the practice of humanitarian intervention complemented sovereignty norms. Security Council involvement in the case of Somalia was motivated by four factors: the magnitude of human suffering; the cross-border impact of continued fighting on neighboring states; the unconventional nature of the conflict – there was an absence of state authority; and the importance of equity in terms of United Nations attention to Africa. Resolution 726 (1992) determined that it was the continuation of the internal situation in Somalia that made it an international threat, and not the consequences of the internal situation for its neighbors like resolution 688 (1991) had in the case of Iraq. Similarly, resolution 751 (1992), which established the United Nations Operation in Somalia (UNOSOM), stated that the magnitude of human suffering caused by the conflict in Somalia made it a threat to international peace and security. In the case of Somalia, a non-traditional view of security – that human rights and security are linked – shaped the initial response of the Security Council. Resolutions 794 (1992) and 814 (1993) marked important advances for the emerging

norm of humanitarian intervention. Both resolutions authorized the use of “all necessary means” by UN personnel to create the conditions required for the safe delivery of humanitarian aid and for political reconciliation in Somalia. This marked the first time that the United Nations authorized armed intervention for a strictly humanitarian cause.

The movement toward Security Council authorized armed intervention for humanitarian reasons was possible because of the high degree of unity in the Security Council around the cause of the conflict and because the use of coercive force posed little threat to norms of state sovereignty, territorial integrity and non-interference in domestic affairs. First, unlike in the later case of Bosnia-Herzegovina, Security Council Members were largely unified in their interpretation of the conflict. This unity among Council Members continued even as the causal story about the conflict changed in the aftermath of SNA attacks on UN peacekeepers. Resolution 837 (1993) identified the SNA faction of the United Somali Congress (USC) and its leader, General Aideed, as perpetrators of attacks against a new group of victims – the United Nations. This change in the chain of causality led to a change in mission emphasis. Resolution 837 (1993) authorized UNOSOM II forces to confront and deter armed attacks against UN personnel and to take necessary measures against those responsible for attacks on peacekeepers. Disagreement on the cause of, and appropriate response to conflict emerged in the Council after full-scale fighting erupted between SNA supporters, UN peacekeepers and the US Military. The death of 16 US soldiers and numerous Somali civilians in October 1993 prompted an eventual US withdrawal of troops from the mission. When the unity in the Security

Council dissipated, so did the humanitarian mission, without achieving its political purpose.

Second, Somalia lacked a legitimate Government and was considered a non-State entity by Security Council Members in many respects. Humanitarian intervention in Somalia didn't raise sovereignty concerns the same way humanitarian intervention does in cases where legitimate state authority exists. New norms are more likely to become strengthened when they are consistent with existing internalized norms, rather than in conflict with them.

The formal record of the Security Council on the situation in Somalia indicated that for many members, the protection and promotion of human rights was integral to the maintenance of international peace and security. Security Council Members made repeated references to the impact of media reporting and imagery on their decision-making with regard to Somalia. Media imagery and expert reports brought the human rights situation in Somalia to their attention and to the attention of their domestic publics, making it easier to garner the political support necessary for humanitarian intervention. While expert opinion and media imagery helped to provoke international interest in Somalia leading to eventual United Nations humanitarian intervention, it also provoked international outrage about the ill treatment of peacekeepers, which eventually led to United Nations withdrawal.

Two innovations in Security Council practice happened in Somalia. It was the first time that the Security Council determined that a strictly internal humanitarian catastrophe constituted a threat to international peace and security. Then, UNOSOM II

was the first peacekeeping mission authorized by the Security Council to undertake enforcement action under Chapter VII of the Charter of the United Nations. However, there was division among both permanent and elected Security Council Members over whether these innovations should serve as a precedent for future Security Council action. China and India were the most vocal and prominent objectors to the Somalia case being seen as a precedent for future humanitarian interventions. Yet six states, including the United States, explicitly stated that they intended the Somalia case to establish precedent.<sup>5</sup> As a result of this fundamental disagreement, Security Council resolutions on Somalia had the effect of both expanding the conventional practice of the Security Council and emphasizing the unique character of that expanded response. The Somali intervention also delineated some limits to the practice of humanitarian intervention. Based on its experience in Somalia, the Security Council later determined that complexity is not amenable to political or military solution. The Security Council needed an intentional and identifiable perpetrator, a clear bad guy, whose behavior the Council could interdict in order for humanitarian intervention to become possible. But the Council also needed a constructive partner on the ground to work with in establishing a political solution to the crisis. In a situation of chaos, perpetrators and potential strategic partners are not clearly identifiable and it is difficult to link specific crimes to their perpetrators. In the cases of intervention following Somalia, simple Council agreement on the source of conflict would not be sufficient, Council unity around a *specific* explanation of the conflict was necessary for a conflict to be considered a candidate for

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<sup>5</sup> Cape Verde, Pakistan, Spain, the United Kingdom and Venezuela also made statements to the Security Council in which they indicated they intended their action in Somalia to set a precedent while Argentina warned that the withdrawal would send a negative message to perpetrators in other conflicts.

Security Council authorized humanitarian intervention – *an intentional causal story with clear victims and identifiable perpetrators.*

*Bosnia-Herzegovina (1992-1995)*

Bosnia-Herzegovina was a case of Security Council authorized humanitarian intervention and one in which the promotion of human rights norms complemented the exercise of state sovereignty. The conflict in Bosnia-Herzegovina raised important questions about the potentially conflicting principles of the protection of human rights and non-intervention; the conditions of legitimate statehood and the appropriate means of self-determination. For these reasons, the situation in Bosnia-Herzegovina provoked widespread interest among large and small states, with 145 states not elected to the Security Council participating in its deliberations on Bosnia over a three year period. There was widespread international interest because the debate about how to respond to the crisis in Bosnia-Herzegovina was in part a debate about what the new world order would look like at the end of the Cold War. At stake in the Security Council's response to the questions raised by the case of Bosnia-Herzegovina were issues of significant importance to most states in the international system: how to resolve situations of contested state sovereignty, what the Charter obligations of the Security Council are in responding to war – whether within or between states; and whether norms of human rights or sovereignty and non-intervention would take precedence when the two came into conflict. Further, the systematic human rights violations in Bosnia-Herzegovina vividly captured by media imagery evoked memories of World War II and the Holocaust.

It seems only natural that the organ created in response to that war would become actively involved in conflicts bearing resemblance to it.

Disunity among Security Council Members over the cause and character of the Bosnian conflict complicated UN efforts to stop ethnic cleansing. Disagreement between Council Members over whether to authorize humanitarian intervention resulted from disagreement on the sovereign authority with regard to Bosnia-Herzegovina and whether the conflict was a civil war or an external aggression. Different frames for understanding the character of the Bosnian war and the human rights conditions on the ground were contested and fought over in the Security Council. Early in the conflict, three competing causal stories of the conflict emerged among Council Members – an inadvertent causal story about civil war, an intentional causal story about external aggression against an independent and sovereign State, and a story of complex causality which lacked a single point of leverage or locus of control. These divisions over the character of the Bosnian conflict not only occurred among members of the Security Council, but also among the members of the United Nations at large. The Security Council response, or more accurately lack thereof, prompted a schism between the majority of members of the General Assembly who supported the intentional causal story of inter-state aggression and the majority of permanent members of the Security Council who adopted a civil war frame where all parties were culpable of violations of human rights and humanitarian law. Despite these differences of opinion on the causal story of Bosnia-Herzegovina, Security Council Members unanimously condemned the practice of ethnic cleansing. Disunity on the causal story, however, prevented early humanitarian intervention and

uniform Security Council action with regards to the protection of safe areas and the proposed partial lifting of the arms embargo against the Bosnian Government.

Humanitarian intervention only became possible in Bosnia-Herzegovina after Security Council Members converged around the intentional causal story in which the Bosnian State was a victim of internal revolt fomented by external aggression by a neighboring state (the Federal Republic of Yugoslavia). In the competition between these causal stories, the existence of powerful proponents on the Security Council and consistency between the causal story and expert opinion, forensic evidence and media imagery of “the facts on the ground” help to explain why the intentional causal story eventually won out over the alternative causal explanations.

Great power leadership matters in the Security Council. The United States of America was an early and forceful proponent of the intentional causal story about Bosnia-Herzegovina. The preceding cases of northern Iraq and Somalia also demonstrated the necessity of US support for humanitarian intervention to occur. However, the case of Bosnia-Herzegovina shows that in absence of a strong coalition of support among permanent members of the Security Council behind the intentional causal explanation of conflict, US support alone is insufficient to prompt humanitarian intervention authorized by the Security Council. Unity around the intentional causal story promoted by the United States and the vast majority of elected members of the Security Council coalesced following irrefutable expert testimony and forensic evidence about Bosnian Serb ethnic cleansing of designated safe areas, eventually making the inadvertent story of civil war unsustainable in the face of mounting evidence to the

contrary. For example, media imagery of the second Markale marketplace massacre in August 1995 in which civilians standing in line for bread in Sarajevo were attacked by sniper fire challenged the civil war frame. The release of the Secretary-General's report to the Security Council in November 1995 confirming independent reports of the possibility of mass graves in Srebrenica also made it difficult to sustain the inadvertent causal explanation. This report included aerial photographs of newly erected dirt mounds provided by the US intelligence services, expert testimony of independent researchers, and documentation of human rights abuses by human rights organizations who had interviewed survivors of the attacks against the safe areas, including Srebrenica. In the face of mounting evidence of Bosnian Serb and Serb state culpability, France and the United Kingdom shifted their positions and the intentional causal story won out over explanations of equal culpability and complexity. Only the Russian Federation continued to deny the intentional causal account (but did not exercise its veto) and China accepted the intentional story but was opposed in principle to the use of force. Contestation between competing causal stories stymied Security Council action. Humanitarian intervention became possible in Bosnia-Herzegovina after a majority of permanent Security Council Members joined the elected Members of the Council in conceptualizing the conflict as inter-state aggression – with the Bosnian Serbs aided by President Milosevic and the Serbian State as perpetrators of ethnic cleansing with the intention of exerting its control over the territory and people of the sovereign state of Bosnia-Herzegovina. Increased unity around this intentional causal story was bolstered by the coherence between the intentional causal story and existing international norms. In the

case of Bosnia-Herzegovina, the promotion of human rights norms was easily reconciled with the norms of sovereignty and territorial integrity. Humanitarian intervention on behalf of the Bosnians reaffirmed the Bosnian Government's sovereignty at the same time that it promoted the norm of Security Council responsibility for the protection of individual human rights.

The importance of the Bosnian case for the study of the emerging norm of humanitarian intervention is that it expanded the possibility of humanitarian intervention to situations of contested sovereignty. Humanitarian intervention in Bosnia-Herzegovina was possible because the Security Council agreed that the victim was a State Member of the United Nations. In cases of contested sovereignty, it is easier to build consensus around the use of force in defense of a sovereign state than against it. Humanitarian intervention is more likely when the promotion of human rights norms complements state sovereignty than when it directly challenges it. The Bosnian case also demonstrates that while US support is necessary, it is insufficient to provoke Security Council authorized humanitarian intervention when faced with the opposition of the remaining permanent members. Examination of the Bosnian case also underscores the increasing power of human rights norms. Security Council resolutions clearly linked the protection of human rights with the maintenance of international peace and security. Further, by establishing the International Criminal Tribunal for the former Yugoslavia, the Security Council advanced the legitimacy of human rights and the relevance of their protection to collective security. Although there were some norm entrepreneurs on the Security Council who promoted the protection of human rights for their own sake (including

Argentina, the Czech Republic, New Zealand and Venezuela), most members adopted an instrumental understanding of the relationship between human rights and security – the protection of human rights is important because it enhances security.

*Rwanda (1993-1994)*

The case of the Rwandan genocide is an example of Security Council failure to authorize humanitarian intervention to stop human rights abuses for the purposes of this dissertation and is a case where the practice of humanitarian intervention conflicts with state sovereignty. Although the Security Council eventually authorized an intervention by France in 1995, this intervention was after the genocide and had the consent of Rwandan state, making it a non-case for the purposes of this study. While the cases of Somalia and Bosnia-Herzegovina affirmed the existence of an emerging norm of humanitarian intervention and delineated the conditions of its use, the case of Rwanda sharply highlighted the nascent norms limitations. The Security Council response to the violence in Rwanda in 1994 demonstrated that disagreement among members of the Security Council on the cause of conflict prevents military action to stop it; and that there are limits to the financial and human costs that states are willing to pay to save strangers in the absence of clear strategic interests. The timing of the Rwandan genocide in relation to the conflicts in Somalia and Bosnia-Herzegovina matters to understanding the Security Council's decision not to authorize humanitarian intervention to stop the genocide in 1994. Faced with mounting challenges and peacekeeping failures in Somalia and Bosnia-Herzegovina, the Security Council was reluctant to engage in another peace

enforcement operation in 1993. Rwanda made it onto the Security Council agenda only after the parties to its civil war, which started in 1991, signed a far-reaching peace agreement in Arusha Tanzania. The Security Council made its participation in Rwanda contingent on progress in implementing the Arusha Accords. It authorized a traditional chapter VI peacekeeping operation to monitor the fulfillment of the agreement and to build confidence between the previous warring parties. From inception, Rwanda was viewed in the shadow of the failures in Somalia and competed with both Somalia and Bosnia-Herzegovina for attention and financial resources. Immediately after voting in favor of resolution 872 (1993) establishing the United Nations Assistance Mission in Rwanda (UNAMIR), the United States stated that it would work to reduce UNAMIR's budget.

When the genocide commenced in April 1994, most Security Council Members interpreted the killing within the framework of a civil war. Because UNAMIR was established to monitor the Arusha Accords that ended civil war, when violence restarted most Security Council Members described the violence as a ceasefire violation and the restart of hostilities between the parties. However, a small group of elected Security Council members, including the Czech Republic, New Zealand, Spain and Argentina described the conflict in terms of an intentional causal story and even genocide. They publicly advanced an intentional causal story about the conflict in Rwanda beginning in May 1994 in which the Government of Rwanda was the perpetrator of genocide against the Tutsi members of its civilian population. Lack of unity around the intentional causal story however, obstructed the efforts of its proponents on the Security Council to enhance

UNAMIR forces and intervene to stop the killing. In the absence of great power leadership provided by permanent members, the elected members of the Council who advanced the intentional causal story were stymied in their efforts to prompt humanitarian intervention.

Further complicating the acceptance of the intentional causal explanation of conflict was the conflict between the promotion of human rights and the protection of state sovereignty in the case of Rwanda. Rwanda was a fundamentally different conflict than either Somalia or Bosnia-Herzegovina. In this case, systematic violations of human rights and international humanitarian law were perpetrated by a State Member of the United Nations. In Somalia and Bosnia-Herzegovina, application of an emerging humanitarian intervention norm reinforced the existing norm of state sovereignty; but humanitarian intervention against the State of Rwanda would directly challenge the institution of sovereignty. The lesson of Rwanda is that it is significantly more difficult to authorize the use of force against a state member of the United Nations for human rights violation against its own population, even when it commits genocide, than in defense of the state.

Even when there was a discernable shift within the Security Council by its Members toward the adoption of the explanation of genocide in June 1994, the intentional causal story lacked clarity as Security Council Members either failed to identify or disagreed with one another on the identities of the perpetrators and victims of genocide. This meant that even after the approval of an expanded peacekeeping operation with a broadened mandate, UNAMIR II did not receive Chapter VII

authorization or sufficient pledges of troops and equipment to make it operational. The apparent mismatch between mandate and capacity to fulfill it reflected a lack of commitment to preserving human life in Rwanda when faced with the large human and financial costs exacted on the UN membership for intervention – what is commonly referred to as a lack of political will. By the end of June 1994, Security Council Members agreed that they must respond to the continuing genocide in Rwanda but disagreed on the appropriate response. France proposed to undertake a humanitarian operation in Rwanda under national control. This proposal was approved by both the Government of Rwanda – the principle perpetrator of the genocide – and the majority of Security Council Members. Military intervention, when it finally occurred, was largely after the genocide and had the approval of the recognized state authority, removing the conflict between the emerging norm of humanitarian intervention and the norm of sovereignty. The intervention did not involve confrontation with the perpetrators.

Despite the late military intervention by France, the Security Council failed to act to prevent or stop the genocide. This failure can be explained in part by the failure of the Security Council Members to unify around an intentional causal story about the conflict. Humanitarian intervention was not possible in the face of strong permanent member opposition. Permanent Members of the Security Council continued to describe the conflict in terms of a civil war framework failing to acknowledge that both civil war and genocide were occurring simultaneously. The Rwanda case underscores the importance of great power leadership for generating Council unity, that the application of human rights norms are mediated by national interests, and that the norms of sovereignty and

non-interference in internal affairs are a formidable barrier to humanitarian intervention when they conflict with human rights norms. The international outrage in response to the United Nations' failure to intervene to stop the genocide, however, confirms the existence of an emerging norm of humanitarian intervention. The Security Council was perceived by domestic populations around the world as failing to discharge its principle duty which included the responsibility to respond to massive human rights violations during conflict.

*Kosovo (1998-1999)*

The conflict in Kosovo is a non-case of Security Council authorized humanitarian intervention and a situation in which the use of military force in defense of human rights conflicts with sovereignty norms. Although a military intervention was undertaken by the North Atlantic Treaty Organization in 1999, it lacked legal authorization from the Security Council. At stake in the Security Council debate over the situation in Kosovo was clarifying the limits of state authority and control over its population and territory in an era marked by the increasing legitimacy of human rights principles. In Kosovo, Security Council members debated the rights and duties of states with regard to their populations. Security Council Members, like in the case of Rwanda and Bosnia-Herzegovina before it, disagreed on the nature of the conflict – whether it was a civil war or systematic ethnic cleansing. They also disagreed whether the intra-state violence was a war at all or whether it was a legitimate response by state authorities to a fundamental challenge by Kosovo's Albanians to the Serbian State's sovereignty over its territory and population. Disunity among permanent members of the Security Council on the

character of the conflict and the appropriate international response obstructed Security Council action. France, the United States and the United Kingdom advanced an intentional causal story in which the Serbian state was systematically cleansing its territory of ethnic Albanians by directing the use of military force against Albanian civilians. China and the Russian Federation fundamentally disagreed, defending Serbia's right to protect its sovereignty against internal challenges to its legal authority. The disagreement went beyond the acceptance of a shared causal story to debate over whether it was a relevant matter for Security Council discussion at all. The positions of the five permanent members were irreconcilable – an insurmountable barrier to Security Council authorized humanitarian intervention.

The intentional causal story had difficulty winning out over the inadvertent causal story in which the Serbian authorities were guilty of excessive use of force in response to acts of domestic terrorism. The desire for secession by much of the Albanian population brought human rights norms into direct conflict with state sovereignty and territorial integrity. Further, although the proponents of the intentional causal story clearly identified the perpetrators of the violence, the Albanian population made for complicated victims. The Albanians were represented by a shadow Government elected by the people that was committed to non-violent political change but they were also represented by the Kosovo Liberation Army (KLA) which was committed to secession through the use of force. The existence of the latter organization greatly complicated the efforts by proponents of the intentional causal story to gain support for humanitarian intervention.

Disunity within the Security Council prevented Security Council authorized humanitarian intervention; but the permanent Members of the Security Council who were proponents of humanitarian intervention in Kosovo (France, the UK and the US) did use military force against the Serbian authorities in an effort to stop ethnic cleansing, despite the absence of a Security Council authorization. Five of the fifteen Members of the Security Council in 1999 were also members of the North Atlantic Treaty Organization (NATO).<sup>6</sup> Humanitarian intervention by NATO can be explained by the same factors that explain Security Council authorization for the use of force in defense of human rights, namely, unity around an intentional causal story of conflict and the increasing prominence of human rights norms. NATO members also acted based on the historical experience of ethnic cleansing by Serbs in Bosnia-Herzegovina (1992-1995) and the intersection of national and regional security interests with human rights norms. Like in the cases of humanitarian intervention preceding it, the timing of the military response was provoked by forensic evidence, expert testimony and media imagery. The watershed moment for supporters of the intentional causal story was the Racak massacre of January 1999 in which the Kosovo Verification Mission confirmed that Serbian military and police authorities launched a reprisal attack against civilians living in the village of Racak and international human rights and media organizations captured the evidence of this and other atrocities and broadcast them internationally. Following a final failed attempt to seek a political solution to the crisis in Rambouillet France and the subsequent launch of

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<sup>6</sup> The five members of the Security Council that were also NATO members included: Canada, France, the Netherlands, the United Kingdom and the United States.

a massive ethnic cleansing campaign by the Serbian Government, NATO forces began bombing targets in Serbia both in and outside of Kosovo.

The NATO humanitarian intervention in Kosovo threatened Security Council credibility by illuminating the stark divisions among its members over the relationship between human rights and security. The intervention also sparked a rancorous debate among permanent Security Council members over the meaning of sovereignty and the legitimate authority for the use of force. China and the Russian Federation advanced a draft resolution condemning the NATO intervention and sanctioning its Members, illustrating the gravity of the crisis the NATO intervention caused within the United Nations. The failure of the resolution by a vote of 12 to 3 confirmed the legitimacy of the principle that humanitarian intervention is justified in cases of overwhelming humanitarian necessity.<sup>7</sup> NATO members justified their actions to the Security Council on the basis of shared human rights norms and the legal obligation to prevent acts of ethnic cleansing and genocide. They argued that the legal foundations for their actions existed in international human rights and humanitarian law, including the Charter of the United Nations. States supportive of the NATO intervention also justified the suspension of the Federal Republic of Yugoslavia's sovereignty based on its failure to meet the conditions of responsible statehood with regard to Kosovo, and in the past with regard to Bosnia-Herzegovina. The European states defended their regional responsibility to maintain peace and security in Europe and protect the fragile Bosnian peace process in

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<sup>7</sup> Only China, Namibia and the Russian Federation voted to define the use of force by NATO as a threat to international peace and security.

absence of Security Council fulfillment of its primary duty to maintain international peace and security.

Although the case of Kosovo is a non-case of Security Council authorized humanitarian intervention, debate among Security Council members on the situation in Kosovo and the subsequent NATO military response significantly advanced the idea that states could not terrorize their own citizens. The failure of the Security Council to effectively engage the conflict in Kosovo and the crisis caused by NATO's illegal use of force in protection of human rights sparked an international movement to reconcile the emerging norm of humanitarian intervention with state sovereignty, resulting in the reformulation of sovereignty as responsibility.

*Sierra Leone (1996-2004)*

Sierra Leone was a case of Security Council authorized humanitarian intervention and one in which the emerging humanitarian intervention norm complemented the sovereignty norm. In contrast to the preceding case of Rwanda and the simultaneous case of Kosovo, in Sierra Leone the democratically-elected Government was the victim, rather than the perpetrator of gross human rights violations. This eliminated the tension between the protection of sovereignty and the protection of human rights. Security Council Members quickly unified around an intentional causal story of conflict in which rebel forces including the Revolutionary United Front (RUF) and elements of the Armed Forces Revolutionary Council (AFRC) were perpetrating violence against the legitimate Government of Sierra Leone and its population. In absence of a competing causal

explanation of the conflict, Security Council Members could act to protect and promote human rights at the same time that it reaffirmed state sovereignty. This Council unity meant that other factors that mediate the success of one causal story over another – the extent to which it is coherent or conflicts with other highly internalized norms, the importance of great power leadership, and the degree of coherence between the causal explanation and expert testimony, forensic evidence and media imagery – were less dominant in the Sierra Leone case. But all three of these factors were present in Sierra Leone.

Evidence from the formal meetings on the situation in Sierra Leone demonstrates that Security Council Members were motivated by human rights concerns in responding to the crisis in Sierra Leone. Security Council Members had a vested interest in protecting state sovereignty by reversing the effects of an illegal military coup; but in its resolutions on Sierra Leone the Council went beyond defending state sovereignty to ushering in monumental changes to peacekeeping and peace enforcement operations. These innovations included the adoption of a civilian protection mandate under Chapter VII, the establishment of human rights monitors, child protection standards and extensive human rights training for UN personnel involved with peacekeeping operations. Security Council Members demonstrated their belief in the connection between human rights and security and in particular how a culture of impunity threatened a durable peace. In the case of Sierra Leone, the Security Council demanded justice for violations of international human rights and humanitarian law, even when the Government had decided not to hold trials. With the passage of resolution 1315 (2000), the Security

Council authorized the creation of a Special Court to prosecute international crimes committed during the war in Sierra Leone in spite of amnesty agreement signed by the Government and the rebels. Finally, many Security Council members voiced their support for a broader conception of state sovereignty that included state responsibility for the protection of human rights.

*Darfur, Sudan (2003-2004)*

Sudan is a non-case of Security Council authorized humanitarian intervention and a situation in which the emerging humanitarian intervention norm conflicted with the sovereignty norm. There was division between Security Council members over the cause and character of the violence in Darfur, Sudan during its formal debates (2003-2004). An intentional causal story was advanced by the United States in which it described the Government of Sudan as perpetrating gross and systematic human rights violations against its citizens in Darfur, suggesting to the Council that Sudan “may be condoning or perpetrating genocide”.<sup>8</sup> Most Security Council members shared the concern over high rates of civilian deaths in Darfur and criticized the Government of Sudan for its failure to protect its population, disarm the Janjaweed militias that were attacking civilians, and bring the perpetrators of human rights violations to trial. But at least 9 members of the Security Council, including the permanent members of France, the Russian Federation, and the United Kingdom, articulated an inadvertent causal story about civil war – in which all parties were responsible for the continued fighting and atrocities against civilians. China argued that the situation in Darfur was an internal matter of the

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<sup>8</sup> Copy footnote from Chapter 9.

Government of Sudan and at least five members of the Council also described the conflict as having complex causes.

The inadvertent causal story was supported by the evidence presented in the reports of the Special Representative of the Secretary-General to the Security Council which identified both rebel groups and the Government as perpetrators of violence against civilians, although it expressed more concern about the latter. In contrast, the United Nations Emergency Relief Coordinator testified that there was evidence of ethnic cleansing by the Government. In absence of Council unity around an intentional causal story about the situation in Darfur, humanitarian intervention was not possible. Indeed, not a single member of the Security Council suggested that the Security Council authorize military force to protect citizens in Darfur. Instead, the punitive actions for failing to protect civilians and disarm militias were discussed related to Article 41 of the Charter which calls for the Security Council to take measures short of force.

Further, the situation in Sudan brought the norms of sovereignty into tension with human rights norms. As the cases of Rwanda and Kosovo show, it is much more difficult to achieve Council unity for humanitarian intervention when the perpetrator of human rights violations is a state. Nonetheless, there were visible attempts by members of the Security Council to reconcile human rights norms in the case of Sudan, illustrating the increasing significance of human rights norms to Security Council deliberations on the meaning of sovereignty and the purposes of the use of force. A sizeable minority of Security Council members adopted the language of “sovereignty as responsibility” and “state responsibility to protect” advanced by the International Commission on

Intervention and State Sovereignty (ICISS). Resolutions 1556 (2004) and 1564 (2004) noted in their preambles that states have a responsibility to protect their population within their territory and to respect human rights.

### **Explaining Security Council Humanitarian Intervention Decisions**

#### *Unity among Security Council Members on an intentional causal story of conflict*

Unity around an intentional causal story is necessary for humanitarian intervention authorized by the Security Council to become possible (see Table 9.1 below). Because humanitarian intervention requires suspending the exercise of sovereignty by the state in question, in absence of Security Council unity, humanitarian intervention will not happen.

**Table 9.1: Causal Stories and Security Council Authorized Humanitarian Intervention**

<b>Conflict</b>	<b>Causal Story</b>	<b>Humanitarian Intervention</b>
Somalia	Complex	Yes
Bosnia-Herzegovina	Intentional	Yes
Rwanda	Inadvertent	No
Kosovo	Contested	No
Sierra Leone	Intentional	Yes
Sudan (Darfur)	Complex	No

When there is contestation between competing causal stories of conflict, Security Council action with regard to the use of force is not possible. An intentional causal story of conflict clearly identifies a perpetrator or perpetrators of systematic violations of human rights that are directed at a specific victim group. The strength of the intentional causal story increases when perpetrators and victims are identified by name (President Milosevic, the Bosnian Muslim population), rather than by generic identity (Serbian

authorities, all civilians). Unity around an inadvertent causal story (a civil war frame) in which multiple parties to the conflict are guilty of perpetrating atrocities against civilians does not lend itself to intervention. Similarly, based on the experience of Somalia, situations of complex causality no longer garner the political will required for Security Council authorized humanitarian intervention. Complexity is not amenable to humanitarian intervention.

*Degree to which humanitarian intervention in a particular case would bring human rights norms into conflict with norms of state sovereignty, territorial integrity and non-intervention.*

In the contestation between causal stories, the degree to which humanitarian intervention in a particular case would bring human rights norms into conflict with norms of state sovereignty, territorial integrity and non-intervention is significant. It matters in Security Council deliberations whether the perpetrator of intentional crimes against the civilian population is a state or non-state actor. When the state is perpetrator there is a significant conflict between the Council's promotion of human rights norms and the norm of sovereignty. It is much more difficult to garner the political will necessary to intervene militarily against a perpetrator state. It became possible for the Security Council to define the effects of human rights violations as a threat to international peace and security in Iraq because its sovereignty had already been suspended. There was significant agreement throughout the international community that Iraq had violated the terms of its external sovereignty. The Security Council did not authorize the use of military force to protect the Kurds and Shias although some members of the Council did use force to protect safe areas. In Rwanda, Kosovo and Sudan the state was the principle

perpetrator of massive atrocities, yet authorization by the Security Council for humanitarian intervention did not happen. In the case of Kosovo, unity of the P-3 members combined with the support of the majority of the elected members around an intentional causal story about Serbian ethnic cleansing of ethnic Albanians permitted them to overcome the high threshold for intervention using the North Atlantic Treaty Organization. The increasing acceptance of the principles of “sovereignty as responsibility” and “the responsibility to protect” by the Security Council means that we should expect authorizations for humanitarian intervention in cases of both state omission and commission with regards to human rights violations. These principles have not yet been operationalized by the Security Council, however as the case of Sudan indicates.

On the other hand, when a non-governmental entity is the principle perpetrator or when the state is conceptualized as a victim of violence along with its citizens (Bosnia-Herzegovina, Sierra Leone), the Security Council actually reaffirms state sovereignty at the same time that it promotes human rights norms through humanitarian intervention. In sum, humanitarian intervention is more likely when there is greater coherence between human rights norms and sovereignty norms. When human rights violations occur at a high level and state sovereignty and legitimacy is low, humanitarian intervention is likely. In contrast, when the sovereignty of a perpetrator state is high, the human rights violations must cross a higher threshold in order to garner the political support necessary for humanitarian intervention. In effect, the human rights principles involved must trump sovereignty because intervention in such a conflict brings these norms into conflict. This finding is consistent with the norms literature in international relations. When there is a

transition to a new norm, as in the cases examined in this dissertation, it will receive more support if it does not come into conflict with strong existing norms. Since humanitarian intervention – or the responsibility to protect – is a new norm, it makes sense that it will not be exercised where it strongly conflicts with the institutionalized norm of state sovereignty. New norms must enter an environment in which the standards of appropriateness are determined by existing norms.<sup>9</sup> Security Council decisions about humanitarian intervention are occurring in a context where the appropriate grounds for the use of force are being renegotiated both inside and outside the Council chamber.

As Table 1 above shows unity around an intentional causal story was necessary for humanitarian intervention to occur in all cases but Somalia. As the examination of the case of Somalia above demonstrated, prior to the Somalia intervention agreement on the cause and character of conflict among Security Council Members was necessary for humanitarian intervention to become possible; but after the political failures of the Somalia intervention, situations of complex causality no longer elicited Security Council authorization. Instead, because of the experience of Somalia, agreement among Security Council members on the causal story alone was not enough – humanitarian intervention required Security Council unity around an *intentional* causal story.

Table 2 (below) shows that after the initial case of Iraq, in which the Security Council defined the effects of human rights a threat to international peace and security but did not authorize the use of military force, humanitarian intervention was undertaken by the Security Council when the victims of aggression were sovereign states as well as their citizens. Alternatively, when states were identified as perpetrators, humanitarian

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<sup>9</sup> Finnemore and Sikkink, “Norm Dynamics and Political Change.”

intervention did not occur. This can be explained by the tension that arises between the new, weaker norm of humanitarian intervention and the strong international norm of state sovereignty. When the state and its citizens are the victims of gross human rights violations, on the other hand, the promotion of human rights through the practice of humanitarian intervention does not challenge, and in most cases, reaffirms, existing sovereignty norms. Unity around inadvertent causal explanations do not provoke humanitarian intervention, regardless the level of human rights abuses. Finally, division among Council Members over the causal story prevents Security Council action in response to the fighting and humanitarian consequences. Unresolved contestation prevents Security Council humanitarian intervention, and in the case of Kosovo, prevents the Security Council from authorizing the use of force.

***Table 9.2: Cases of Security Council Authorized Humanitarian Intervention***

<b>State</b>	<b>Conflict with Westphalian Sovereignty</b>	<b>Humanitarian Intervention</b>
Somalia	No	Yes
Bosnia-Herzegovina	No	Yes
Rwanda	Yes	No
Fed. Rep. of Yugoslavia (Kosovo)	Yes	No*
Sierra Leone	No	Yes
Sudan	Yes	No

\* NATO intervened militarily to stop ethnic cleansing in Kosovo in absence of Security Council authorization.

*Importance of Great Power Leadership*

The success of the intentional causal story over other competing conceptualizations of conflict is mediated by the power and prominence of its

proponents. Humanitarian intervention requires Security Council unity around an intentional causal story. Unity does not require the active support of all Security Council members but it does require the support of the United States as well as the acceptance or concurrence of a majority of permanent Security Council members. The case of Rwanda shows that unity among elected members around an intentional causal story of conflict is ineffective when faced with opposition from the permanent members of the Security Council. Similarly, although most of the elected members of the Council and the United States were early proponents of an intentional causal story about aggression in Bosnia-Herzegovina, it was only after France and the UK also accepted the intentional causal story that intervention became possible. In the case of Kosovo, support of France, the US and the UK for the intentional causal story was not enough when faced with threatened veto opposition from China and the Russian Federation; but because of their great power status they had the military capacity to respond in absence of Security Council authorization and the political clout to avoid censure for their actions. In sum, support of the United States is a necessary but not sufficient condition for the success of an intentional causal story in the Security Council. This finding is also confirmed in the case of Darfur. United States support for an intentional causal story has been insufficient to create a permissive environment for humanitarian intervention.

*Importance of forensic evidence, expert testimony and media imagery in shaping causal stories and garnering political will to respond*

Forensic evidence, expert testimony and media images proving the existence of human rights violations can bring situations of conflict to the attention of the decision

makers on the Security Council, as well as their domestic publics. These factors also mediate the success of competing causal stories about the character of conflict and the nature of human rights violations. Coherence between the intentional causal story and “the facts on the ground” makes the continued acceptance of rival causal stories by other Council members untenable. Expert and forensic evidence and media imagery mediates the contestation process, helping one causal story win out over others, but it is also often the trigger that determines the point at which intervention happens. Once an intentional causal story has been adopted by the majority of members of the Security Council, for example, documentation of particularly egregious abuses may provoke the use of military force. So while evidence of mass atrocity can shift Security Council support in favor of a particular causal story, once an intentional causal story has been adopted, evidence of mass atrocity can help to explain the timing of humanitarian intervention.

#### *Sequencing and Historical Context of Situations of Mass Killing*

The sequencing and historical timing of Security Council decisions about the use of force matter. At the earliest stages in the norm’s development, the requirements for humanitarian intervention are higher than later when the norm has become more accepted by members of the Security Council. For example, in the case of Somalia, humanitarian intervention was possible because of the absence of state authority but in Bosnia-Herzegovina intervention expanded to cases of contested state sovereignty. Humanitarian intervention is also more likely in cases with a history of past human rights violations garnering the attention of the Security Council (Iraq and Kosovo). It also is common practice for Security Council members to discuss each new conflict within the

context of their experience of the last intervention. In this sense, timing matters. Security Council members sought to avoid another Somalia or Bosnia-Herzegovina when Rwanda made it to the Security Council agenda. This influenced how they framed and responded to the killing in Rwanda. Had the genocide occurred in a different historical context, the response might have been different. Similarly, if the conflict in the Security Council over the appropriate response to violence in Kosovo had happened earlier in the norm's development and in absence of the experience of Bosnia-Herzegovina, there is reason to doubt that NATO members would have intervened militarily in absence of Security Council authorization. Finally, simultaneous crises create competition for scarce resources. Sierra Leone was always examined in the context of Kosovo. But the Security Council's experiences earned through earlier interventions and failures in the field led to an incremental and more robust response from the Security Council in response to the kidnappings of peacekeepers in Sierra Leone than it had in the earlier conflicts of Somalia and Bosnia-Herzegovina.

### **Human Rights, Armed Force and State Sovereignty**

The emerging practice of humanitarian intervention which began in the early 1990s paralleled a simultaneous evolution in the norms of sovereignty and human rights. Initially, humanitarian intervention was not possible by the Security Council when its exercise would bring the two norms into tension as demonstrated in the cases of Rwanda and Kosovo. However, humanitarian intervention became possible when the two norms complemented each other as in the cases of Somalia, Bosnia-Herzegovina and Sierra

Leone. At the beginning of the twenty-first century however, a new norm of sovereignty as responsibility emerged, substantially revising both the highly internalized norm of state sovereignty and the emerging norm of humanitarian intervention. As a result, the responsibility to protect norm reconciles the preservation of sovereignty with the protection of human rights. In this section, I will describe some of the significant changes in the status of the responsibility to protect norm that have developed since 2004.

*Evolution of the Responsibility to Protect Norm (2005-2007)*

Faced with the combined Security Council failures in Rwanda and Kosovo, Secretary-General Kofi Annan in 1999 issued a challenge to the members of the United Nations: to find a way to reconcile human rights principles with the tradition of state sovereignty. The International Commission on Intervention and State Sovereignty (ICISS) responded to that challenge by re-conceptualizing sovereignty to include state responsibility for the protection of human rights and advocating for a collective international responsibility to protect exercisable by the Security Council. Chapter 8 explored the significant attempt by some Security Council members to reconcile human rights norms with sovereignty norms by articulating this collective responsibility to protect civilians in Darfur, Sudan (2003-2004). Significantly, despite initial reluctance, the responsibility to protect was formally endorsed as an international norm by the membership of the United Nations in 2005 and later codified into the resolutions of the Security Council.

Annan proposed that the United Nations move “towards embracing and acting on the ‘responsibility to protect’ potential or actual victims of mass atrocities” in his comprehensive report on the implementation of the Millennium Declaration in early 2005.<sup>10</sup> The report, *In Larger Freedom: Towards Development, Security and Human Rights for All*, was produced for world leaders in advance of the 2005 World Summit.

Specifically, the report stated,

This responsibility lies, first and foremost, with each individual State, whose primary *raison d’être* and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required.<sup>11</sup>

In April, members of the General Assembly met in a series of six plenary sessions to respond to the report in preparation for the World Summit. During the debate, twenty-four member states plus the 27 states represented by the European Union eagerly endorsed the new norm of the responsibility to protect. Poland’s statement is typical of this support.

...we have to recognize that a new paradigm of security has emerged, moving the centre of attention from the security of States towards the security of citizens – individual human beings – a shift from the concept of defending territory to that of protecting people. The principle of responsible sovereignty includes not only a State’s privileges, but also its obligations to protect human rights, the rule of law, democracy and the welfare of its own people, as well as its obligations towards other States. Hence, we endorse the emerging norm that there is a collective international ‘responsibility to protect’, exercisable by the Security Council, in cases when sovereign Governments have proved unable or unwilling to act.<sup>12</sup>

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<sup>10</sup> Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights For All*, (United Nations, 2005), p. 49, Section IV, Part A, paragraph 135.

<sup>11</sup> Annan, *In Larger Freedom*, 49, Section IV, Part A, paragraph 135.

<sup>12</sup> A/59/PV.89, 8 April 2005, 89<sup>th</sup> plenary meeting of the General Assembly, p. 4.

Although the African Union adopted the responsibility to protect in its Charter in 2005, the response from some quarters of Africa and the Americas was cautious about adopting the principle. There was significant opposition to responsibility to protect, however, from states in the Middle East and by the Russian Federation. The former argued that adoption of the responsibility to protect would lead to uneven application based on the geostrategic interests of powerful, Western states and would undermine national sovereignty.<sup>13</sup> The latter vigorously rejected the proposition that sovereignty as responsibility was an emerging norm but confirmed that the Security Council could authorize intervention when massive human rights violations and genocide qualified as a threat to international peace and security under Chapter VII of the Charter of the United Nations.<sup>14</sup> Six months later, however, in October 2005, the World Summit Outcome document was unanimously adopted by the Heads of State and/or Government of all the member states of the United Nations. In paragraphs 138 and 139, the final document reaffirmed that respect for human rights is essential to international relations; declared that individual states had a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity; and endorsed the principle that the United Nations has the responsibility to protect populations through the collective action of the Security Council.<sup>15</sup>

This emerging norm of the responsibility to protect (R2P) was affirmed by the Security Council in resolution 1674 (2006) on the protection of civilians in armed

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<sup>13</sup> A/59/PV.86, 6 April 2005, 86<sup>th</sup> plenary meeting of the General Assembly, p. 5 (Pakistan); p. 9 (Algeria); and p. 13 (Egypt). See also statement by Iran.

<sup>14</sup> A/59/PV.87, 7 April 2005, 87<sup>th</sup> plenary meeting of the General Assembly, p. 6.

<sup>15</sup> A/RES/60/1, 24 October 2005, 60/1. 2005 World Summit Outcome, pp. 1; 30.

conflict. Originally expected to pass in December 2005, the resolution was delayed for several months in response to divisions among Security Council members over the appropriateness of further codification of R2P.<sup>16</sup> The Russian Federation argued that it was premature to advance the concept of responsibility to protect in Security Council documents.<sup>17</sup> Alternatively, France argued that it would be unusual to reopen debate on a concept that already had “commanded a consensus among our heads of State or Government”<sup>18</sup>. The original draft of the resolution, which was advanced by the United Kingdom, specifically affirmed state and collective international responsibility to protect in two clauses of the preamble and a single operative clause which underlined the specific provisions of R2P from the World Summit Outcome Document. The revised resolution which was passed unanimously by the Security Council in April 2006 weakened the responsibility to protect language and included a statement on the reaffirmation of the “principles of political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States”.<sup>19</sup> Nonetheless, resolution 1674 (2006) did endorse the responsibility to protect by referring to paragraphs 138 and 139 of the World Summit Outcome Document in the fourth operative clause of the resolution. Paragraphs 138 and 139 endorsed state responsibility to protect its citizens and an international collective responsibility to protect civilians when a state is either unable or unwilling to do so, respectively. The passage of a Security Council resolution on the

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<sup>16</sup> S/PV.5319, 9 December 2005

<sup>17</sup> *Ibid.*, p. 19.

<sup>18</sup> S/PV.5319 (resumption 1), 9 December 2005, p. 7.

<sup>19</sup> S/RES/1674(2006), 28 April 2006. The members of the Security Council in April 2006 were Argentina, China, Congo, Denmark, France, Ghana, Greece, Japan, Peru, Qatar, Russian Federation, Slovakia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, and the United States of America.

protection of civilians in armed conflict was a significant development in itself. Civilian protection was not included in the mandates of peace operations in the 1990s except in the case of Sierra Leone.<sup>20</sup> This compromise resolution gained Chinese acceptance and overcame Russia's reluctance to support it.

While proponents of the responsibility to protect describe it as a new international norm and seek its further codification in Security Council resolutions in an effort to enhance its status as common or customary law, its opponents continue to deny that support for the principle is widespread enough for it to be considered an international norm. However, increasing evidence of the transformation of the sovereignty norm to include responsibility to citizens can be found in the statements of members of the Security Council during formal meetings and in the resolutions passed on the situation in Darfur, Sudan as indicated in Chapter 8. However, the passage of Security Council resolution 1706 (2006) on the situation in Darfur is a particularly important development because it recalls resolution 1674 (2006) on the protection of civilians in armed conflict and reaffirms paragraphs 138 and 139 of the World Summit outcome document endorsing the responsibility to protect. Resolution 1706 (2006) is the first Security Council resolution mandating a United Nations peacekeeping operation that makes an explicit reference to "the responsibility of each United Nations Member State to protect its citizens and the international community's responsibility to assist in this if the state could not provide for such protection alone".<sup>21</sup> At the end of August 2007 United Nations Secretary-General Ban Ki Moon proposed the creation of the position of Special

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<sup>20</sup> Piiparinen, "The Lessons of Darfur."

<sup>21</sup> S/PV.5519, 31 August 2006, p. 4.

Advisor for the Responsibility to Protect. The Special Advisor will focus on the conceptual development of responsibility to protect including its operationalization and building consensus around the new norm among members of the United Nations. So what is the status of the responsibility to protect norm at the end of 2007?

According to Finnemore and Sikkink (1998), “after norm entrepreneurs have persuaded a critical mass of states to become norm leaders and adopt new norms, we can say the norm reaches a threshold or tipping point”.<sup>22</sup> A critical mass of states has been reached when enough states adopt the norm (not less than one third of states) and when enough critical states adopt the norm. In this case, the critical states – “those without

**Table 9.3: Security Council Endorsement of the Responsibility to Protect Norm**

<b>Resolution</b>	<b>Subject</b>	<b>Votes in Favor</b>	<b>Abstentions</b>	<b>Votes Against</b>
<b>1674 (2006)</b>	Protection of civilians in armed conflict; endorses responsibility to protect	Argentina, China, Congo, Denmark, France, Ghana, Greece, Japan, Peru, Qatar, Russian Federation, Slovakia, Tanzania, UK, USA	None	None
<b>1706 (2006)</b>	Situation in Sudan (Darfur); endorses responsibility to protect	Argentina, Congo, Denmark, France, Ghana, Greece, Japan, Peru, Slovakia, Tanzania, UK, USA	China, Qatar, Russian Federation	None

<sup>22</sup> Finnemore and Sikkink, “Norm Dynamics and Political Change,” 901.

which the achievement of the substantive norm goal is compromised”<sup>23</sup> – are the five permanent members of the Security Council. As the table above shows, the responsibility to protect norm was endorsed unanimously by the members of the Security Council in resolution 1674 (2006). It is also important to note that China was serving as the president of the Security Council during the month of April 2006 when resolution 1674 (2006) was passed by the Council. Security Council presidents have enormous agenda setting power, thus, it is notable that the resolution on the protection of civilians during conflict was negotiated and passed during China’s tenure. However, resolution 1706 (2006) which applied the responsibility to protect to the case of Darfur, Sudan did not receive the support of China and the Russian Federation who abstained from the vote on this resolution.

A norms cascade requires support but not unanimity from critical states.<sup>24</sup> At minimum, we can argue that the decision by China and the Russian Federation to not veto resolution 1706 (2006) means that either they did not view it as a threat to their vital interests or their national interests have begun to be shaped by new norms of human rights protection. Because the responsibility to protect was adopted in resolutions, however, and not a formal treaty with specific legal obligations, we need further evidence of international socialization before we can safely argue that a tipping point has been reached. As of 2007, there is increasing evidence that the responsibility to protect norm (formerly articulated as the norm of humanitarian intervention) is approaching but has not yet reached a critical threshold or tipping point in the life cycle of the norm. This means

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<sup>23</sup> Finnemore and Sikkink, “Norm Dynamics and Political Change,” 901.

<sup>24</sup> Ibid.

that not enough states have endorsed the responsibility to protect such that it has redefined what constitutes the appropriate use of force by the Security Council. We will need to watch the behavior of the Security Council as it continues to address situations of mass killing, ethnic cleansing and genocide for evidence of increased international socialization. Whether or not the norm's entrepreneurs will induce norm breakers to become norm followers and punish them when they violate the new norm will determine if the responsibility to respect norm will cascade through the international community of states becoming the prevailing standard of appropriateness or whether like many emergent norms it never cascades.

*The practice of Humanitarian Intervention and the Institution of State Sovereignty*

The formidable challenges posed to the institution of sovereignty by new norms of human rights protection during the 1990s brings into sharp relief the tension that can exist between individual rights, the state, and sovereignty. In an attempt to bridge the political divide between sovereignty and military intervention to protect human rights, scholars and policy practitioners have promoted a new conceptualization of "sovereignty as responsibility" which has been codified in documents including the 2005 World Summit Outcome and Security Council resolutions 1674 (2006) and 1706 (2006).<sup>25</sup> States have formally endorsed the idea that they have the responsibility to protect their populations and if they are either unable or unwilling to fulfill their responsibilities towards its people, or if the state itself is the perpetrator, the responsibility to protect

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<sup>25</sup> ICISS, *Responsibility to Protect*.

transfers to other state parties.<sup>26</sup> When the state fails to fulfill its sovereign responsibility, “the principle of non-intervention yields to the international responsibility to protect”.<sup>27</sup> In this way, the doctrine of the responsibility to protect reaffirms state sovereignty – both its internal authority and its external legal identity – but transforms its meaning of sovereignty to require state protection of human rights. When states approve international agreements voluntarily, they accept the external obligations imposed upon them by those agreements as well as international oversight. Those agreements that are codified into international law gain the most force; but agreements on norms about protecting human rights have significant legitimacy.<sup>28</sup> When members of the international community of states agree to intervene militarily in a sovereign state to protect that state’s population, it is temporarily suspending the sovereignty of the state in question but not challenging the institution of sovereignty itself.<sup>29</sup>

According to just war theorist Michael Walzer (1977), when a state turns savagely on its own people and engages in crimes that “shock the conscience of mankind” it is possible to doubt the very existence of a political community. In turn, without a political community there is no requirement for state self-determination or sovereignty. In effect, the sovereignty of a rights-violating state is temporarily suspended or not recognized by the international society of states, rather than overturned as an institution. This is consistent with the argument in Chapter 1 that sovereignty cannot simply be asserted by a

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<sup>26</sup> Thakur, “Intervention, Sovereignty and the Responsibility to Protect,” 328.

<sup>27</sup> *Ibid.*, 330.

<sup>28</sup> *Ibid.*

<sup>29</sup> ICISS, *Responsibility to Protect*).

single state but must be mutually conferred between states.<sup>30</sup> Historically, states have refused equal recognition to states viewed as “uncivilized”.<sup>31</sup> Following a similar logic of contingent sovereignty, acts such as aggression, and even the mass killing by a state of its own citizens, may permit other states to intervene without subverting sovereignty. In a case where intervention is undertaken to stop atrocities, the state being intervened upon arguably does not lose its sovereignty, rather, it forfeits its right to non-intervention.<sup>32</sup>

Since sovereignty is not independent from an international community of sovereign states, a broad-based membership of that community can undertake intervention legitimately on the basis of a general consensus among them.

Sovereignty is the constitutive principle of the nation-state system, yet is also derivative of that system. This underlies the paradox of sovereignty: states are sovereign only within the context of a broader global system of states, and thus they can remain independent only by maintaining a system that imposes constraints on their independence”.<sup>33</sup>

Sovereignty based on the conception that power resides in the people, is not inconsistent with military intervention to promote and protect the fundamental freedoms of people from their state. If the basis for rule is the consent of the ruled, states that exist juridically but that are not social facts should waive their right to non-intervention in cases of extreme violence directed at the ruled.<sup>34</sup> The security of states should not take precedence over the security of human beings, the protection for whom the state was

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<sup>30</sup> Donnelly, *Universal Human Rights*, 250.

<sup>31</sup> See Crawford, *Argument and Change*; Finnemore, *Purposes of Intervention*.

<sup>32</sup> Donnelly, *Universal Human Rights*, 250.

<sup>33</sup> Bruce Cronin, “Intervention and the International Community,” In *International Intervention: Sovereignty Versus Responsibility*, ed. Michael and Donald A. Sylvan Keren, (London: Frank Cass Publishers, 2002), 150; 156.

<sup>34</sup> See Ken Booth, “Security and Emancipation.” *Review of International Studies* 17 (1991): 4, 313-26; Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent, 1973).

created. Because the meaning and location of sovereignty are contested, it should not set limits to, or exhaust, our moral and political identities and obligations.<sup>35</sup>

Finally, it is questionable whether the act of multilateral military intervention for protection purposes fundamentally threatens or weakens the institution of sovereignty at all. States undertaking military intervention, even on behalf of human rights, are exercising their sovereign statehood. Indeed, the reframing of sovereignty as responsibility reaffirms the principle of sovereignty as the cornerstone of international relations at the same time that it defines civilian protection as the sovereign responsibility of the state. Humanitarian intervention reinforces the concept of the state as the primary actor in international politics. By saving strangers, the state maintains its status as the primary protector of human rights norms at the same time that it remains the principal violator of human rights norms. Conceived in this way, humanitarian intervention does not threaten the principles of sovereignty, sovereign equality among states, or domestic jurisdiction. Instead, it reformulates the meaning of sovereignty – that it entails citizen protection and the recognition of fundamental human rights – at the same time that it reaffirms the principle that states retain the monopoly over power and the means of violence in the international state-system. At the end of 2007 the Security Council is making decisions about humanitarian intervention in a context in which the meaning of state sovereignty and the appropriate standards for the use of force are simultaneously being reformulated.

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<sup>35</sup> Booth, “Security and Emancipation”, p. 79; and Mark Hoffman, “Agency, Identity and Intervention” in *Political Theory, International Relations and the Ethics of Intervention* ed, Mark Hoffman and Ian Forbes (London: Macmillan Press, 1993), 205.

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