Norm-Takers or Norm-Makers? The Role of Developing Countries in the Evolution of International Norms of Intervention and State Sovereignty

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ABSTRACT

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Since the end of the Cold War, the norms of sovereignty and non-intervention enshrined in the UN Charter have been subject to significant challenge by practices of "humanitarian intervention" in civil conflicts and humanitarian crises involving massive human rights violations. Since 2001, the "responsibility to protect" has been considered by some to be an "emerging norm" in international society which seeks to redefine the sovereignty of nation-states in terms of their responsibility to protect their populations from massive human rights abuses and to establish a responsibility of the international community as a whole to intervene, including through military force in extreme cases, where states are unwilling or unable to fulfill their sovereign responsibilities. This thesis examines the role of developing countries in the emergence and evolution of the "responsibility to protect" and attempts to develop a theory to explain the ability of developing countries to influence the direction of change in international norms of sovereignty and intervention. It does so by conducting a plausibility probe of several hypotheses derived from Stephen Krasner's theory of "international regime change" and applying these to a case-study of international debates around "humanitarian intervention" and the "responsibility to protect" between 1999 and 2005.

DEDICATION

To M-H, without whose "help" this would likely have been a better thesis.

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Introduction

Since the end of the Cold War, the norms of sovereignty and non-intervention enshrined in the UN Charter have been subject to significant challenge by practices of "humanitarian intervention" in civil conflicts and humanitarian crises involving massive human rights violations. Since 2001, the "responsibility to protect" has been considered by some to be an "emerging norm" in international society which seeks to redefine the sovereignty of nation-states in terms of their responsibility to protect their populations from massive human rights abuses and to establish a responsibility of the international community as a whole to intervene, including through military force in extreme cases, where states are unwilling or unable to fulfill their sovereign responsibilities to protect their populations. Since the 1990s, the most consistent sceptics of the concept of "humanitarian intervention" in international society have been developing states. In international gatherings inside and outside the UN, state representatives from the global South have repeatedly rejected the "so-called 'right' of humanitarian intervention" and—especially since the 2003 US-UK-led invasion of Iraq—some have warned against allowing the "responsibility to protect" to become a Trojan horse for military intervention for strategic reasons by Northern great powers.

This thesis sets out to assess how successful developing states have been in influencing the direction of change in international norms concerning sovereignty and intervention. How have they used existing international institutions to try to influence the evolution of these norms? How unified has the "global South" been in its position on intervention and sovereignty? How have attitudes in the "global North" affected the

ability of developing states to influence the debate? In order to answer these questions, and to develop a theory concerning the ability of developing states to influence the evolution of international norms more generally, I conduct a plausibility-probe of several hypotheses derived from Stephen Krasner's theory of "international regime change." In particular, I apply these hypotheses to a case-study of international debates around "humanitarian intervention" and the "responsibility to protect" beginning in 1999 after NATO's intervention in the conflict in Kosovo in the Federal Republic of Yugoslavia.

Extrapolating from Krasner's theory, I will probe the following hypotheses:

Hypothesis 1: As existing international institutions facilitate the participation of developing countries in decision-making, the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should also increase.

Hypothesis 2: As the ideological coherence of the Southern diplomacy on issues of sovereignty and intervention increases, the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should also increase.

Hypothesis 3: As Northern capabilities decline, the success of developing countries in influencing the direction change in international norms of sovereignty and intervention should also increase, provided Northern attitudes remain committed to action through multilateral institutions.

The reason for conducting a plausibility probe rather than theory-testing is the lack of an existing theory specifically concerned with the issue of developing states and norm evolution. As I argue the next chapter, while existing literature on international norms generally recognizes the historic role of developing states in promoting international norm change (e.g. during the period of decolonization), it provides little in terms of systematic analysis of the ability of developing countries to act as "norm entrepreneurs" in the current international system. Hence the need to adapt possible

hypotheses from existing theory in another area of International Relations (IR) and attempt to determine whether more intensive testing of my derived hypotheses is warranted.

1. Structure

This introduction is followed by four chapters and a conclusion. Chapter 1 surveys the existing literature in IR on the subject of international norms. I argue that there is little attention in this literature to the role of developing states in international norm change, and little attempt to systematically investigate the ability of developing states to influence the direction of norm change. I then introduce Stephen Krasner's theory of "international regime change," developed in the context of the North-South conflict of the 1970s and 1980s.

In Chapter 2 I present my research design, beginning with a fuller explanation of the "modified structural" theory of international politics which I draw on, and the way in which I adapt Krasner's theory of "international regime change" to investigate the role of developing countries in the evolution of international norms. I then present my three working hypotheses (stated above) and define and explain how I will operationalize my variables. Here I explain what I mean by "international norms of sovereignty and intervention," focusing in particular on the three core norms of what I call the "postcolonial sovereignty regime": non-intervention, non-use of force and sovereign equality. In this section I emphasize the degree to which these norms are contested along several dimensions and suggest how shifting areas of international consensus and contestation might be measured. I then define and explain how I will measure "Northern

attitudes and capabilities," "ideological coherence of Southern diplomacy," and the degree to which international institutions facilitate Southern participation in decision-making ("institutional environment").

The next two chapters present my case study in two parts, each covering a separate chronological period. Chapter 3 analyzes developments between the 1999 NATO intervention in Kosovo and the 2001 publication of the report of the International Commission on Intervention and State Sovereignty which first articulated the concept of the "responsibility to protect." Chapter 4 analyzes developments between 2002 and 2005, with a particular focus on the lead-up to the 2005 World Summit during which world leaders in the UN General Assembly agreed to a version of the "responsibility to protect" concept. In both of these chapters I seek to assess the state of all three of my independent variables—Northern capabilities and attitudes, ideological coherence of Southern diplomacy, and institutional environments—and their impact on the success of developing countries in influencing the development of international norms. In doing so I follow the within-case method proposed by George and Bennett, using process-tracing to identify causal relations between variables at different points in the case.[1] It is important to note that process-tracing in a single case can provide multiple *observations* along the causal path linking independent and dependent variables. Because of this, as George and Bennett note, it is possible to overcome the problem of underdetermination which arises when variables outnumber cases (as they usually do in single-case designs, including

[1] George and Bennett propose within-case methods as an alternative or complementary research method to controlled comparison of different cases, which they argue it is difficult to find adequate cases for in the social sciences. Within-case methods attempt to establish the causal impact of particular variables, not by focusing on analysis of variables across cases, but on uncovering causal paths within a single case. Process-tracing seeks to identify the causal chains or mechanisms linking independent and dependent variables. See Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Mass.: MIT Press, 2005), chapters 8-10.

mine).[2] Both parts of my case study thus contain separate observations for all variables in a given chronological period. In general my observations on the "ideological coherence of Southern diplomacy" are the lengthiest. This is so both because of the importance of this variable, and because there is much useful empirical data on the views of the "global South" on intervention that is (unfortunately) not widely made use of by IR scholars interested in these issues.

2. General conclusions

Based on my case study, I conclude that the empirical evidence generally supports my hypotheses, meaning that these are worthy of further and more rigorous testing. In general terms, the evolution of the international debate on "humanitarian intervention" from 1999 to 2005, and in particular the emergence and development of the concept of the "responsibility to protect," confirms that developing states *can,* at least in the area of sovereignty and intervention, impact the direction of international norm change, if only by defusing radical challenges to existing norms. In broad terms, my conclusion is that, where Northern states have sought to bring about reform of the norms of sovereignty and intervention through multilateral institutions that grant developing countries the opportunity to participate in decision-making, and where the global South has managed to forge some coherence in its response to these Northern initiatives, developing countries have been able to shape the direction of norm change. Where Northern states have chosen to act through narrower mechanisms, where institutional environments allow for less direct Southern participation in decision-making, or where developing states have

[2] Ibid., 28-29.

been divided over the issue of sovereignty and intervention, the global South has been less successful in influencing the direction of norm change.

Chapter 1: Literature Review

This chapter reviews the relevant scholarship in International Relations (IR) on the subject of international norms and their evolution. In particular, I focus on identifying scholarship relevant to thinking about the role of developing states in influencing (or resisting) international norm change and answering my research question: how do the structures of international institutions, the ideological coherence of Southern diplomacy, and Northern attitudes and capabilities affect the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention? In the first section of this chapter I consider IR scholarship on international norms in general and the conceptual and methodological debates that have emerged in this scholarship. In the second section I consider how such scholarship addresses the issue of norm change and the relationship between norms and power in international politics. I suggest that some of this scholarship underestimates the way in which power asymmetries in the international system shape processes of norm diffusion and norm change. In the third section I consider what role developing states can play in influencing the development of international norms given the vast power asymmetries that characterize the international system. I argue that this problem has not been systematically addressed in the literature and I find in Stephen Krasner's work on the North-South conflict a potentially useful theoretical framework for thinking about the conditions that are likely to affect the ability of developing states to collectively influence the development of international norms.

1. Norms in international relations: conceptual and methodological issues

The study of international norms has become a prominent area of research within IR since at least the 1980s. As Martha Finnemore and Kathryn Sikkink note, while the concern with norms and "ideas" in IR has a long history—including in the work of such archetypically "realist" figures as E.H. Carr and Hans Morgenthau—there was a definite "return to norms" in IR scholarship in the 1980s and 1990s.[3] This "return to norms" followed an earlier turn away from norms and normative concerns associated with the 1970s "behavioural revolution" and the rise to prominence of materialist-structural theories of international politics (especially Kenneth Waltz's neorealism). Outside of the United States, a concern with norms remained central in IR even in the 1970s, however, particularly in the work of "English school" scholars such as Martin Wight and Hedley Bull, for whom norms shared by states formed the very basis of "international society."[4] Within American IR, the early 1980s saw the rise of a concern with international regimes which included analysis of norms as key components of regimes of inter-state cooperation formed in specific issue-areas.[5] Since the 1980s, norms have formed an important part of the research agenda of constructivist IR theories which depart from the materialist assumptions of neorealism and regime scholarship and focus on the social nature of international politics, including the norms that constitute the identities and preferences of states.[6]

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[3] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 889-890.

[4] Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977).

[5] See Stephen Krasner ed., *International Regimes* (Ithaca and London: Cornell University Press, 1983).

[6] Alexander Wendt, *Social Theory of International Politics* (New York: Cambridge University Press, 1999).

Scholarship on international norms since the 1980s has had to contend with several key conceptual and methodological issues. The first concerns the question of definition. While definitions of norms have proliferated in the literature, a key conceptual division among them concerns whether norms in international politics are best defined in *behavioural* terms as regularities of behaviour (as "normal practices in the international system"[7]) or in *normative* terms as shared understandings of ethical obligation. There are important advantages to both types of definitions. Defining norms in terms of regularities of behaviour draws our attention to the difference between professed principles and actual practice, and thus to instances of what Stephen Krasner calls "organized hypocrisy," or the continued adherence to principles widely violated in practice.[8] Defining norms in terms of prescriptions—i.e. in terms of what *should* be "normal" behaviour for an actor with a given identity—draws our attention to the way in which the *meaning* of behaviour in international politics is always established intersubjectively among a group of actors interpreting any action. This then allows us to attend to processes of *normative contestation* and to identify the role of such contestation in changing "normal" behaviour over time. It is useful then, as Neta C. Crawford argues, to maintain a conceptual distinction between behavioural norms (viz. norms as "normal" behaviour) on the one hand and "normative beliefs" (convictions about right and wrong) on the other.[9] This allows us to continue to understand norms as regularities of practice in the international system, but ones which are subject to contestation by a variety of actors.

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[7] Janice E. Thomson, "Norms in International Relations: A Conceptual Analysis," *International Journal of Group Tensions* 23, no. 1 (1993): 67.

[8] Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999).

[9] Neta C. Crawford, *Argument and Change in World Politics: Ethics, Decolonization and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002), 86-92.

Over time, contestation can lead to changes in what behaviour is considered "normal" in international practice.

Aside from definitional issues, IR scholarship on international norms has also faced questions regarding to proper methodology for studying norms. For theorists committed to positivist social science, international norms can be studied as variables whose impact on state behaviour can be assessed and measured, including by quantitative analysis.[10] Even for many constructivist scholars, basically positivist methods can be used to study the process by which norms influence state behaviour, for example by altering state preferences.[11] Other constructivists, however, argue that positivist methodology cannot account for the fundamentally *intersubjective* nature of norms. Thus Friedrich Kratochwil and John Gerard Ruggie argue that the positivist method of looking to state practice as observable evidence for falsifiable hypotheses regarding the causal impact of norms on behaviour is flawed because norm-compliance and norm-violation have no existence independent of the interpretative and communicative practices through which behaviour is understood by the relevant community of states.[12] Thus Kratochwil compares norms to performative "speech-acts" such as promises and threats: it is not enough to understand such utterances as "causes" of behaviour; explaining them requires an examination of the processes of reasoning and deliberation that reveal the shared rule-structure that makes them meaningful.[13]

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[10] See e.g. Gary Goertz and Paul F. Diehl, "Toward a Theory of International Norms," *Journal of Conflict Resolution* 36, no. 4 (December 1992): 634-664.

[11] E.g. Audie Klotz, "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions Against South Africa," *International Organization* 49, no. 3 (Summer 1995): 451-478.

[12] Friedrich Kratochwil and John Gerard Ruggie, "International Organization: The State of the Art and the Art of the State," *International Organization* 40, no. 4 (Autumn 1986): 767.

[13] Friedrich Kratochwil, *Rules, Norms and Decisions: On the Foundations of Practical and Legal Reasoning in Domestic and International Affairs* (New York: Cambridge University Press, 1991), chapter 1.

Alexander Wendt has proposed that the debate between positivism and the kind of post-positivist interpretivism represented by Ruggie and Kratochwil can be moderated by a middle way "constructivist realist" approach to social science. Such an approach would adopt a positivist epistemology—treating objects (including "social kinds" like norms) as existing independently of the knowing subject—and a constructivist ontology—treating unobservable, ideational phenomena as real.[14] Constructivist realism à la Wendt grants the role (indeed, the primacy) of ideas in social life (including international life) but argues that even ideational phenomena like norms can be studied by positivist methods. This is because, while these phenomena are indeed, as Kratochwil and Ruggie insist, constituted socially and therefore not "mind-independent" of the collectivity that shares them, they *can* nonetheless be conceived of as mind-independent of the individual that wishes to explain them. The processes of reasoning, deliberation, and contestation by which the relevant community makes meaning of given events can itself be studied empirically. To take the example of norm compliance and violation, Kratochwil and Ruggie are surely correct to point to the fact that individual violations of norms do not necessarily invalidate them, and that what is important is the reasons proffered by the violator and the responses of other states. While a purely positivist methodology cannot capture these communicative dynamics, it is also the case that positivism is useful (as Kratochwil and Ruggie themselves admit) in cases "where noncompliance [with norms] is widespread, persistent, and unexcused."[15] In these cases, positivist methodology—which treats state behaviour as an indicator of the operation and strength of a norm—seems to be the only way to measure just how "widespread and persistent"

[14] Wendt, *Social Theory of International Politics*, chapter 2.
[15] Kratochwil and Ruggie, "International Organization," 768.

noncompliance (or compliance) actually is, while a more interpretivist approach—which attends to reasoning and argument—is required to determine what counts (and to whom) as an "excuse" in any given context. As we shall see, analyzing the phenomena of "humanitarian intervention" and "sovereignty as responsibility" requires both types of analysis, establishing regularities of "normal" behaviour and the (contested) meaning attributed to them by particular actors.

2. Norms, norm change, and power

Even if one adopts a "constructivist realist" approach to studying international norms, it is important to distinguish between two different aspects of international norms that can be studied by positivist means. The first is the causal influence of norms on state behaviour, treating norms as an independent variable and state behaviour as a dependent variable. The second is the *change* in international norms and the causal factors that explain such change. Charting changes in "normal" state behaviour and identifying causal mechanisms that explain why particular norms emerge, spread, are modified, and decline has been a central preoccupation of research on international norms. Different theories of norm change have been proposed. Ann Florini, for instance, has proposed a model of international norm change based on an analogy from biological evolution and the natural selection of genes. Norms (like genes), she argues, are "inherited" from one generation of state leaders to another; different norms are "selected" over time based on their "prominence" in the international system, their coherence with other prevailing norms, and their relation with the prevailing political and material environment.[16] Other scholars

[16] Ann Florini, "The Evolution of International Norms," *International Studies Quarterly* 40, no. 3 (September 1996): 363-389.

have tried to provide more precise models of the mechanisms by which international norms emerge and become dominant. Thus for example Finnemore and Sikkink conceptualize norm change in terms of a "life cycle" divided into three phases: a first phase of "norm emergence" during which "norm entrepreneurs" attempt to persuade a critical mass of states to embrace a new norm; a second phase of "norm cascade" during which states that have adopted the new norm (and the international organizations of which they are members) attempt to socialize other states into accepting it; and a third phase of "norm internalization" during which a norm acquires a taken-for-granted quality and is no longer subject to public debate.[17]

One of the important causal mechanisms to which theorists of international norm change have pointed is the process of persuasion and argument. While norm change can be brought about by many means (including emulation, coercion, and bargaining), the use of normative argument to change the behaviour of "target" actors has drawn substantial attention. Crawford, for instance, has sought to investigate the causal role played by ethical arguments in changing dominant norms regarding the propriety of colonialism, slavery and racism since the sixteenth century.[18] Others have emphasized the role of argument in the diffusion of norms of human rights from the international to the domestic level, emphasizing the way normative arguments can "entrap" states into acknowledging and eventually internalizing norms they have previously rejected.[19] One of the central theoretical issues that a focus on argument must face is how to distinguish the relative

[17] Finnemore and Sikkink, "International Norm Dynamics," 895-905.

[18] Crawford, *Argument and Change*.

[19] Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms Into Domestic Practices: Introduction," in *The Power of Human Rights: International Norms and Domestic Change*, eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (New York: Cambridge University Press, 1999), 1-38.

weight of normative argument in bringing about norm change as compared to other factors, including material factors such inequalities of power. Indeed, the problematic relationship between norms and power is at the heart of the question of what role norms play in international politics.

Theorists of international norms typically depart from strictly materialist theories of IR, for which norms are merely epiphenomenal to more basic considerations of material power. For what Krasner calls "modified structural" theories of international regimes, norms can be thought of as intervening variables between "basic causal variables" (including power and interests) and state behaviour. They are thus seen as having some independent impact on the state behaviour, but are themselves dependent (to a greater or lesser degree) on underlying material power dynamics.[20] An example of such a "modified structural" theory of norms would be Krasner's own theory of state sovereignty as "organized hypocrisy." According to Krasner, the international norm of "Westphalian sovereignty," while widely recognized as a fundamental norm of international politics, has long been (and continues to be) frequently violated in practice. Such violation occurs in particular when the norms of sovereignty conflict with the interests of powerful actors. This is inevitable, Krasner argues, in an anarchical environment characterized by vast asymmetries of material power, where "logics of consequence" (the pursuit of interests) will always trump "logics of appropriateness" (conduct according to norms).[21] Others scholars of international norms are less pessimistic than Krasner about the perpetual dominance of "logics of consequence" over "logics of appropriateness" in international politics. They argue that state practice *is* in

[20] Stephen Krasner, "Structural causes and regime consequences," in *International Regimes*, ed. Stephen Krasner (Ithaca and London: Cornell University Press, 1983), 5.

[21] Stephen Krasner, *Sovereignty*, 6.

fact, however imperfectly, constrained and guided by normative and ethical principles. While divergent interpretations of norms are possible in an anarchical system, there are limits to this divergence and some level of consensus based on shared interpretation is possible.[22]

We will return to the specific question of norms of sovereignty in the next chapter, but for the time being Krasner's analysis can help illustrate several conceptual, methodological and theoretical points regarding norm change and power. First, as Daniel Philpott has argued, it is open to question to what degree Krasner successfully demonstrates that state practice in the realm of sovereignty actually "refutes" the idea of sovereignty as a fundamental norm shaping international society and reveals it to be an instance of "organized hypocrisy." A key question remains unanswered in his analysis: just how "frequent" do violations of sovereignty have to be to say that the norm is an instance of "organized hypocrisy"? To answer this question requires a means of quantifying proportionally instances of norm-violation in a universe of norm-compliance.[23] Second, some of the instances of sovereignty-violation that Krasner cites as evidence of the "organized hypocrisy" of sovereignty, such as sovereignty-violation "by invitation" through consensually agreed treaties, are not usually considered as such. Indeed, it is an established principle of classical definitions of sovereignty in international law that state consent to treaty obligations is *not* a limitation of sovereignty but rather as

[22] See Andrew Hurrell, "Norms and Ethics in International Relations," in *Handbook of International Relations*, eds. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (Thousand Oaks, CA: Sage, 2002), 137-154.

[23] Daniel Philpott, "Usurping the Sovereignty of Sovereignty?" *World Politics* 53 (January 2001): 308.

an expression of it.[24] This crucial distinction reminds us, as Kratochwil and Ruggie would insist, that the very status of a norm-violation as such cannot be established without attending to the interpretive and communicative processes which make such practices meaningful within international society—the interpretivist element of our analysis that is lacking in Krasner's work.

Keeping these criticisms in mind, Krasner's central thesis—that power asymmetries severely limit the constraining effects of norms on powerful actors—is an important one, particularly for theories of norms and norm change that emphasize processes of "persuasion" and argument. Presumably, "persuasion" looks very different when it is a powerful actor seeking to persuade a less powerful one about a norm than vice versa. This problem is directly recognized by some scholars of international norms. Thus, for example, Thomas Risse, analyzing arguments about norms in terms of Habermas' conception "communicative action" recognizes that the international arena does not perfectly fulfill the conditions of an "ideal speech situation" outlined by Habermas, particularly the requirement that actors regularly explain and justify their behaviour on the basis of "equal access" and in the absence of hierarchy. Risse nonetheless argues that by relaxing certain of Habermas' assumptions—including, crucially that of "equal access" and non-hierarchy—it is possible to identify situations approaching genuine communicative action in international politics.[25] The central task for researchers on international norms and norm contestation, Risse suggests, is to analyze

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[24] The classic expression of this principle in international law is the judgment of the Permanent Court of Justice in the *Wimbledon case* of 1923. See Jan Klabbers, "Clinching the Concept of Sovereignty: Wimbledon Redux," *Austrian Review of International and European Law* 3, no. 3 (1999): 345-367.

[25] Thomas Risse, "International Norms and Domestic Change: Argument and Communicative Behavior in the Human Rights Arena," *Politics & Society* 27, no. 4 (December 1999): 533-536.

"to what extent [power relations] can explain argumentative outcomes" and to what extent arguments are won simply by "the power of the better argument."[26]

In practice, this central task is not always performed, with the result that some analysts of international norms arguably underestimate the way in which power asymmetries shape norm diffusion and norm change. Risse's own work on the diffusion of international human rights norms is an example of this. Risse argues that the argumentative process involved in the diffusion of human rights norms from transnational advocacy networks and domestic opposition groups to repressive governments is an example of Habermasian communicative action in so far as the obvious imbalance of material power in favour of the "target" state means that the non-state actors in question (domestic and foreign) can rely only on "the power of the better argument," and that genuine argument is occurring. Yet Risse's own analysis reveals that such arguments occur within the context of a larger imbalance of power: all of the norm-violators he discusses are developing states (they are not cases selected from "all regions of the world," as he states, but only from all regions of the global South) and an important part of his "spiral model" involves international NGOs (most of which are based in the North) mobilizing "Western states" and "Western publics" to exert leverage over the (third world) "target state." Risse admits that in at least some of his cases the resulting arguments over human rights can be described as "forced dialogues" initiated under the threat of economic or political sanctions by Western donors. While he argues that this does not disprove his theory because even these "forced dialogues" eventually take on the characteristics of "true argumentative exchanges" in which "both sides accept

[26] Ibid., 536.

each other as valid interlocutors...and agree on the norms guiding the situation,"[27] he ignores the degree to which the leverage of "economic and political sanctions" by Western donors *remains* in the background of such dialogue even if it is not explicitly invoked. In the presence of potential sanctions, the image of non-state actors as the weaker party relying solely on "the power of the better argument" is misleading. To illustrate this one need only imagine a situation in which the "target" state is one from the global North targeted by NGOs based in the global South—viz. NGOs without the potential economic and political leverage of "Western states" backing them up.

As Risse argues, the relative impact of argument and power in such cases of norm diffusion and internalization can in principle be distinguished by careful empirical analysis. But there is a second way in which Risse's analysis of norm change and diffusion underestimates the limiting effects of power on the functioning of international norms. This is indicated by his very definition of international norms of "human rights" as exclusively civil and political rights. Risse's five-stage model of norm internalization is triggered by "repression" in the "target state," rather than by, say, economic deprivation, preventable disease, or environmental degradation. While he takes this definition as neutral, the definition is itself arguably the product of power relations. Risse ignores the history of *contestation* over the very definition of rights which developed in the post-war period between the Western bloc, the Eastern bloc, and the Third World, in which the latter two groups of states emphasized social, economic and cultural rights while the former focused on civil and political rights. Some scholars have argued that the hegemony of civil and political rights in the post-Cold War period itself reflects the hegemony of the US following the collapse of the Eastern bloc and the fragmentation of

[27] Ibid., 550.

the Third World bloc.[28] Thus it maybe that the "global human rights regime" that Risse takes to be the functional equivalent of the Habermasian "common lifeworld" in the international sphere is itself in part the product of hegemonic power, and that the very terms of human rights discourse reflect power relations.

3. International norms and developing states

As the foregoing critique of Risse indicates, one important axis along which power relations may condition and limit norm change is that which separates the industrialized states of the global North from the developing/underdeveloped states of the global South. The potentially different roles of developed and developing states in processes of norm diffusion and norm change are not always noticed or addressed systematically by scholars of international norms. To return to the example of human rights norms, Risse's "spiral model" of norm internalization is exclusively concerned with understanding norm diffusion from the "global human rights polity" (which includes INGOs, Western publics, governments and IOs, but notably *excludes* non-Western states) to "norm-violating" states (which seem to be developing countries by definition).[29] What is not considered is the possibility of norm diffusion in the other direction - i.e. instances in which non-Western and developing states and international organizations might try to change behaviour of "Western liberal states" either domestically or internationally.

The question of the ability of developing states to actually *shape* the content of international norms and influence international norm change has not been sufficiently or systematically explored in the literature on international norms. To be sure, the role of

[28] See Tony Evans, *The Politics of Human Rights: A Global Perspective* (London: Pluto, 2005).

[29] All of the case studies in the volume edited by Risse et al. on the *Power of Human Rights* concern norm diffusion to developing or post-communist states.

developing states in key instances of norm change, especially in the promotion of norms of decolonization in the 1950s and 1960s, has been widely recognized.[30] The role of developing states acting in multilateral settings (the UN, the Commonwealth, the OAU) to delegitimize South African *apartheid* and promote norms of anti-racism has been analyzed by Audie Klotz.[31] But these success stories seem to be exceptions. While acknowledging them, most scholars of North-South politics tend to be rather pessimistic regarding the ability of developing states to influence the direction of international norm change. Developing states, they argue, act far more frequently as "norm-takers" than as "norm-setters," as "the objects but not the authors of norms and laws that are supposedly international."[32] Thus, for example, in the realm of political economy, critical theorists have argued that the post-Cold War triumph of neo-liberal economic programs has seen the diffusion to developing countries of dominant norms of macroeconomic governance that enshrine investor freedoms and the property rights for transnational enterprises over democratic participation.[33] According to Jacqueline Anne Braveboy-Wagner, the norms that form the heart of many contemporary international regimes "have tended to be promoted by the northern nations and imposed on, or put more generously, diffused to, southern nations normally through elite groups and then governmental sectors... The

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[30] E.g. Robert Jackson, "The Weight of Ideas in Decolonization: Normative Change in International Relations," in *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*, eds. Judith Goldstein and Robert O. Keohane (Ithaca: Cornell University Press, 1993), 111-138; Crawford, *Argument and Change,* especially chapter 7.

[31] Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca: Cornell University Press, 1995).

[32] Ramesh Thakur, "Global Norms and International Humanitarian Law: An Asian Perspective," *International Review of the Red Cross* 841 (31 March 2001). http://www.icrc.org/web/eng/siteeng0.nsf/html/57JQZD (accessed 15 July 2010)

[33] Stephen Gill, "New constitutionalism, democratisation and global political economy," *Global Change, Peace & Security* 10, no. 1 (1998): 23-38.

inclusiveness of the dialogue relevant to the establishment of most such regimes is therefore open to question."[34]

Under what conditions can developing states act as successful "norm entrepreneurs"? There are some hints towards an answer to this question within the literature on international norms, but little in terms of systematic analysis. One suggestion has been that a key constraint on successful norm entrepreneurship is the ability to access the relevant international discussions and forums. Thus, for example, Crawford argues that the power inequalities of international "speech situations" can be seen as being in part about variation in the ability to have one's arguments heard.[35] Florini notes that powerful states have important advantages over weaker states as norm entrepreneurs by virtue of their superior "communicative resources": "norms held by powerful actors simply have many more opportunities to reproduce through the greater number of opportunities afforded to powerful states to persuade others of the rightness of their views"[36] One way in which developing states have sought to overcome this deficiency is by using international organizations as platforms in which to have their voices heard. This includes both the major "tricontinental" intergovernmental forums (the Non-Aligned Movement and the Group of 77), and universal membership bodies such as the UN General Assembly, as well as regional and subregional organizations. Quantitative analysis has pointed to the particular propensity of weaker states to participate in international organizations.[37] While some of this participation can be explained by

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[34] Jacqueline Anne Braveboy-Wagner, *Institutions of the Global South* (London and New York: Routledge, 2009), 214-215.

[35] Crawford, *Argument and Change,* 117.

[36] Florini, "Evolution," 375.

[37] E.g. Maurice East, "Size and Foreign Policy Behaviour," *World Politics* 25, no. 4 (July 1973): 556-576.

conventional neoliberal institutionalist explanations of state cooperation in general, scholars of developing states have emphasized the particular rationale for Third World cooperation and "solidarity" in pooling diplomatic resources to achieve collectively results in bargaining with developed states that they would be unable to achieve individually.[38]

Some such South-South cooperation has clearly had as its goal the alteration of international norms (e.g. the push for rapid decolonization in the 1950s and 1960s, the struggle against apartheid). How and why some of these efforts at international norm change succeeded while others failed is a question that has yet to be addressed in a systematic manner by the literature on international norms. Perhaps the most prominent example of a *failed* attempt at norm change initiated by the global South is the group of initiatives collectively referred to as the New International Economic Order (NIEO). The NIEO, which was at the centre of North-South confrontation in the 1970s, is the subject of an extensive body of literature in IR, IPE and International Law.[39] As the NIEO's proposed reforms of the global economy included unmistakably normative components (relating in particular to the norms defining the rights and duties of states), studies of the NIEO and of why it largely failed to achieve its goals can provide a good starting point for developing a theory of the conditions under which developing countries can influence the formulation of international norms.

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[38] Keisuke Iida, "Third World Solidarity: The Group of 77 in the UN General Assembly," *International Organization* 42, no. 2 (Spring 1988): 375-395.

[39] See, among others, Branislav Gosovic and John Gerard Ruggie, "On the Creation of New International Economic Order: Issue Linkage and the Seventh Special Session of the UN General Assembly," *International Organization* 30, no. 2 (Spring 1976): 309-345; Robert L. Rothstein, *Global Bargaining: UNCTAD and the Quest for a New International Economic Order* (Princeton: Princeton University Press, 1979); Jeffrey A. Hart, *The New International Economic Order: Conflict and Cooperation in North-South Economic Relations, 1974-77* (London: MacMillan, 1983); Craig N. Murphy, *The Emergence of the NIEO Ideology* (Boulder, CO: Westview Press, 1984).

4. Determinants of Southern success in influencing international norm change

Particularly helpful in this respect is Stephen Krasner's structural realist account of the NIEO. Taking as his starting point a realist theory of international regimes, Krasner argues that the NIEO is best seen as an attempt by developing countries to bring about "international regime change," changing the liberal trade regime established after World War II into a new regime based on principles and norms of "authoritative" allocation of wealth.[40] According to Krasner, attempts by developing countries to bring about such regime change stemmed largely from the political weakness and vulnerability of their governments to pressures of the global market which they were too weak to either influence unilaterally or to adjust to internally. Facing a weak international position and internal underdevelopment, such governments sought to expand their power internationally and consolidate their control domestically by altering the principles and norms of existing international regimes away from market-oriented modes of allocation towards authoritative allocation which could guarantee both an increased flow of resources and a more predictable and stable international environment.[41] According to Krasner, this involved two related strategies. The first was to seek to alter existing international institutions, demanding both greater participation in existing global forums and the creation of new international bureaucracies more congruent with regimes based on authoritative allocation, e.g. with the power to compel resource transfer from North to South.[42] The second strategy was to support international regimes that expanded the

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[40] Stephen Krasner, *Structural Conflict: The Third World Against Global Liberalism* (Berkley, Los Angeles, London: University of California Press, 1985), 5.

[41] Ibid., 12.

[42] Ibid., 6.

scope of activities recognized as being subject to the sovereign control of states, e.g. by extending the sovereign control of resources or by legitimating national controls on multinational corporations.[43] Developing states also sought to resist Northern efforts to create international regimes *limiting* sovereign powers, e.g. in the areas of population control or human rights.[44]

According to Krasner, the degree to which the governments of developing countries succeeded in altering international regimes to align them with their preferred principles and norms was a function of three variables: first, the nature of existing regime structures, including existing international organizations; second, the ability of developing states to articulate a "coherent system of ideas" that set the international agenda and consolidated Third World unity; and third, the power and attitudes of the global North, especially the United States.[45] Krasner argues that developing countries were particularly successful in promoting international regime change when using international forums—like the UN General Assembly—based on the principle of sovereign equality and "one nation, one vote" decision-making procedures, rather than those forums, such as the Bretton Woods institutions or the UN Security Council, in which the principle of great-power primacy was recognized and enshrined in weighted voting or the power of the veto.[46] They were also more successful to the degree to which they were able to coordinate their actions around a coherent ideological program which placed the responsibility for underdevelopment on the functioning of the liberal international economy and called for authoritative allocation at the international level.

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[43] Ibid.. 7.
[44] Ibid.
[45] Ibid.
[46] Ibid.. 7-8.

Finally, Krasner argues that the 1970s provided developing countries with a window of opportunity opened by the relative decline of the US as a hegemonic power, but one still committed to the international institutions which it had been instrumental in establishing in the aftermath of World War II. The highpoint of Third World success was the formal assent of the North in the UN General Assembly to the demands of the NIEO, which articulated principles and norms that departed in significant respects from the market-oriented model of international allocation. Beginning in the late 1970s, however, the window of opportunity began to close as Northern commitments to institutions in which developing countries set the agenda began to erode: the US temporarily withdrew from the International Labour Organization in the late 1970s, and formally withdrew from UNESCO in 1985; in 1982, several Northern states rejected the UN Law of the Sea Convention. For Krasner, writing in 1985, the ultimate outcome of these developments was unclear, though the declining Northern commitment to multilateral forums suggested that developing states would ultimately be unsuccessful in achieving international regime change. Krasner concluded that these states ultimately lacked the "meta-power" that was needed by states to establish new regimes (as opposed to "relational power" used to maximize advantage within existing regimes).[47]

We do not have to accept all of Krasner's ideas to find his theoretical framework and hypotheses useful. Krasner's essentially neorealist explanation of the motivations of developing states in seeking international regime change, for example, is called into question by Craig Murphy, who has studied the "NIEO ideology" in some detail.[48] Nonetheless, Krasner's structural theory of North-South conflict and the conditions for

[47] Ibid., 29.

[48] See Craig N. Murphy, *Global Institutions, Marginalization, and Development* (New York: Routledge, 2005), chapter 7.

successful international regime change driven by the global South suggests a more general theoretical framework for systematically analyzing the role of developing states in influencing the development of international norms. Norms, along with principles, are key elements of international regimes. According to Krasner, changes in the norms and principles of a particular regime are changes of the regime itself (unlike changes in rules and decision-making procedures, which are changes *within* regimes).[49] It should therefore be possible to apply Krasner's theory of the conditions for southern success in altering international regimes to cases of change of international norms. Applying Krasner's theory in this way would produce the following working hypothesis: The ability of developing countries to influence the direction of change in international norms should increase as a result of international regimes that grant them a large degree of access to and participation in international decision-making, as a result of increased ideological coherence in Southern diplomacy, and as a result of a decline in Northern capabilities, provided Northern attitudes remain committed to multilateralism. This is the more general theory whose plausibility I want to investigate, taking as my case post-Cold War attempts to alter international norms on sovereignty and intervention through the practice of "humanitarian intervention" and arguments about "responsible sovereignty." As numerous scholars have noted, most Third World states opposed such efforts and clung to more traditional conceptions of sovereignty, non-intervention and Charter-based notions of states' rights, even as they increasing accepted the validity of international human rights norms.[50] Indeed, Southern opposition to the so-called "right of humanitarian intervention" is credited in part with shifting the debate over human rights and

[49] Krasner, "Structural causes," 3-4.

[50] Mohammed Ayoob, "Third World Perspectives on Humanitarian Intervention and International Administration," *Global Governance* 10 (2004): 99-118.

sovereignty away from discussions of "humanitarian intervention" and towards the "emerging norm" of the "responsibility to protect." In my paper I will seek to apply Krasner's theory of the conditions for Southern influence on international regime change to the case of Southern opposition to "humanitarian intervention" and the alteration of the international norms of state sovereignty. How have existing regime structures (including IOs), the ideological coherence of Southern diplomacy, and Northern attitudes and capabilities affected the success of developing countries in influencing the direction of change in the international norms of sovereignty and intervention?

Chapter 2: Research Design

In order to shed some light on the way in which developing countries are able or unable to influence the direction of international norm change, in this paper I will conduct a case study analyzing international debates over the concepts of "humanitarian intervention" and "responsibility to protect" and their implications for norms of sovereignty and intervention. My analysis will take the form of a plausibility probe of three hypotheses derived from Stephen Krasner's theory of "international regime change." These three hypotheses are applied to my case in an attempt to develop a theory explaining the ability or inability of developing countries to influence international norm change that could then be further tested. The reason for conducting a plausibility probe rather than theory-testing is the lack of an existing theory specifically concerned with the influence of developing states on norm evolution. As explained in the previous chapter, while the existing literature on international norms acknowledges the historic role of developing states in international norm change and contains suggestive hints regarding the role of materially more and less powerful states as "norm entrepreneurs," it provides little in terms of systematic analysis of the role of developing states in the evolution of international norms. Hence the need to adapt possible hypotheses from existing theory in another area of IR.

In this chapter I explain the theoretical framework from which my hypotheses are derived, present my hypotheses, and describe how I will operationalize my variables.

1 Theoretical framework: international regimes and international norms

The theoretical framework adopted in my case study is a "modified structural" theory of IR which understands international outcomes as caused in large part by the distribution of material capabilities among states in the international system, but which accords some independent causal role to international regimes, and to international norms as elements of those regimes. International regimes can be defined as "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations."[51] According to regime theory, regime-governed behaviour in international politics is behaviour guided by principles and norms held in common by different actors, and not simply by narrow calculations of the self-interest of each actor individually. Norms, in this context, can be defined as "standards of behaviour defined in terms of rights and obligations."[52] Along with principles—defined as "beliefs of fact, causation, and rectitude"—norms provide the "basic defining characteristics of a regime."[53] Changes in norms or principles lead to changes in the regime itself (unlike changes in rules or decision-making procedures, which lead to change *within* a given regime).[54]

Stephen Krasner has used regime theory to analyze North-South conflict in the 1970s and 1980s, describing attempts by developing countries to reform the international economic order during that period as an attempt at "international regime change," an attempt to replace the norms and principles of the liberal trade regime established following World War II with norms and principles of "authoritative allocation" and

[51] Krasner, "Structural causes," 2.
[52] Ibid.
[53] Ibid., 3.
[54] Ibid., 3-4.

global redistribution managed by international institutions. Krasner argues that the successes and failures of developing countries in achieving such regime change can be explained by three key variables: 1) the degree to which existing international institutions provided developing countries with access to and participation in international decision-making; 2) the coherence of the ideology underpinning Third World demands; and 3) the capabilities and attitudes of Northern states. In brief, Krasner argues that during the 1970s the existence of international institutions whose membership rules and decision-making structures granted developing countries a large degree of participation in decision-making, the ideological convergence of the Third World bloc around structuralist explanations of underdevelopment, and the relative decline of US hegemony combined with continued Northern commitment to multilateralism increased the ability of developing countries to successfully challenge the existing international economic regime and make demands for international regime change. By the early 1980s, however, Northern attitudes towards the international institutions through which the Third World was making its demands became increasingly hostile, with the result that the Third World's demands for a "New International Economic Order" were marginalized, and the attempted international regime change failed.[55]

Krasner's theory of the determinants of the ability of developing countries to bring about international regime change suggests a more general theoretical framework for systematically analyzing the role of developing states in influencing the evolution of international norms. As explained above, within regime theory, norms are key elements of international regimes, and changes in the norms of a particular regime bring about

[55] Krasner, *Structural Conflict*, 29.

changes in the regime itself.[56] It should therefore be possible to apply Krasner's theory of the conditions for Southern success in altering international regimes to cases of change in international norms. Applying Krasner's theory in this way would produce the following working hypothesis: *The ability of developing countries to change international norms should increase as a result of increased Southern participation in decision-making in international organizations, increased ideological coherence in Southern diplomacy, and a decline in Northern capabilities, provided that decline is accompanied by continued Northern commitment to the international institutions through which developing countries articulate their demands.* If correct, this hypothesis should also indicate the conditions for successful Southern *opposition* to international norm change when such change is initiated by states in the global North. This is the situation which I investigate in the first part of my case study, taking as my example Northern attempts in the late 1990s to alter international norms of sovereignty and intervention through the normalization of practices of "humanitarian intervention." I investigate the opposition of the global South to this attempt at international norm change, and the role of this opposition in shaping the subsequent emergence of the concept of the "responsibility to protect." The second part of my case concerns the ability of developing countries to shape the subsequent direction of the evolution of the "responsibility to protect." In both parts I am concerned with the ability of developing countries to influence the direction of change in norms of sovereignty and intervention.

[56] Krasner, "Structural causes," 3-4.

2 Hypotheses and variables

Applying Krasner's theory of international regime change to the issue of intervention and sovereignty, we arrive at the following three hypotheses:

Hypothesis 1: As existing international institutions facilitate the participation of developing countries in decision-making, the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should also increase.

Hypothesis 2: As the ideological coherence of the Southern diplomacy on issues of sovereignty and intervention increases, the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should also increase.

Hypothesis 3: As Northern capabilities decline, the success of developing countries in influencing the direction change in international norms of sovereignty and intervention should also increase, provided Northern attitudes remain committed to action through multilateral institutions.

Testing the above hypotheses requires defining and measuring four variables:

1) Success of developing countries in influencing the direction of change in international norms of sovereignty and intervention
2) Participation of developing countries in decision-making in international institutions
3) Ideological coherence of Southern diplomacy
4) Northern capabilities and attitude

3 Operationalization of dependent variable

The *success of developing countries in influencing the direction of change in international norms of sovereignty and intervention* will be measured by assessing the degree to which the direction of change in prevailing norms of sovereignty and intervention corresponds to the expressed preferences and opinions of developing

countries. In this section I explain how this can be done by first clarifying what I mean by "change in norms of sovereignty and intervention." I then describe the three key norms of sovereignty with which I am concerned (non-intervention, non-use of force, and sovereign equality) and discuss how change in these norms can be observed and measured.

3.1 *Changing norms of sovereignty and intervention*

Measuring the ability of developing countries to influence the direction of change in norms of sovereignty and intervention requires acceptance of two theoretical assumptions about the nature of international politics. The first of these is the assumption that state sovereignty and practices of intervention *can* indeed be understood in terms of international norms. While a strict materialist perspective on IR would likely reject such a proposition, a "modified structural" theory, as described above, accepts that ideational phenomena such as norms play some role in shaping international behaviour, even if this role is fundamentally conditioned by material factors (the distribution of material capabilities among states) and by the structural conditions of international anarchy. In this respect, a "modified structural" theory is similar to the approach of the "English school" of IR pioneered by scholars like Martin Wight and Hedley Bull. For these scholars, while material power and self-help are extremely important in explaining international outcomes, international politics cannot be understood as being purely about competition between self-reliant states of varying material capabilities. Instead, states in the international system should be understood as members of an anarchical but ordered "international society," a group of states that are "conscious of certain common interests

and common values," that conceive of themselves as "bound by a common set of rules in their relations with one another," and which participate in common institutions.[57] The mutual recognition by states of each other's sovereignty—viz. of each other's supreme authority over a given territorial jurisdiction—is among the most fundamental of these common institutions. State sovereignty is thus "the basic norm, or *grundnorm,* upon which the society of states ultimately rests."[58] State sovereignty is the central standard of state behaviour in the current international system, and is defined in terms of both the rights and duties of states, particularly the right to supreme authority within a state's domestic jurisdiction and the duty to refrain from intervening in the domestic jurisdiction of other states.

The second assumption underlying my approach is that the norms associated with state sovereignty are not static, but are subject to historical change, as well as to contestation by different actors at any given point in time. While this might seem to contradict the idea that sovereignty is the "basic norm" of international society, this is not necessarily so. Here we can borrow a distinction from constructivist IR between *regulative norms*—norms which regulate the behaviour of actors—and *constitutive norms*—norms which make possible certain actions by creating the identities and interests of actors.[59] Sovereignty as a "basic norm" of international society can be seen as the fundamental constitutive norm of modern international politics in the sense that it defines sovereign states—viz. political authorities with exclusive territorial jurisdiction—as the basic actors in international politics. This differentiates modern international

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[57] Bull, *The Anarchical Society,* 13.

[58] Robert H. Jackson, "Sovereignty in World Politics," in *Sovereignty at the Millennium* ed. Robert H. Jackson (Oxford: Blackwell, 1999), 10.

[59] The origin of the distinction is John Searl, *The Social Construction of Reality* (New York: Free Press, 1995).

society from, for example, medieval Europe, in which political authority was organized in terms of multiple, territorially-overlapping jurisdictions.[60] While the constitutive norm that defines sovereign states as the primary actors in international society has remained essentially unchanged since the seventeenth-century, the attendant *regulative* norms that define the rights and obligations of states *have* changed significantly since then. To take one example, where state sovereignty was once understood to include a virtually unrestricted right of the sovereign to use of force, including preventively to maintain the balance of power, to gain territory from rivals, or to obtain the repayment of debts, this expansive definition of sovereign rights to use force has been progressively restricted in international legal agreements since the late nineteenth-century.

Another way in which norms of sovereignty have changed is in terms of *which* actors are eligible for recognition as sovereigns. In the past two centuries alone, for example, we have witnessed, according to J. Samuel Barkin and Bruce Cronin, oscillation between periods during which sovereignty has been understood as belonging properly to *states*—i.e. to governmental structures exercising exclusive institutional authority over a given *territorial* jurisdiction—and periods during which it has been understood as belonging essentially to *nations*—viz. to structures ruling in over (and in the name of) a *population* belonging to a given "national" community.[61] Probably the most radical change in this aspect of sovereignty, however, has been the change brought about in the second half of the twentieth-century by the formal decolonization of European empires. Before decolonization, "Westphalian sovereignty," associated with the norm of non-

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[60] John Gerard Ruggie, "Continuity and Transformation in the World Polity: Towards a Neorealist Synthesis," in *Neorealism and Its Critics* ed. Robert O Keohane (New York: Columbia University Press, 1986), 131-157.

[61] J. Samuel Barkin and Bruce Cronin, "The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations," *International Organization* 48, no. 1 (Winter 1994): 107-130.

intervention within Europe, was overtly imperial beyond Europe, denying or circumscribing the sovereign rights of non-European societies and states, justifying their conquest and colonization—or at least subjection to highly interventionist supervision by European powers—by reference to their failure to measure up to a "standard of civilization" determined by European powers to be the requisite of full sovereignty.[62] In the words of Christopher Clapham, "Westphalian sovereignty provided the formula under which territories which did not 'count' as states according to the criteria adopted by the European state system could be freely appropriated...by those which did count."[63] Formal decolonization thus brought about a fundamental "revolution in sovereignty"[64] which universalized sovereign statehood to all formerly colonized territories regardless of their internal systems of economic or political governance and regardless of their material capabilities.

3.2 *The postcolonial sovereignty regime*

By "norms of sovereignty and intervention," then, I mean the core norms of what Clapham calls the "postcolonial sovereignty regime," viz. those norms central to international society following decolonization. These are essentially three: non-intervention, the non-use of force, and sovereign equality. To say that these three norms are the key norms of postcolonial international society is not to argue that all three have been followed by states in practice to the same extent, or even that all three are

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[62] See Gerrit W. Gong, *The Standard of "Civilization" in International Society* (Oxford: Clarendon Press, 1984).

[63] Christopher Clapham, "Sovereignty and the Third World State," in *Sovereignty at the Millennium* ed. Robert H. Jackson (Oxford: Blackwell, 1999), 101.

[64] See Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001), especially chapters 8 to 12.

interpreted by all states in the same manner. Indeed, as will emerge clearly in my case study, the *contestation* of norms—both of their content and their application in particular cases—is a key process in international politics and one that has the potential to spur norm change. Each of these three norms has been contested, and has the potential to change along several dimensions (see table below).

3.2.1 ***Non-intervention***. Non-intervention refers to the prohibition against interference by a state, group of states or international organization in matters falling within the domestic jurisdiction of a state. This norm emerges logically from the reciprocal recognition by states of each other's supreme authority in their domestic jurisdictions. In the words of R.J. Vincent:

> Where such final and absolute authorities are collected together in international society, it can be said that the recognition by each of them of the others' authority within their own domains—recognition of a principle of state sovereignty—is fundamental to their coexistence. If a state has a right to sovereignty, this implies that other states have a duty to respect that right by, among other things, refraining from intervention in its domestic affairs.[65]

While older than the postcolonial sovereignty regime, the concept of non-intervention has been central in the postcolonial period in maintaining what Robert Jackson calls the "negative sovereignty" of weak states, viz. sovereignty guaranteed less by the ability of the states in question to prevent external intervention in their domestic affairs than by the *forbearance* of other states from such intervention.[66] Non-intervention is thus a norm defined in terms of the rights of states (to the inviolability of their domestic jurisdiction)

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[65] R.J. Vincent, *Nonintervention and International Order* (Princeton, N.J.: Princeton University Press, 1974), 14.

[66] Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and Third World States* (Cambridge; New York: Cambridge University Press, 1990), 26-31.

and their obligations (to forebear from intervening in the domestic jurisdictions of others).

The norm of non-intervention is subject to contestation and change along two dimensions. First, the *scope* of what is and is not considered to be within the domestic jurisdiction of the state—and therefore what is and is not protected by the norm of non-intervention—has been contested and has changed over time. As Vincent writes, "the frontiers protected by the principle of nonintervention are unclear at any one time, they vary over time, and they are defined differently by different statesmen."[67] The authoritative articulation of the norm of non-intervention in Article 2(7) of the UN Charter states that

> Nothing contained in the present Charter shall authorize the United Nations to intervene in *matters which are essentially within the domestic jurisdiction of any state* or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.[68]

The question of *which* matters fall "essentially within the domestic jurisdiction" of states, and which therefore are protected by the norm of non-intervention, is left undefined in the Charter and has been hotly debated throughout the Charter period. In the immediate postwar years, for instance, European colonial powers argued that the conduct of colonial authorities in colonized territories fell within the scope of matters "essentially within the domestic jurisdiction" of the colonial state, and was therefore exempt from any attempts at international supervision. This interpretation was vigorously rejected by Asian and Latin American states and by the Soviet bloc, who argued successfully that the non-intervention norm should be interpreted in a manner that supported self-determination of

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[67] Vincent, *Nonintervention*, 15.

[68] Charter of the United Nations, Article 2(7), emphasis added.

colonial peoples rather than continued colonial rule.[69] Following decolonization, debates over the scope of the non-intervention within the UN largely pitted the emergent Third World bloc and communist states on one hand against the United States and its allies on the other. The former generally pressed for an expansive definition both of the scope of matters protected by the principle of non-intervention, and of the definition of acts constituting intervention, including indirect forms of subversion as well as economic coercion.[70] Western states generally opposed such expansive definitions as an attempt to restrict the "natural" interplay of international relations.[71]

The second dimension along which the norm of non-intervention has been contested and can potentially change concerns *exceptions* to the rule. The norm of non-intervention not only provides a general rule against intervention, it also enables and legitimates certain exceptions to that rule—viz. it defines permissible and legitimate intervention. Thus Article 2(7) states specifically that the principle of non-intervention "shall not prejudice the application of enforcement measures under Chapter VII" of the Charter. Chapter VII of the Charter provides the Security Council with the authority to determine the existence of any "threat to the peace, breach of the peace, or act of aggression" (Article 39) and to decide on measures, both peaceful (Article 41) and involving the use of force (Article 42), necessary to "maintain or restore international peace and security." The Charter's exception to the non-intervention norm is thus both

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[69] Goronwy J. Jones, *The United Nations and the Domestic Jurisdiction of States: Interpretations and Applications of the Non-Intervention Principle* (Cardiff: University of Wales Press, 1979), chapter 4.

[70] See in particular United Nations General Assembly (UNGA) Resolution 2131 (XX) *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* (21 December 1965); UNGA Resolution 2625 (XXV) *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations* (24 October 1970); UNGA Resolution 3281 (XXIX) *Charter of Economic Rights and Duties of States* (12 December 1974), articles 1 and 2.

[71] Vincent, *Nonintervention*, 259.

narrow—restricting legitimate intervention to that authorized by the Security Council to maintain international peace and security—and potentially very broad—giving the Security Council considerable discretion in determining the existence of threats to international peace and security.[72] In the polarized atmosphere of the Cold War, resort to Security Council authorized intervention was extremely limited due to the use of the veto by the Council's permanent members. Since the late 1980s, however, greater agreement among the permanent members of the Council and an expansion of the definition of threats to international peace and security, has introduced significant changes in practices of intervention, legitimating (even if inconsistently) enforcement measures authorized by the Council in the context of internal conflicts with grave human rights and humanitarian impacts.[73] It is important to note that the new wave of "UN interventionism," while altering the scope of the non-intervention norm, did *not* of itself challenge the definition of exceptions to the norm of non-intervention contained in the Charter. Intervention *not* authorized by the Council, on the other hand, does constitute a potential challenge to this second element of the non-intervention norm, carving out an additional exception to the norm beyond Security Council authorization of collective enforcement measures.

3.2.2 ***Non-use of force.*** The second major norm of the postcolonial sovereignty regime is that prohibiting the use of force in international relations and obliging states to seek peaceful resolution of international disputes. While the norm on the non-use of force is

[72] The Charter additionally provides for a right of individual and collective self-defense (Article 51), though since this right applies to states facing "armed attack," it is not strictly speaking concerned with intervention but with defense against intervention. Article 51 is discussed in the next section on the use of force.

[73] For a now-classic argument comparing Cold War and post-Cold War Council practice see Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

closely related to non-intervention (military action against a state without its consent by definition intervenes in its domestic jurisdiction), there are good reasons for keeping the two apart. As the above discussion of the scope of the non-intervention norm indicates, some states have favoured expansive definitions of what constitutes intervention that include a variety of activities beyond military action. By these definitions then, not every intervention involves the use of force. Conversely, not every use of force necessarily constitutes intervention: deployment of military force within a state with the consent of that state is not typically seen as intervention. Because the norm of non-use of force thus covers a narrower spectrum of behaviour than non-intervention, it is quite possible for the two norms to evolve separately, with, for example, the scope of the non-intervention norm shrinking without the norm of non-use of force being affected—viz. with a wider array of internal matters being considered beyond the realm of exclusive domestic jurisdiction, without thereby being necessarily seen as legitimate occasions for the use of force.

From a historical perspective, the norm prohibiting the use of force is a rather dramatic *departure* from classical conceptions of sovereignty. Indeed, before the twentieth century, the use of force was considered a fundamental prerogative of sovereign states and international law recognized no rules about when it was permissible for the sovereign to wage war. The first attempts to promote norms restricting the freedom of sovereign states to use force occurred with the Hague Peace Conventions of 1899 and 1907, which committed signatories not to commence hostilities without prior and unambiguous warning, and prohibited the recourse to armed force for the recovery of

contractual debts.[74] The next, more ambitious and infamously unsuccessful attempt to restrain the sovereign right to use force was the Covenant of the League of Nations, which sought to create a collective security system that committed League members to protect any state facing aggression (Article 10), to submit international disputes to arbitration, judicial settlement, and international inquiry (Articles 12, 13, and 15), and not to resort to war with any state complying with decisions resulting from any of these processes (Article 13(4)).[75] The first general prohibition of war considered legally binding was the 1928 Briand-Kellogg Pact which committed signatories to "condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another," except in the case of self-defence.[76] Both the League and the Brian-Kellogg Pact were, of course, ineffective in preventing the world war that followed. The UN Charter framework built on the experience of the failure of the League of Nations and the interwar system of collective security, and provided the most comprehensive formulation yet of a prohibition on the use of force. Article 2(4) of the Charter states that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[77]

As with non-intervention, the norm of non-use of force both establishes a general rule prohibiting the resort to force in international affairs and establishes some forms of force as legitimate exceptions to the rule. In general, only two exceptions to the Charter's

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[74] A. Randzelhofer, "Article 2(4)" in *The Charter of the United Nations: A Commentary*, ed. Bruno Simma (Oxford; New York: Oxford University Press, 2002), 115.

[75] Ibid.

[76] Ibid., 116.

[77] Charter of the United Nations, Article 2(4).

general prohibition of force are widely recognized. The first concerns collective enforcement measures authorized by the Security Council under Chapter VII. As we have seen above, Article 42 of the Charter provides the Council with the authority to authorize "such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security," if it has determined the existence of a threat to peace and decided that peaceful means of addressing it "would be inadequate."[78] The second generally accepted exception to the norm against the use of force is the right of individual and collective self-defence, recognized under customary international law and enshrined in the Article 51 of the Charter. Article 51 reserves to states the "inherent right of individual and collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security," and requires states exercising this right to report measures taken immediately to the Security Council.[79]

Contestation and potential change of the norm on the non-use of force can occur along two dimensions. First, the scope of *existing* exceptions to the rule prohibiting the use of force can be contested and can expand. For example, the definition of what constitutes a threat to international peace and security—and can therefore serve as a justification for use of force authorized by the Security Council—has been seen by many as having expanded in the post-Cold War period to include certain internal developments within states. Similarly, the definition of legitimate self-defence has also been claimed to have expanded: while the Charter limits the right of self-defence to a response to an "armed attack," many states now believe that the right also allows use of force to pre-

[78] Ibid., Article 42.
[79] Ibid., Article 51.

empt an attack, provided that the necessity of self-defence is deemed to be "instant, overwhelming, leaving no choice of means, and no moment of deliberation."[80] More controversially, the US under the George W. Bush administration asserted the right to use force in self-defence *preventively* against threats linked to transnational terrorism or weapons of mass destruction, "even if uncertainty remains as to the time and place of the enemy's attack."[81]

The second dimension of contestation and change in the norm on the non-use of force has been the articulation of *new* exceptions to the rule. This has been far less common than attempts to alter the scope of existing exceptions. The claim of a right of "humanitarian intervention" without Security Council authorization would be an example of this. Such a claim was rarely if ever made by states during the Cold War: the three Cold War-era interventions which are closest candidates for genuine "humanitarian interventions"—Indian intervention in East Pakistan in 1971, the Vietnamese invasion of Cambodia in 1978, and the Tanzanian invasion of Uganda in 1979—were all justified primarily on the grounds of existing exceptions to the non-use of force (primarily self-defence).[82] In the post-Cold War period, as we shall see, claims for the legitimacy of "humanitarian intervention," including intervention not authorized by the Security Council, have been made in several instances.

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[80] See Michael Byers, *War Law: Understanding International Law and Armed Conflict* (New York: Grove Press, 2005), 54. The wording is from US Secretary of State in the *Caroline* dispute between the US and Great Britain in 1842.

[81] United States, White House, *National Security Strategy of the United States of America*, September 2002.

[82] Wheeler, *Saving Strangers*, chapters 2, 3, 4.

3.2.3 ***Sovereign equality.*** The final major norm of the postcolonial sovereignty regime concerns sovereign equality. Sovereign equality is the idea that all states in international society should enjoy equal legal status and equal basic sovereign rights regardless of their material powers or domestic social systems, and that special rights and prerogatives should not be granted to states on the basis of power. While the concept of sovereign equality was promoted by writers on international law beginning in the eighteenth century, its widespread recognition by states occurred only in the late nineteenth and early twentieth centuries.[83] The decolonization of European empires in the second half of the twentieth century brought about a revolutionary change in this norm, extending to formerly colonized states the *unconditional* recognition of equal sovereign rights. This effectively overthrew the earlier "standard of civilization" according to which sovereign rights were reserved to an exclusive club of states and granted to newcomers only on the basis of criteria of empirical statehood and "civil" internal governance.[84]

Of the three norms of the postcolonial sovereignty regime surveyed here, sovereign equality is arguably the least settled and most contested. As Gerry Simpson has argued, the concept of sovereign equality, while frequently considered a single, uniform norm, can be further divided into three distinct forms. *Formal equality* refers to equality before the law, the principle that "in judicial settings states have equality in the vindication and 'exercise of rights'."[85] This is not the same thing as states having entirely identical rights: different rules (e.g. regional customs or functional customary regimes) can still apply to different states (e.g. littoral vs. inland states), as long as rules that are

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[83] Robert A. Klein, *Sovereign Equality Among States: The History of an Idea* (Toronto: University of Toronto, 1974).

[84] Gong, *The Standard of "Civilization", op cit.*

[85] Gerry J. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge; New York: Cambridge University Press, 2004). 43.

understood to apply to the same states are applied equally. An understanding of sovereign equality that understands it purely as formal equality is thus perfectly compatible with the granting of special rights and prerogatives to a select group of states, e.g. on the basis of their great power status.[86] A stronger conception of sovereign equality, on the other hand, includes either *legislative* or *existential* equality, or both. Legislative equality refers to the role of states in international law- or rule-making processes, and implies both an equal role for all states in the formation and application of rules and an understanding that states are bound only by those norms to which they give their consent.[87] Existential equality refers to the recognition that all sovereign states enjoy a minimum batch of inalienable rights—notably "the right to exist (territorial integrity), the right to choose the manner of existence (political independence) and the right to participate in the international system"—which guarantee their "liberty to pursue a number of different political programmes without fear of sanction from the international community."[88]

As Simpson argues, while formal sovereign equality has long been central to international society, commitment and fidelity to either legislative or existential equality has been historically variable. In particular, since the Concert of Europe in the nineteenth century, these two elements of sovereign equality have at various times been compromised by what Simpson calls "legalized hegemony"—the granting of special rights and prerogatives to great powers—and by what Simpson calls "anti-pluralism"—the tendency to divide states into separate classes depending on the legitimacy or morality of their institutions and cultures, and to seek to deprive a particular class of "outlaw states" of their full legal rights. In the postcolonial period, contestation and

[86] Ibid.
[87] Ibid., 48.
[88] Ibid., 54, 279.

change in the norm of sovereign equality has concerned primarily legislative and existential equality. While the UN Charter enshrines "the principle of the sovereign equality of all its Members" among the foundational principles of the UN,[89] as Edward Luck has noted, the founders of the UN understood sovereign equality "as a legal term, not one describing rules for inter-governmental decision-making"—i.e. not as legislative equality.[90] Great power prerogative, in the form of the veto power of the permanent members of the Security Council, was enshrined at the very heart of the UN system. Indeed, as Simpson argues, the Charter as a whole is best seen as a "compromise between the political requirements of hegemony...and the juridical commitment to equality (or the dignity and sovereignty of the smaller states)."[91] This compromise is evident not only in the institutional arrangements of the Security Council, but also in persistence in the Charter of the language of colonial paternalism with respect to the peoples of "non-self-governing territories" whose well-being the colonial powers were to promote as a "sacred trust."[92] Indeed, as Mark Mazower has recently argued, despite the UN's subsequent instrumental role in facilitating decolonization, the organization was originally conceived by its European architects as a means of *preserving* rather than eliminating European colonial rule—viz. as means of maintaining a system of *unequal* sovereignty between sovereign European states and their colonial dependencies.[93]

Beginning in the early postwar years, however, activism by postcolonial states was crucial in pushing for an expanded notion of sovereign equality that would include

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[89] Charter of the United Nations, Article 2(1).

[90] Edward C. Luck, *The UN Security Council: Practice and Promise* (London; New York: Routledge, 2006), 20.

[91] Simpson, *Great Powers,* 167.

[92] Charter of the United Nations, Article 73.

[93] Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton; Oxford: Princeton University Press, 2009).

not only formal equality among states but also existential and legislative equality. With regard to the former, Asian and Latin American states in the 1950s pushed for the immediate granting of unconditional sovereignty to colonized territories regardless of their level of internal development. As the General Assembly's 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* put it, colonial peoples were entitled to an unconditional right to "freely determine their political status and freely pursue their economic, social and cultural development" and "inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence."[94] Thus, while the new states that emerged from the ensuing wave of decolonization were expected to abide by existing *international* commitments (e.g. the commitment to territorial integrity and preservation of existing borders, even where these had been imposed by European imperialism), their sovereign rights *internally* were to be undiminished "however weak their government, however scant their control over territory, however inchoate their people."[95] In the terms proposed by Robert Jackson, they were granted the right of "juridical sovereignty" without having to demonstrate "empirical sovereignty."[96]

At the same time as they promoted greater existential sovereign equality, developing countries have also promoted legislative equality, in particular by challenging the granting of special rights or prerogatives to great powers. In the early twentieth century, Latin American states in particular were important critics of such special rights and used the occasion of the Hague conference of 1907—the first international meeting

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[94] UNGA Resolution 1514 (XV) *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960.

[95] Philpott, *Revolutions in Sovereignty*, 35.

[96] Jackson, *Quasi-States*, 23.

to include the participation not only of great powers but also of smaller states—to push for equal rights among states analogous to equal civil and political rights for individuals within a liberal domestic constitution.[97] Four decades later, the conflict between great power privilege and legislative equality was apparent at the San Francisco conference that founded the UN, particularly in debates over the composition, procedures and powers of the Security Council. While a majority of states, having learned the lesson of the League of Nations, accepted the need for special rights for the permanent five members of the Council, they still sought to soften the effect of these rights in a variety of ways: by seeking to limit the application of the veto to enforcement actions, by seeking to expand the membership of the Council so as to weaken the hold of the great powers on its decision-making, by seeking to establish a mechanism for reviewing the permanency of great power membership, and by seeking to constrain Council's decisions by instituting review mechanisms through the General Assembly or International Court of Justice. In the end, virtually every modification proposed by smaller states with respect to the Security Council was rejected. The effect—permanent status and the right of veto for the great powers—was an entrenchment of sovereign *in*equality which granted the permanent five (P5) members "de facto immunity from the enforcement jurisdiction of the Security Council while other states [were] subject to increasingly intrusive doctrines of intervention."[98]

The following table summarizes the three norms of the postcolonial sovereignty regimes and the dimensions along which each has been contested and has the potential to change.

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[97] Klein, *Sovereign Equality*, 54-61. See also Simpson, *Great Powers*, chapter 5.
[98] Simpson, *Great Powers*, 188.

Norms of sovereignty and intervention	Possible dimensions of norm contestation and change
Non-intervention	-change in scope of domestic jurisdiction -change in exceptions to the rule
Non-use of force	-change in scope of existing exceptions to the rule -articulation of new exception(s) to the rule
Sovereign equality	-change in recognition of legislative equality -change in recognition of existential equality

3.3 *Observing and measuring change in norms of sovereignty and intervention*

Accurately measuring the strength and content of international norms is a well-known problem in IR scholarship on this subject. As numerous scholars have noted, the strength and content of norms cannot be deduced purely from state behaviour. Individual cases of what appears to be norm-compliance or norm-violations do not necessarily prove or disprove the existence of a norm, and cannot be interpreted separately from the communicative practices of justification that accompany them. Verbal justifications, even if misleading or mendacious regarding the true circumstances and intentions of a given action, still reveal something about what a given group of states thinks the content of norms are in a given issue-area. Thus, for example, justifications for intervention, even if they are lies, reveal what is considered normal and justifiable behaviour in international society. For this reason, government statements regarding norms of sovereignty and intervention and statements justifying particular acts of intervention (or non-intervention) reveal the state of international understanding and the area of consensus—as well as the areas of contestation—concerning these norms. Debates between state representatives and consensual resolutions on these subjects within universal membership organizations can be particularly useful in assessing these areas of consensus and contestation.

Using such materials, Southern success in influencing the direction of norm change can be measured by assessing the degree to which the areas of international consensus and contestation regarding the content of the norms of non-intervention, non-use of force, and sovereign equality have shifted in a direction more compatible with the stated positions of developing states and their international groupings. Such shifts can be measured by looking at resolutions expressing areas of agreement on issues relating to sovereignty and intervention (e.g. the 2005 World Summit Outcome) and comparing them to earlier policy statements of states advocating and states opposing departures from existing sovereignty norms. The lesser the distance between the area of "international consensus" and the expressed positions of developing states, the greater the success in influencing the direction of norm change.

This method of measuring Southern success in influencing the direction of norm change obviously raises the problem of possible spurious effects: shifts in international consensus congruent with developing country preferences may occur for reasons other than developing country influence. Controlling for this possibility requires paying attention to other explanations and to possible evidence for these explanations in the empirical material revealed by process-tracing. For this reason, in both parts of my case study below I include evaluation of possible alternative explanations in my assessment of the impacts of my independent variables on Southern success in influencing the direction of norm change.

4 Operationalization of independent variables

Testing my hypotheses requires the operationalization of three independent variables that may influence the ability of developing countries to shape the direction of international norm change: the extent to which international institutions facilitate the participation of developing countries in decision-making, the ideological coherence of the Southern diplomacy on issues of sovereignty and intervention, and Northern capabilities and attitudes towards multilateralism. Below I summarize how each of these three factors is defined in Krasner's theory of international regime change, how they will be defined for the purposes of my case study, and how they will be measured.

4.1 *Participation of developing countries in decision-making in international institutions*

This variable measures the extent to which international institutions grant developing countries access to and participation in decision-making processes. With regard to the North-South conflict in the 1970s and 1980s, Krasner argues that developing states were more successful in pushing for international regime change through institutional arrangements that were based on principles of universal membership and sovereign equality, and whose decision-making procedures operated on the basis of "one state, one vote." Thus the Third World bloc was successful in using institutions such as the UN General Assembly or the UN Conference on Trade and Development (UNCTAD) to promote the norms and principles of New International Economic Order, but was less succesful in institutions functioning according to other principles (such as great power primacy in the UN Security Council) or other decision-making procedures (such as weighted voting in the Bretton Woods institutions).

For the purpose of my case study, the key international institutions to be examined are the UN Security Council and the General Assembly. The Security Council, with primary authority under the Charter for maintaining international peace and security, has been the key venue for debates over military intervention in humanitarian crises. Since the easing of East-West conflict in the mid-to-late 1980s, the Council has increasingly become involved in internal wars and has authorized the use of force in such situations on numerous occasions by expanding the definition of threats to "international peace and security." In cases of interventions not explicitly authorized by the Council—such as Anglo-American intervention in Iraq throughout the 1990s and in 2003, NATO intervention in Kosovo, or the more recent Russian intervention in Georgia—the Council has been the key venue of debate between those in favour and those opposed to these interventions. In addition, the Council has considered in its various thematic debates broader questions of principle related to the enforcement of international humanitarian law, the definition of international peace and security, and the protection of civilians in armed conflict. The Security Council has thus been an important venue for the development of norms concerning sovereignty and intervention.

Unlike the General Assembly, the Security Council functions according to the principle of great-power primacy, with the five permanent members possessing the power to veto any resolutions supported by any number of its other members. In theory, as David Malone notes, the guaranteed presence of seven non-permanent members from the global South (three from Africa, two from Asia and two from Latin America) and the requirement that Council resolutions be passed by at least nine of fifteen affirmative votes, gives the global South a potential "seventh veto" that could allow developing

countries to block resolutions favoured by the permanent members.[99] In practice, this has never happened, and it is even less likely in the post-Cold War period. As we shall see in the next section, this is not so much because of a lack of cohesion among developing countries in voting practices in the Council (cohesion has actually been remarkably high since the 1980s) but because of increased voting cohesion *between* developing countries and the permanent five. Moreover, increased cohesion *among* the permanent five has meant that developing countries have lost the ability to play off permanent members against each other.[100]

Besides the Security Council, the General Assembly has been the main venue for debate over "humanitarian intervention" and the "responsibility to protect," from the debate that occurred following NATO's intervention in Kosovo in 1999, through the 2005 World Summit. Here the "one state, one vote" decision-making procedures, as well as the tendency in the post-Cold War period to seek consensus on Assembly resolutions, has given developing countries the potential to exert far greater leverage, at least to the degree that they present a coherent diplomatic front (see below). Conscious of this, developing countries have been among the strongest supporters of plans to "revitalize" the General Assembly in recent years, and have protested loudly against the perceived "encroachment" of the Security Council on the prerogatives of the Assembly, including the promotion of international norms and the codification of international law. In addition to the full Assembly, several Assembly committees—particularly the third (Social, Cultural, and Humanitarian), fourth (Special Political and Decolonization), fifth

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[99] David M. Malone, "Introduction," in *The UN Security Council: From the Cold War to the 21st Century* ed. David M. Malone (Boulder and London: Lynne Rienner, 2004), 14.

[100] David M. Malone, "The UN Security Council in the Post-Cold War World: 1987-1997," *Security Dialogue* 28, no. 4 (1998): 396.

(Administrative and Budgetary) and sixth (Legal)—have played a significant role in the debates on "humanitarian intervention" and the evolution of the "responsibility to protect." All of these committees, like the Assembly itself, have universal membership and equal voting.

For the purposes of the case study, *participation of developing countries in decision-making in international institutions* will thus be an essentially dichotomous variable, distinguishing between those international institutions that encourage such participation by their membership rules and voting procedures (e.g. the General Assembly) and those that do not (e.g. the Security Council).

4.2 *Ideological coherence of the Southern diplomacy*

This variable measures the extent to which developing states have articulated a cohesive ideological position on issues regarding intervention and sovereignty as a basis for a united diplomatic front in international forums. In the case of the North-South conflict of the 1970s, Krasner argues that Southern ideological coherence was provided primarily by a common adherence to economic theories (the structuralism of Raúl Prebisch and the *dependencia* school) which attributed Third World underdevelopment primarily to international causes—unequal exchange, declining terms of trade—rather than to national policies. Within the main multilateral organization of the global South concerned with economic affairs—the Group of 77—these theories were molded into a coherent ideology justifying collective demands for international structural change.[101] This ideology then provided a basis for common diplomatic action and allowed

[101] The most detailed analysis of the emergence of this ideology is Craig Murphy. *The Emergence of the NIEO Ideology* (Boulder, Colorado: Westview Press, 1984).

developing countries, acting collectively through the G77, to coordinate their demands across issue areas and to present a common front in negotiations with the North, which they did more often than not throughout the 1970s and early 1980s.[102] Even more fundamentally, Krasner argues, this ideology provided the very basis for the idea of the "Third World" itself, by providing an image of a shared history and common future that helped bridge differences of history, economic position, and culture.[103]

Since the 1970s, the "Third Worldist" ideology that underpinned the demands of the NEIO has gone into dramatic decline.[104] This decline has been driven in part by economic developments, especially the increasing economic differentiation within the "Third World" between the rising East Asian Newly Industrialized Countries (NICs) on the one hand, and sub-Saharan Africa, caught in a protracted debt crisis and economic stagnation, on the other. Such significant economic polarization *within* the "Third World" itself has called into question the continued viability not only of a single ideological framework to address the experiences and needs of a variety of different countries, but also of the very terminology used to describe them. The continued use of the term "Third World" has been criticized as analytically misleading,[105] and the continued use of "North-South" terminology in the context of the United Nations has been seen as being of little relevance to the actual interests of and conflicts between UN Member States.[106] In the

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[102] As has been demonstrated by the voting records of the G77 countries within the General Assembly. See Iida. "Third World Solidarity," 375-95.

[103] Krasner, *Structural Conflict*, 90.

[104] See Mark T. Berger, "After the Third World? History, destiny and the fate of Third Worldism," *Third World Quarterly* 25, no. 1 (2005): 24-27.

[105] See e.g. Mark T. Berger, "The End of the 'Third World'?" *Third World Quarterly* 15, no. 2 (1994): 257-275; Berger, "After the Third World?" *op cit*; Jean-François Bayart, "Finishing with the idea of the Third World: the concept of political trajectory," in *Rethinking Third World Politics* ed. James Manor (London and New York: Longman, 1991).

[106] Thomas G. Weiss, "Beyond the North-South Theatre," *Third World Quarterly* 30, no.2 (2009): 271-284.

wake of the end of the Cold War confrontation between the superpowers, one of the main ideological planks of the Third World bloc—"non-alignment"—seems to have lost its *raison d'être*, and its main institutional platform is sometimes seen as an anachronism.[107]

Without diminishing the significance of these momentous changes or of the diversity of the contemporary global South, there are several good reasons to retain some collective term of reference for states of the former "Third World." As Vicky Randall has argued, while the term "Third World" may have lost much of its analytical usefulness for the purpose of the study of comparative politics, it remains useful for geopolitical analysis to describe the major axes of economic and political inequality in the international system.[108] Not only is international economic inequality thought to have increased since the 1980s, it remains the case that the majority of poor people live in countries of the former Third World.[109] Moreover, looking at the international institutions in which significant decisions regarding the management of the global economy have been made since the end of the Cold War (the Bretton Woods Institutions, the Group 7/8 advanced industrial powers), the political marginalization of most states of the "global South" in economic decision-making is evident (though this may be changing with recent emergence of the G20). Thus, far from being irrelevant, some terminology to describe the relations between "North" and "South"—properly reconfigured to take into

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[107] See Amitav Acharya, "Developing Countries and the Emerging World Order: Security and Institutions," in *The Third World Beyond the Cold War: Continuity and Change,* ed. Louise Fawcett and Yezid Sayigh (Oxford: Oxford University Press, 2000), 91-2.

[108] Vicky Randall, "Using and Abusing the Concept of the Third World: Geopolitics and the Comparative Political Study of Development and Underdevelopment," *Third World Quarterly* 25, no. 1 (2004): 41-53.

[109] E.g. Branko Milanovic, *Worlds Apart: Measuring International and Global Inequality.* (Princeton, NJ: Princeton University Press, 2005), chapter 4.

account both the rise of the NICs and the peripheralization of parts of the former "Second World"—remains necessary.[110]

For the purpose of my case study, it is worth retaining some collective designation for the "global South" for two additional reasons. The first is that, taken collectively, states in the global South have been and continue to be the most likely to experience the kinds of conflicts and humanitarian crises that lead to calls for "humanitarian intervention" or the invocation of the "responsibility to protect." In both the Cold War and post-Cold War periods, conflicts in the global South (both inter-state and intra-state) have vastly outnumbered those in the developed North. Whether one attributes this fact to poverty and underdevelopment generally[111] or to the specific security predicaments of states undertaking "state-making" in the context of weak state-society relations and an unfavourable international environment,[112] the fact is that, as the primary sites of conflict-related human rights and humanitarian crises, developing countries are also the primary potential targets of practices of armed intervention to protect vulnerable populations. Most of the internal wars since the 1980s that have provided the focus for debates on "humanitarian intervention" have been in the former "Third Word." (The important exception, perhaps, is Yugoslavia, but even here it has been argued that the post-Cold War Balkans are best understood as a part of an *expanded* post-Cold War "Third World"

[110] For an argument along these lines see Caroline Thomas, "Where is the Third World Now?" *Review of International Studies* 25, no. 5 (1999): 225-244.

[111] See Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can be Done About It* (Oxford: Oxford University Press, 2007), chapter 2.

[112] Mohammed Ayoob, *The Third World Security Predicament: State Making, Regional Conflict and International System* (Boulder, CO: Lynne Rienner, 1995).

in that the region faces some of the same dynamics of conflict linked to economic vulnerability and ethno-nationalism seen as typical of the traditional "Third World".[113]) The second, related reason why it is worth retaining a collective designation for developing countries is that, while they remain the likeliest targets for military "humanitarian intervention," states in the global South are also the *least* likely to be the agents of such interventions. As discussed above, coercive military interventions in conflict situations, whether authorized by the UN Security Council or not, have been conducted mostly by militaries from Northern states. An exception to this is military intervention by regional hegemons or regional organizations in the global South itself, e.g. Nigerian-led interventions by the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone in the 1990s, on which more below.

There are *prima facie* good reasons, then, for using a collective designation to describe those states most likely to be targets, and least likely to be agents, of "humanitarian intervention." Whether this objective condition has translated in practice into an collective *intersubjective* understanding and a coherent ideological position regarding intervention among developing countries is another issue. During the Cold War, a principled stand on intervention *was* central to the ideology of Third World "non-alignment," which opposed in principle intervention by the superpowers or former colonial powers in developing countries (though attitudes on particular interventions differed). The 1955 Afro-Asian conference in Bandung, Indonesia codified "abstention from intervention or interference in the internal affairs of another country" among its key founding principles. Since its founding in 1961, the Non-Aligned Movement (NAM) has

[113] See Mohammed Ayoob, "The New-Old Disorder in the Third World," *Global Governance* 1, no. 1 (1995): 62-63.

repeatedly reaffirmed the principle of non-intervention. The NAM's 1964 Cairo Declaration, for example, declared that "interference by economically developed foreign States in the internal affairs of newly independent, developing countries" constituted a "standing threat to peace and security."[114] On the specific issue of "*humanitarian* intervention," the Third World during the Cold War showed some degree of consensus in rejecting its legitimacy: in two Cold War cases frequently cited as examples of "humanitarian intervention" (East Pakistan and Cambodia), the non-aligned states were generally united in their criticism of these interventions as contrary to the non-intervention norm.[115]

In the post-Cold War period, several Southern states have sought to keep alive the ideology of non-alignment and its condemnation of all interventionism as an imperialist practice. This has particularly been the case with those countries that have faced frequent covert or overt intervention by the US such as Cuba, Iraq, Iran, and Sudan. Other states (including Algeria, Malaysia, Indonesia and India) that have sought to avoid direct confrontation with the US, have continued to voice concerns over the growing interventionism of the North and of the UN Security Council. This perspective has been reflected in the post-Cold War statements of the NAM. For example, the NAM's 1995 summit in Cartagena, Colombia produced a pledge by the assembled states to oppose "new interventionist trends" and to defend the principles of sovereign equality and non-

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[114] Non-Aligned Movement, *Program for Peace and International Cooperation: Final Declaration of the Second Summit of the Non-Aligned Movement* (10 October 1964, Cairo), 3. http://www.namegypt.org/Relevant%20Documents/02nd%20Summit%20of%20the%20Non-Aligned%20Movement%20-%20Final%20Document%20(Cairo_Declaration).pdf (accessed 15 July 2010).

[115] See Wheeler, *Saving Strangers*, 67 (East Pakistan), 95 (Cambodia). The Tanzanian intervention against Idi Amin's regime in Uganda in 1979 was viewed more favourably: see Wheeler, 125.

intervention "which some are now trying to disregard."[116] Nonetheless, the willingness of developing states on the Security Council to vote for resolutions authorizing enforcement measures in internal conflicts in Somalia, Bosnia and (belatedly) Rwanda strongly suggests that Southern opposition to "interventionism," at least when authorized by the UN, has not been total. Moreover, among African states in particular, the *failure* of the UN or the great powers to intervene in a timely manner to prevent the Rwandan genocide has provided a strong impetus for rethinking the traditional defence of absolute non-intervention in favour of a move towards a regional norm of "non-indifference" and the establishment of an (admittedly embryonic) mechanisms for regional intervention against massive human rights abuses.[117] This parallel ideological development, and its interaction with the older anti-interventionism of the NAM, will play an important part in my case study.

For my case study, I will seek to measure Southern ideological coherence on matters concerning intervention by closely surveying Southern reactions to individual interventions or proposed interventions, as well as looking at more general statements by developing countries and their multilateral organizations concerning "humanitarian intervention," the "responsibility to protect" and their implications for sovereignty. This is an admittedly inexact method of measurement, and faces the same problems as the attempt to measure norms. Statements made by statesmen can always be strategic rather than principled, though for the purpose of my analysis this is not a fatal problem: as the question I am concerned with is the *effect* of Southern ideological coherence on the

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[116] Non-Aligned Movement, *The Call from Colombia: Final Document of the Eleventh Summit of the Non-Aligned Movement* (20 October 1995, Cartagena), para. 5.

[117] Paul Williams, "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture," *African Affairs* 106, no. 423 (2007): 253-279.

ability of developing countries to influence the direction of norm change, the *motivations* for particular statements (whether strategic or principled) are not particularly significant. If states choose to align themselves with a collective Southern position for the strategic purpose of exercising leverage in inter-state discussions, this in itself is highly significant.

4.3 *Northern capabilities and attitudes*

This variable measures both the capabilities of Northern states and their attitudes towards multilateralism. In Krasner's account of North-South conflict, "Northern capabilities" refers to the relative power of developed states, and especially the United States, vis-à-vis the global South and the Soviet bloc. Writing in the mid 1980s, Krasner saw the US as a declining hegemon, both in terms of its military power—declining since the mid-1970s relative to the USSR—and in terms of economic power—declining relative to its nearest competitors among the advanced industrialized capitalist states.[118] By "Northern attitudes" Krasner refers in particular to US commitments to multilateral action through international institutions. Krasner argues that while the US had supported multilateral mechanisms while it could exert preponderant influence on them in the immediate postwar period, its commitment to them began to erode as decolonization brought larger numbers of Third World states into international institutions, and as these states increasingly sought to shape the agendas of these institutions in a manner harmful to US interests. Krasner thus argues that the early to mid 1970s provided developing countries with a window of opportunity for their attempt at international regime change, with US hegemony in relative decline while the US remained committed to working through international institutions which it no longer controlled. By the later 1970s,

[118] Krasner, *Structural Conflict*, 70.

however, and especially under the Reagan administration in the early 1980s, this commitment seriously declined. Taking as his examples the US's withdrawal from the International Labor Organization in 1977 and from UNESCO in 1985, its refusal to participate in the International Court of Justice case over Nicaragua, and the rejection by a number of Northern states of the UN Convention on the Law of the Seas in 1982, Krasner argues that the US and the North more broadly were increasingly turning away from multilateral venues, leaving Southern proposals for international regime change still-born.[119] The end point of Northern withdrawal from multilateral processes, Krasner believed, would be an overall decline in interdependence between North and South and a greater resort to collective self-reliance on the part of both.

Many of Krasner's expectations have, of course, proven mistaken. Most importantly, the expectation of US hegemonic decline, widely shared in the late 1970s and early 1980s, proved to be widely off the mark. The end of the East-West conflict and the subsequent demise of the Soviet Union left the US as the sole superpower, replacing a bipolar international system with a unipolar one. While the stability and durability of unipolarity has been debated by IR scholars,[120] there has been little doubting US primacy in most dimensions of power. While US economic hegemony may have declined in relative terms with the rise of the European Union, Japan and China, in terms of military power, the US in the post-Cold War period has remained supreme, maintaining by far the largest military budget in the world since the 1980s. Continued high-levels of investment in military technology and a global projection capability and basing structure have

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[119] Ibid.

[120] See e.g. William C. Wohlworth, "The Stability of a Unipolar World," *International Security* 24, no. 1 (Summer 1999): 5-41 and Christopher Layne "The Unipolar Illusion Revisited: The Coming End of the United States' Unipolar Moment," *International Security* 31, no. 2 (Winter 2006): 7-41.

arguably given the US virtually uncontested "command of the commons" on land and sea, in the air and in space.[121] More broadly, as Krasner would have predicted, the balance of economic and military power between the North and South has remained largely unbridged, despite the notable development achievements by a number of Newly Industralized Countries, a number of which (notably China) have sizeable military capabilities and regional projection capabilities.

For our purposes the Northern capabilities that are most significant are those directly related to the capacity to conduct armed "humanitarian intervention," especially the ability to rapidly project military force. In this respect, the US remains unrivalled at a global level, though other actors (Russia, the European Union, China) maintain varying projection capabilities on a regional level. These capabilities can be used either unilaterally or multilaterally, and with or without UN authorization. In the context of UN mandated military interventions, Northern involvement in these has generally proceeded on the basis of "subcontracting," or military missions with UN authorization but not under UN command and control. This has been the case particularly in enforcement missions (the 1991 Gulf War) but also in peacekeeping missions (such the US-led operations in Somalia and Haiti in the 1990s, the French-led *Operation Turquoise* in Rwanda). This is not to say that *only* Northern military capabilities are important. Indeed, several developments should draw our attention to the emerging capabilities within the global South itself. First, as Northern military participation in UN peacekeeping as a whole has declined since the Bosnian war, a larger proportion of peacekeeping troops has come from countries in the global South, meaning that troops from the global South may

[121] Barry Posen, "Command of the Commons: The Military Foundation of U.S. Hegemony," *International Security* 28, no. 1 (Summer 2003): 5-46.

increasingly be involved in coercive civilian protection as such protection becomes integrated into the mandates of UN peacekeeping missions. In additional, regional initiatives in the global South are highly significant, particularly ECOWAS's intervention in the civil wars in Liberia and Sierra Leone in the 1990s and, potentially, the African Union's emerging peace and security architecture which sanctions collective "humanitarian intervention" under article 4(h) of the AU's Constitutive Act.

Despite these important developments, however, there are several reasons why our focus should remain on the military capabilities of the North. First, while Southern troops in UN peacekeeping operations have been deployed with increasingly "robust" mandates that involve civilian protection duties, it is important to distinguish between "robust" UN peacekeeping on the one hand and armed "humanitarian intervention" on the other. The latter, by most definitions, involves military intervention within a state *without the consent* of that state. While it is true that modern UN peace operations have increasingly taken place in environments in which consent is uncertain or manipulated by parties to the conflict,[122] the importance of the overall consent of the host state for a peacekeeping deployment remains crucial. As a rule, the Security Council has been extremely reluctant to authorize the deployment of a peacekeeping mission without the consent of the target state. Possibly the only example so far is Somalia, but this one is ambiguous as there existed no effective government to provide consent.

A second reason to focus on Northern capabilities is that, even if troops from the South are increasingly deployed in internal conflicts through the UN or through regional efforts, in instances in which robust use of force for civilian protection has been deployed

[122] United Nations, General Assembly and Security Council. *Report of the Panel on United Nations Peace Operations*, UN document A/55/305 - S/2000/809 (21 August 2000), para. 48.

it has generally been delegated to an individual country or group of countries from the global North (e.g. the US-led UNITAF mission in Somalia, French-led *Operation Turquoise* in post-genocide Rwanda, British *Operation Paliser* in Sierra Leone in 2000, the European Union's *Operation Artemis* in Ituri). The reasons for this are that Northern countries uniquely enjoy the military and economic capabilities necessary to mount prolonged military interventions in internal conflicts. In 2000, the UN Panel on Peace Operations argued that "while the United Nations has acquired considerable expertise in planning, mounting and executing traditional peacekeeping operations, it has yet to acquire the capacity to deploy more complex operations rapidly and to sustain them effectively," and concluded that "the UN does not wage war. Where enforcement action is required it has consistently been entrusted to coalitions of willing states with the authorization of the Security Council."[123] In practice, this has meant primarily UN authorization for Western states, led by the US, to take military action in the name of the international community. As Thomas Weiss argues, US "airlift capacity, military muscle, and technology" will likely remain a requirement for larger and longer deployments in the foreseeable future.[124]

For the purposes of this study, we may take Northern capabilities as more or less constant. To be sure, the US's military engagements in Afghanistan and Iraq have "distracted" the remaining superpower, drawing substantial manpower and funding, and making it less likely that the US will intervene in cases where it does not perceive its vital interests to be at stake.[125] Nonetheless, in Krasner's terms, this is more a question of

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[123] Ibid., para. 6(h) and para. 53.

[124] Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity Press, 2007), 134.

[125] Ibid.

"attitudes" than "capabilities": proponents of "humanitarian intervention" have argued that such intervention *is* in the vital national interest of Northern states because of the destabilizing effects of humanitarian crises.[126] Were such an attitude to prevail in Washington and other Northern capitals, there is little reason to doubt that the capabilities could be found to act, and if they were, there would be little to stop them militarily.

Taking Northern capabilities as constant then, the more significant variable for our case is Northern "attitudes." As we have seen Krasner defined Northern attitudes in terms of the commitment of Northern states, and especially the US, to multilateral action through international institutions. For our purposes, the focus will be on Northern commitments to existing multilateral mechanisms for authorizing and/or legitimating military intervention. In practice, this means the UN Security Council, which, as we saw above, is widely recognized as having the "primary responsibility for the maintenance of international peace and security" and as being the only body with the legal authority to authorize the non-defensive use of force. Northern attitudes towards Security Council authorization of the use of force have not been uniform in the post-Cold War period. The attitude of the US in particular has been one of ambivalence, characterized by a sense of "exceptionalism" that is characteristic of its broader relationship with international institutions and international law.[127] According to Edward Luck, "exceptionalism" has four central characteristics:

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[126] See Will to Intervene Project, *Mobilizing the Will to Intervene: Leadership and Action to Prevent Mass Atrocities* (Montréal: Montreal Institute for Genocide and Human Rights Studies, 2009).

[127] See Edward C. Luck, "American Exceptionalism and International Organizations: Lessons from the 1990s," in *US Hegemony and International Organizations: The United States and Multilateral Institutions,* ed. Rosemary Foot, S. Neil McFarlane and Michael Mastanduno (Oxford: Oxford University Press, 2003), 25-48; Nico Kirsch, "Weak as Constraint, Strong as Tool: The Place of International Law in US Foreign Policy," in *Unilateralism and U.S. Foreign Policy: International Perspectives,* ed. David M. Malone and Yuen Foong Khong (Boulder and London: Lynne Rienner Publishers, 2003), 41-70.

> -a willingness to "go it alone" when it suits ones interests, and an apparent immunity to the criticism of other states
> -an assumption about the universal validity and morality of one's values and practices
> -an inward-looking orientation that gives primary consideration to domestic political considerations when deciding international behaviour
> -a belief that action through multilateral institutions is only an option rather than an obligation.[128]

On the issues of military intervention and sovereignty, the US has exhibited these characteristics on numerous occasions in the post-Cold War period, evincing a willingness to use force unilaterally without the sanction of the UN Security Council, as it did in Panama in 1989, in Iraq during the 1990s and in 2003, against Sudan and Afghanistan in 1998. In certain circumstances, the US has preferred "narrow multilateralism" in acting through NATO and has, as we shall see in the next chapters, sought to reserve a role for NATO to act militarily outside the structures of the UN.

The US's "exceptionalist" approach to the use of force—adopting multilateral actions when it suits US interests, "going it alone" when it doesn't—has been contrasted with the more "genuine" multilateralism of its principal Western allies like the United Kingdom, France and Canada. These countries, according to David Malone, "view multilateralism as an important goal in itself."[129] With regard to military intervention, however, this judgement has to be seriously qualified, particularly in the case of the post-Cold War UK, which was alone among NATO allies in joining the US in its unilateral strikes on Iraq in the late 1990s (France had earlier participated in patrolling the Iraqi "no fly" zones but withdrew in 1996) and its invasion of that country 2003. Along with the

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[128] Luck, "American Exceptionalism," 27

[129] David M. Malone, "A Decade of U.S. Unilteralism?" in *Unilateralism and U.S. Foreign Policy: International Perspectives,* ed. David M. Malone and Yuen Foong Khong (Boulder and London: Lynne Rienner Publishers, 2003), 21.

rest of NATO, the UK, France, and Canada joined the US in the unauthorized use of force against the Federal Republic of Yugoslavia in 1999—not a "unilateral" use of force in the strict sense, but in-line with the US's goal of making NATO more autonomous from the UN. However, in all cases, it is fair to say that NATO countries participating in unauthorized interventions have followed the lead of the United States; there have been no unilateral interventions by the US's NATO allies on their own initiative.

But "Northern attitudes" in my case study refers not only to the willingness to use force unilaterally, but also to a broader commitment to multilateral mechanisms in the legitimation of interventions and the promotion of new doctrines and norms, as opposed to a preference for unilateral policies or narrower, North-only mechanisms such as NATO. In this respect, US allies like Canada *have* remained more committed to multilateral actions through the UN. As we shall see, this is particularly important in the case of "humanitarian intervention" as it was this commitment that ensured that Canada and other Northern countries sought to bring the issue of intervention back into the UN system following Kosovo. Measuring Northern attitudes thus involves analyzing both military actions—specifically the willingness of Northern states to disregard Security Council authorization and to resort to unilateral or "narrow multilateral" military action—and diplomatic actions—specifically the willingness of Northern states to promote new ideas and norms through universal multilateral forums like the UN.

5 Structure of the case study

In the case study of international debates over "humanitarian intervention" and the "responsibility to protect" which follows, I structure my analysis around the four

variables discussed above, dividing each section of the case study into separate assessments of each, followed by an assessment of the degree to which the area of international consensus at the end of the period in question reflects the stated positions of developing countries. As the key "norm entrepreneurs" promoting both "humanitarian intervention" and the "responsibility to protect" have been mostly (though not exclusively) Northern states, I begin each section of the case study by observing and measuring *Northern attitudes.* Specifically I try to measure the degree to which Northern states in a given period of time were committed to multilateral mechanisms or were willing to look beyond such mechanisms to unilateral or "narrow multilateral" alternatives. As mentioned above, this refers not only to a willingness on the part of Northern states to abide by UN mechanisms governing the use of force, but also to the degree to which Northern states remained committed to using multilateral forums to promote new concepts and norms. I follow this with a discussion of the *ideological coherence of Southern diplomacy*, trying to measure the degree to which Southern states in a given period of time were able to put forward a coherent collective position on the question of intervention and state sovereignty. As we shall see in the case study, by "collective position" I do not mean a unanimously held common ideology as such, but rather a collectively espoused compromise position which successfully reconciled (or at least papered over) inevitable differences for the sake of collective bargaining. Third, I discuss the *institutional environment* in which these positions of both Northern and Southern states were put forward and debated. Here I measure to extent to which these environments facilitated the participation of developing countries in decision-making processes based on their membership rules and decision-making procedures.

Having measured the three independent variables, I then seek to measure the *success of developing countries in influencing the direction of change in international norms of sovereignty and intervention* by analyzing the shifting areas of consensus and contestation over the question of intervention. In particular, I look at successive articulations of the concept of the "responsibility to protect," evaluate the implications of these articulations for the key norms of sovereignty (non-intervention, non-use of force, and sovereign equality), and assess the degree to which they resemble or depart from the expressed positions of developing countries. Finally, I evaluate the degree to which the evidence supports alternative explanations.

Chapter 3: Case Study - Part One, 1999-2001

This first part of my case study discusses the international debate around "humanitarian intervention" from the NATO intervention in Kosovo in the spring and summer of 1999 to the publication of *The Responsibility to Protect*, the report of the International Commission on Intervention and State Sovereignty (ICISS), in December 2001. NATO's military intervention in the Federal Republic of Yugoslavia (FRY) over the conflict in its southern province of Kosovo in March-June 1999 has been frequently cited as a key turning point in the emergence of post-Cold War doctrines of "humanitarian intervention." While previous Northern military interventions in internal conflicts during the 1990s (with the exception of northern Iraq in 1991) had been conducted with the explicit legal authorization of the Security Council, NATO's war in Kosovo, in contrast, was not authorized by the Council. While the Council found that the conflict in Kosovo between the FRY and the Kosovo Liberation Army (KLA) constituted a "threat to peace and security" and demanded, under Chapter VII, an immediate cessation of hostilities,[130] opposition to the use of force and the threat of veto by two permanent members (Russia and China) guaranteed that no resolution authorizing NATO to use force could be passed. NATO's decision to intervene anyway, and to justify its intervention in large part by reference to the "humanitarian emergency" caused by the violence in Kosovo, spurred a intense debate among member states of the United Nations on what then-UN Secretary-General Kofi Annan called "the dilemma of intervention": the apparent contradiction between the humanitarian imperative to rescue vulnerable

[130] United Nations Security Council Resolution 1199 (23 September 1998).

populations from massive human rights abuse, and the need to uphold an international order founded on legal norms of sovereignty, non-intervention, and the non-use of force.[131]

In what follows I survey Northern attitudes and the ideological coherence of Southern diplomacy in the debate over "humanitarian intervention" between 1999 and 2001 and the institutional environment in which the debate took place. I then seek to assess the impact of these factors on the ability of developing countries to influence the direction of norm change, specifically, in this case, to influence the evolution (or non-evolution) of the central norms of sovereignty (non-intervention, non-use of force, and sovereign equality). I conclude that, in this part of my case study, my three working hypotheses are largely confirmed by the case material:

-First, while Northern states promoting "humanitarian intervention" were willing to resort to force in Kosovo without Security Council authorization, and thus to seriously challenge existing norms of non-intervention, non-use of force and sovereign equality, these same states still sought to work through the multilateral mechanisms of the UN in order to reform the norms of sovereignty in a way that would legitimate their actions. This required them to engage with the views of developing countries in a way that would not have been necessary had they been content to commit to narrower, non-UN mechanisms, with the result that Southern states were able to decisively shape the subsequent debate.

-Second, as the coherence of Southern diplomacy increased, so too did the ability of developing states to resist the radical norm change proposed by proponents of

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[131] See United Nations General Assembly, *We the Peoples: The Role of the United Nations in the Twenty-First Century: Report of the Secretary General*, UN document A/54/2000 (27 March 2000), paras. 215-219.

"humanitarian intervention." This can be seen by comparing the initial split within the global South over the Kosovo war with its later consensus in rejecting the "right" of unauthorized "humanitarian intervention." While the initial Southern split over the Kosovo war allowed NATO to secure the appearance of legitimacy for unilateral "humanitarian intervention" within the Security Council (in the form of the rejection of a Russian-sponsored resolution condemning the intervention), the subsequent coherence of the Southern diplomacy in the General Assembly dispelled any possibility of legitimating a new norm of unauthorized "humanitarian intervention."

-Finally, in institutional environments which facilitated the participation of developing countries in decision-making processes (i.e. the General Assembly), developing countries were largely able to defuse the radical challenge posed by "humanitarian intervention" and reaffirm the central norms of the postcolonial sovereignty regime. This encouraged Northern proponents of "humanitarian intervention" to seek alternative, non-government institutional settings—an independent international commission—in which participation by Southern states was only indirect. As I demonstrate through an analysis of the report of the ICISS, the ideas that emerged from this alternative institutional setting posed a greater challenge to postcolonial sovereignty norms than those affirmed by the General Assembly.

1 Northern attitudes

In this section I survey Northern attitudes concerning "humanitarian intervention" in the Kosovo case and in subsequent debates within the UN. I show how the position staked out by several Northern states during and after the Kosovo

intervention had potentially revolutionary implications for the three key norms of the postcolonial sovereignty regime: non-intervention, non-use of force and sovereign equality. With regard to non-intervention, Northern states reaffirmed the developments since the end of the Cold War which shrank the *scope* of the non-intervention rule by expanding the Security Council's definition of threats to international peace and security, but also sought to carve out a *new exception* to both the non-intervention norm and the norm prohibiting the use of force. This new exception would allow states, in limited circumstances, to intervene in cases of "humanitarian emergency" even without Security Council authorization. The effect of such an exception, had it been accepted by the broader membership of the UN, would have been to significantly alter not only the norms of non-intervention and non-use of force, but also that of sovereign equality, reinforcing the special rights of a select (and self-selecting) group of states to use force against states defined in advance as "rogues" or "outlaws." The Kosovo war can thus be seen as an attempt by certain Northern states to promote radical norm change.

Despite their willingness to resort to unilateral force, however, a number of Northern states promoting this change in international norms of sovereignty and intervention remained committed to working through the universal multilateral mechanisms of the UN, and unwilling to commit to the assertion of new prerogatives for the narrower, North-only mechanisms of NATO. As a result, they sought to work through the UN to legitimate new practices of intervention, ensuring that they would have to engage with the opinions of Southern states.

1.1 Unauthorized "humanitarian intervention" from Iraq to Kosovo

Throughout the 1990s, Northern states on the UN Security Council were key proponents of the Council's expansion of the definition of threats to international peace and security to include phenomena related to internal conflicts and humanitarian crises. This expansion then served as the basis for the increased (if highly selective) authorization by the Council of enforcement measures in the context of such conflicts and crises, from Somalia in 1992[132] to East Timor in 1999.[133] In addition, in at least two cases, a small number of Northern states made claims for the legitimacy of military intervention in situations of "humanitarian necessity" even *without* explicit Security Council authorization. This took place first in the context of US, UK and (for a time) French military actions in Iraq following the end of the 1991 Gulf War, and later in the context of the 1999 NATO intervention in the Federal Republic of Yugoslavia (FRY) over the war in Kosovo.

While the Iraqi case is beyond the chronological scope of this case-study, it deserves a brief discussion, as it served as an early testing ground for some of the claims regarding unauthorized "humanitarian intervention" later marshalled by Northern states in the case of Kosovo. In the Iraqi case, such claims were first made in the spring of 1991 in the aftermath of the Gulf War when repression of a Kurdish uprising in northern Iraq by the Saddam Hussein regime sparked a refugee and humanitarian crisis, leading to pressure from neighbouring states and Western publics for international action to assist displaced Kurds. In early April, then French Foreign Minister Roland Dumas publicly called for altering the UN Charter to include a "duty of intervention" (*devoir*

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[132] See United Nations Security Council Resolution 794 (3 December 1992).
[133] See United Nations Security Council Resolution 1264 (15 September 1999).

d'ingérence) by the international community in cases of massive human rights abuse. The only specific actions which Dumas called for, however, were diplomatic and humanitarian, not military.[134] On 5 April 1991, the UN Security Council passed Resolution 688 (drafted by Belgium and France, and cosponsored by the US and UK), demanding that the Iraqi government immediately end repression of the Kurds and "allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq," and requesting that all member states "contribute to humanitarian relief efforts" in the country. While the resolution deemed the Kurdish refugee crisis to be a threat to international peace and security, it did not refer to Chapter VII or authorize enforcement measures, and it explicitly invoked Article 2(7) on non-intervention.[135] The passing of Resolution 688 was followed by the unilateral declaration by the US of a "no-fly zone" for Iraqi aircraft north of the 36th parallel and by the deployment in late April of Western ground forces inside Iraq to protect refugee "safe havens" ("Operation Provide Comfort"). Western ground forces remained in northern Iraq until July 1991. After that, US, British and French aircraft continued to patrol the northern "no-fly zone"—as well as a second "no-fly zone" in the south of the country declared in August 1992—and to conduct extensive air strikes targeting Iraqi radar and command and control centers.[136]

Neither the deployment of ground forces as part of "Operation Provide Comfort" nor the enforcement of the no-fly zones was explicitly authorized by the Security

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[134] See "Paris Calls for New UN Laws to Help Kurds," *Independent* (London) 5 April 1991, cited in Wheeler, *Saving Strangers*, 141.

[135] United Nations Security Council Resolution 688 (5 April 1991).

[136] For a description of the chronology see James Cockayne and David M. Malone, "Creeping Unilateralism: How Operation Provide Comfort and the No-Fly Zones in 1991 and 1992 Paved the Way for the Iraq Crisis of 2003," *Security Dialogue* 37, no. 1 (March 2006): 123-141.

Council, leading many observers to consider this an early case of unilateral "humanitarian intervention."[137] The intervention initially met with the acquiescence of most members of the Security Council.[138] As US and UK airstrikes continued throughout the 1990s, however, this initial acquiescence dissipated: France withdrew participation in the northern and southern no-fly zones in 1996 and 1998 respectively; after the mid-1990s the Security Council became increasingly polarized over continued Anglo-American unilateralism.[139] In the face of growing criticism, the UK in particular sought to justify the continued bombing on humanitarian grounds. (The US, in contrast, provided little detailed justification for its use of force beyond vague references to previous Security Council resolutions and self-defence.[140]) In 1992, the UK government for the first time explicitly argued that the US and UK's use of force in Iraq was conducted (in the words of the Legal Counsel of the Foreign and Commonwealth Office [FCO]) "in exercise of the customary international law principle of humanitarian intervention,"[141] and that "international intervention without the invitation of the country concerned can be justified in cases of extreme humanitarian need."[142] The UK government also presented on several occasion in the 1990s and early 2000s a set of criteria according to which it believed "humanitarian intervention" could be justified. The 1992 version of the criteria argued that "humanitarian intervention," in order to be legal, had to be in response to an

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[137] See Wheeler, *Saving Strangers,* chapter 5; Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention in International Law* (Oxford; New York: Oxford University Press, 2002), 130-133.

[138] See discussion in Wheeler, *Saving Strangers*, 155.

[139] Christine Gray, "From Unity to Polarization: International Law and the Use of Force Against Iraq," *European Journal of International Law* 13, no. 1 (2002): 1-19.

[140] Ibid.

[141] Anthony Aust, Legal Counsellor, Foreign and Commonwealth Office of the United Kingdom, statement before the House of Commons Foreign Affairs Committee, 2 December 1992, quoted in Chesterman, *Just War*, 204.

[142] "UK Materials on International Law" 63 *British Yearbook of International Law* (1992) 824, cited in Christine Gray, *International Law and the Use of Force* (Oxford and New York: Oxford University Press, 2000), 35.

urgent situation of extreme humanitarian crisis demanding immediate relief; had to be in a state that was unwilling or unable to address the crisis; had to be the only possible course of action; and had to be "limited in time and scope."[143] While these criteria changed somewhat in successive iterations, all versions notably omitted Security Council authorization as a prerequisite for intervention.

The UK repeated both its claim to a legal right of unilateral "humanitarian intervention" and its proposed criteria in the case of Kosovo. In October 1998, when NATO issued its first "activation order" authorizing airstrikes against the FRY if the Milosevic regime failed to comply with Security Council resolutions demanding the withdrawal of FRY forces from Kosovo, the FCO circulated a note to NATO members outlining its views on the legality of the unilateral use of force in Kosovo. Noting that the authorization of force for humanitarian reasons by the Security Council was now widely accepted, the FCO argued that "force can also be justified on the grounds of overwhelming humanitarian necessity without a UNSCR [UN Security Council Resolution]" provided several criteria were fulfilled: there had to be "convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief"; it had to "objectively clear that there is no practicable alternative to the use of force if lives are to be saved"; and the proposed use of force had to be "necessary and proportionate to the aim" of alleviating humanitarian need and "strictly limited in time and scope to this aim." The FCO considered that the first and second criteria were fulfilled in the case of Kosovo

[143] Ibid.

and that therefore "if action through the Security Council is not possible, military intervention by NATO is lawful on grounds of overwhelming humanitarian necessity."[144] This argument was repeated several months later by the UK delegate in the Security Council once NATO bombardment of the FRY was underway:

> Every means short of force has been tried to avert this situation. In these circumstances, and as an exceptional measure on grounds of overwhelming humanitarian necessity, military intervention is legally justifiable. The force now proposed is directed exclusively to averting a humanitarian catastrophe, and is the minimum judged necessary for that purpose.[145]

As numerous observers have noted, the UK was in the minority among NATO states in explicitly invoking a *legal* doctrine of unauthorized "humanitarian intervention" in the case of Kosovo.[146] As Simon Chesterman has argued, most other NATO states—including the United States—apparently remained wary of invoking a *legal* doctrine of "humanitarian intervention." Instead they resorted to other kinds of legal arguments—e.g. arguing that previous Chapter VII Security Council resolutions provided implicit authorization for NATO actions—and supplemented these with less precise, *moral* arguments justifying the intervention in humanitarian terms.[147] Thus, at the end of the first week of the airstrikes, US President Bill Clinton argued on American television that the purpose of NATO's resort to force was "to protect thousands of innocent people in Kosovo from a mounting military offensive" by the FRY forces. He explained that:

> We've seen innocent people taken from their homes, forced to kneel in the dirt, and sprayed with bullets; Kosovar men dragged from their families, fathers and

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[144] Cited in Adam Roberts, "NATO's 'Humanitarian War' over Kosovo," *Survival* 41, no. 3 (autumn 1999): 106.

[145] United Nations Security Council, 3988th meeting , 24 March 1999, provisional verbatim record (UN document S/PV.3988), 12.

[146] Belgium also argued for such a right before the International Court of Justice after the intervention. See Simon Chesterman, "Legality Versus Legitimacy: Humanitarian Intervention, the Security Council, and the Rule of Law," *Security Dialogue* 33, no. 3 (2002): 294.

[147] Ibid.

> sons together, lined up and shot in cold blood. This is not a war in the traditional sense. It is an attack by tanks and artillery on a largely defenceless people... Ending this tragedy is a moral imperative.[148]

Throughout the NATO air campaign, NATO countries on the Security Council (the US, UK, France, Canada, and the Netherlands) defended NATO's actions as necessary to avert a "humanitarian catastrophe" caused by FRY military actions in Kosovo. Military action, in the words of the US representative on the Council, was "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."[149] France argued that NATO action aimed "at putting an end to the intolerable actions of the authorities of the Federal Republic of Yugoslavia, a policy of deportation that has made it necessary and legitimate to apply the severest measures, including military action."[150] Canada argued that NATO was acting to prevent a "looming humanitarian disaster" and insisted that world could not "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."[151] The Netherlands argued that "the impending humanitarian catastrophe" caused by FRY military actions "could not be averted by peaceful means." While noting that NATO would have preferred to base its action on a specific Security Council resolution, the

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[148] Bill Clinton, Address to the Nation on Airstrikes Against Serbian Targets in the Federal Republic of Yugoslavia (Serbia and Montenegro), 29 March 1999, cited in "Contemporary Practice of the United States relating to International Law," *American Journal of International Law* 93, no. 3 (July 1999), 630.

[149] United Nations Security Council, verbatim record of the 3988th meeting, 24 March 1999 (UN document S/PV.3988), 4.

[150] United Nations Security Council, verbatim record of the 4000th meeting, 8 May 1999 (UN document S/PV.4000), 5.

[151] United Nations Security Council, verbatim record of the 3988th meeting, 24 March 1999 (UN document S/PV.3988), 6.

Dutch delegate on the Council argued that "we cannot sit back and simply let the humanitarian catastrophe occur" just because such a resolution was prevented by "one or two permanent members' rigid interpretation of the concept of domestic jurisdiction."[152]

While the resort to moral rather than legal justifications is highly significant in terms of the development of international law (arguably foreclosing the possibility of the emergence of a new norm of unauthorized "humanitarian intervention" in customary international law), for our purposes these less legalistic justifications of the intervention remain significant. By refraining from explicitly invoking a legal doctrine of "humanitarian intervention," but arguing instead that the NATO intervention was justifiable on moral grounds, Northern states were in effect promoting a "softer" standard for the use of force which would have allowed a self-selected group of states to resort to force in exceptional circumstances to forestall a "humanitarian catastrophe," even if such resort to force could not be squared with existing international law because of the rigid interpretation of sovereignty by a number of permanent members of the Security Council.[153] As the next section argues, this amounted to an important challenge to the core norms of the postcolonial sovereignty regime: non-intervention, non-use of force and sovereign equality.

1.2 Implications for the norms of the postcolonial sovereignty regime

NATO claims regarding the legitimacy of unauthorized "humanitarian intervention" in Kosovo posed a potentially radical challenge to the core norms of the

[152] Ibid., 8.

[153] For informative discussion of the distinction between legality and legitimacy in the Kosovo case see Thomas Franck, "Legality and Legitimacy in Humanitarian Intervention," in *Humanitarian Intervention*, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), 243-267.

postcolonial sovereignty regime. With regard to non-intervention, Northern states in Kosovo case reaffirmed the developments since the end of the Cold War which had diminished the scope of matters considered as part of domestic jurisdiction by expanding the Security Council's definition of threats to international peace and security. In justifying their intervention, NATO countries referred repeatedly to the previous Security Council resolutions which had found that the war in Kosovo, rather than being an internal affair of the FRY, constituted a "threat to peace and security in the region."[154] China and Russia abstained from voting on these earlier resolutions and argued that the situation in Kosovo was a matter falling within the FRY's domestic jurisdiction, but a majority of the Council agreed that the situation was the legitimate concern of the Council.[155] Besides arguing for the restricted scope of the non-intervention norm, however, NATO countries also sought to carve out a *new exception* to both the non-intervention norm and the norm prohibiting the use of force. This new exception would allow enforcement of Security Council demands, including, in cases of extreme humanitarian emergency, through the resort to force, by a group of states acting without explicit Security Council authorization. While NATO countries characterized their intervention in Kosovo as "exceptional," and several (e.g. Germany and Norway) argued expressly *against* making the NATO intervention a precedent for future unauthorized interventions,[156] for others the invocation of the "exceptional" nature of the intervention did not foreclose the possibility that similar "exceptions" would arise in the future. Indeed, a number of NATO countries

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[154] United Nations Security Council Resolution 1199 (23 September 1998) and 1203 (24 October 1998).

[155] Alex J. Bellamy, "Kosovo and the Advent of Sovereignty as Responsibility," *Journal of Intervention and Statebuilding* 3, no. 2 (2009): 171.

[156] United Nations General Assembly, 54th session, provisional verbatim record, 8th plenary meeting, 22 September 1999 (UN document A/54/PV.8), 11-12 (Germany) and 54th session, provisional verbatim record, 55th plenary meeting, 17 November 1999 (UN document A/54/PV.55), 14 (Norway).

argued explicitly for such a possibility. Denmark, for example, argued that unauthorized "humanitarian intervention" could not be foresworn entirely. After the war was over, Danish Foreign Minister Niels Helveg Petersen argued that the Kosovo war had demonstrated that, though the Security Council retained primary responsibility for maintenance of international peace and security, the "international community" could act against atrocities "even if the Security Council is blocked." "The challenge," Petersen insisted, was "to keep open the option of humanitarian intervention without Security Council authorization in extreme cases, but to do so without jeopardizing the international legal order."[157] Speaking in the Commission on Human Rights in March 2000, the Danish delegate argued that "If the Security Council was blocked, humanitarian intervention might be considered only in extreme cases, only as an 'emergency exit' from the norms of international law, and only if clearly justified by political and moral considerations in the case concerned."[158]

The US and UK appear to have been particularly concerned to maintain NATO's future freedom of manoeuvre in the absence of Security Council authorization. Speaking at NATO's 50th Anniversary Summit in Washington D.C. in April 1999, US Deputy Secretary of State Strobe Talbott argued that NATO's engagement in the Balkans foreshadowed a new generation of "non-Article V" missions "beyond NATO territory."[159] While arguing that "NATO's tasks and mission must always be consistent

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[157] United Nations General Assembly, 55th session, provisional verbatim record. 13th plenary meeting, 24 September 1999 (UN document A/55/PV.13), 33.

[158] United Nations Commission on Human Rights, 56th session, summary record, 10th meeting , 27 March 2000 (UN document E/CN.4/2000/SR.10), 14-15.

[159] Quoted in Bruno Simma, "NATO, the UN, and the Use of Force: Legal Aspects," *European Journal of International Law* 10 (1999), 15. Article V of the North Atlantic Treaty stated that: "an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will

with the purposes and principles of the UN" (i.e. with both Articles 2(4) and 2(7) of the Charter), he made clear that this did not mean that NATO *required* SC authorization to act where it felt necessary:

> we must be careful not to subordinate NATO to any other international body or compromise the integrity of its command structure. We will try to act in concert with other organizations, and with respect for their principles and purposes. But the *alliance must reserve the right and the freedom to act when its members, by consensus, deem it necessary.*[160]

The UK similarly argued that use of force by NATO in future Kosovo-like situations constituted "collective action" even in the absence of Security Council authorization. Speaking in July 2000, the UK's Foreign Secretary Robin Cook argued that "any use of force [in humanitarian emergencies] should be collective" and "no individual country can reserve to itself the right to act on behalf of the international community," but also made clear that this did not foreclose the possibility of unauthorized use of force as long as it was conducted by a *group* of states like NATO. For Cook, the Kosovo intervention followed "a collective decision backed by the 19 members of NATO and unanimously by the 42 European nations which attended the Washington NATO Summit in April 1999." Rather than believing that NATO *required* Security Council authorization to use force in humanitarian emergencies, Cook described such authorization as "preferable."[161]

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assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area." It also specified that "Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security."

[160] Quoted in ibid., emphasis added.

[161] Robin Cook, "Guiding Humanitarian Intervention," speech delivered to the American Bar Association, 19 July 2000 http://www.ukun.org/xq/asp/SarticleType.17/Article_ID.137/qx/articles_show.htm (accessed 15 July 2010)

This attitude on the part of the UK and US amounted to a claim for the right of a select group of states to decide without reference to the Security Council when situations of "humanitarian necessity" warranted a military response. In addition to claiming a new exception to the norm of non-intervention beyond that contained in Article 2(7) of the Charter, and a new exception to the norm on the non-use of force beyond those allowing for collective action by the Security Council or self-defence, this claim also amounted to an attempt to restrict the norm sovereign equality by diminishing further both its *legislative* and *existential* elements. By moving the locus of decisions about the use of force from the Security Council, where states from all regions had the opportunity to participate, even if not on equal terms, to a self-selected group of Northern states, NATO's claimed right of intervention would have reinforced the "legalized hegemony" of the North by granting NATO a special right to resort to force.[162] It would also have denied the existential equality of states deemed by NATO to be "rogues" or "outlaws," depriving them of the basic rights of territorial integrity and political independence.

1.3 Continued commitment to multilateral processes

While Northern states demonstrated in Kosovo a willingness to use force without Security Council authorization in cases they deemed to constitute sufficiently grave humanitarian crises, and while a number explicitly sought to challenge existing norms of sovereignty by reserving to NATO the right to resort to such use of force in future cases if necessary, it is important to note that a number of Northern states remained committed to the multilateral mechanisms of the UN and sought to reform these rather than

[162] For the concept of legalized hegemony and the implications of the Kosovo intervention see Simpson, *Great Powers*, chapter 7.

marginalize them. NATO countries like Germany argued that the evolution of practice of "humanitarian intervention" outside the framework of the UN would be highly problematic and could "open the door to the arbitrary use of power and anarchy and throw the world back to the nineteenth century."[163] The solution was not to search for an alternative framework but "to further develop the existing United Nations system in such a way that in the future it is able to intervene in good time."[164]

Canada, the Netherlands and Germany were among those actively promoting reform *within* the UN system so as to facilitate future international action in Kosovo-type situations. They argued that this could be achieved through a fundamental rethinking of one of the UN's foundational principles, that of state sovereignty. As the Canadian Minister of Foreign Affairs Lloyd Axworthy told the General Assembly in September 1999, while sovereignty remained an important principle of international organization, it was no longer "absolute" and could not be "a shield behind which the most egregious violations of human rights and fundamental freedoms can be hidden."[165] This sentiment was echoed by the Dutch foreign minister when he called on the Assembly "to accept that the traditional balance between sovereignty and human rights, between the State and the people is shifting," and that it was now accepted that sovereignty could not protect gross violations of human rights.[166] The German delegate to the Assembly similarly argued that "the concept of non-interference in internal affairs cannot be interpreted as giving the green light to blatantly violate of international commitments to the detriment of one's

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[163] United Nations General Assembly, 54th session, provsional verbatim record, 8th plenary meeting, 22 September 1999 (UN document A/54/PV.8), 12.

[164] Ibid.

[165] United Nations General Assembly, 54th session, provisional verbatim record, 10th plenary meeting, 23 September 1999 (UN document A/54/PV.10), 17.

[166] United Nations General Assembly, 54th session, provisional verbatim record, 13th plenary meeting, 24 September 1999 (UN document A/54/PV.13), 22.

own people." Germany he said "encouraged and supported any discussion on how humanitarian intervention can be brought into line with the United Nations task to maintain peace and security in the world."[167]

This commitment on the part of Northern "middle powers" to the UN as the main institutional venue for pursuing the reform of international norms of sovereignty ensured that they would have to seriously engage and contend with the views of developing countries. As we shall see in the third section of this chapter, this engagement and contention quickly produced a highly polarized and divisive debate, as ardent opponents of "humanitarian intervention" among developing states managed to mobilize the global South within the General Assembly to reaffirm existing sovereignty norms. This led Northern proponents of "humanitarian intervention," particularly Canada, to search for an alternative institutional channel—an independent international commission—in which developing countries would have less direct influence.

2 Ideological coherence of Southern diplomacy

In this section I analyze the Southern response to the NATO intervention and the coherence of subsequent Southern diplomacy in the debate over "humanitarian intervention." The global South was initially split over the Kosovo intervention, with a number of developing countries on the Security Council supporting or at least not opposing NATO's resort to force. While this has been interpreted by some observers as evidence of an emergent "moral consensus" on a new "right of intervention" in extreme humanitarian emergencies, I argue that this seriously misinterprets the evidence. While it

[167] United Nations General Assembly, 54th session, provisional verbatim record, 27th plenary meeting, 6 October 1999 (UN document A/54/PV.27), 5.

is true that a majority of developing countries in the Council refused to condemn NATO's intervention, a closer look at both their individual positions and at the positions of other developing states outside the Council reveals virtually no *principled* support in the global South for a "right of intervention" in 1999, and thus no support for the potentially radical changes to the norms of sovereignty and intervention that such a right would imply. Indeed, most developing states, including those which supported this particular intervention, expressed principled *opposition* to any right of unauthorized "humanitarian intervention" by self-selected groups of states like NATO. By the time "humanitarian intervention" was debated in the General Assembly in late 1999 and 2000, there was thus a *high degree of ideological coherence* within the South in rejection the so-called "right of humanitarian intervention." Both collectively through the Non-Aligned Movement and the South Summit, and individually in their statements to the General Assembly, developing countries reiterated their rejection of unauthorized intervention by a self-selecting groups of states. This ideological coherence does not mean, however, that there was complete unanimity within the global South on all questions related to intervention. In particular, while states belonging to what might be called the "counterhegemonic bloc" of opponents to US hegemony vigorously opposed any legitimation of non-UN mechanisms for authorizing intervention as basically a form of neo-imperialism, African states in particular sought to develop alternative mechanisms of intervention that themselves challenged in important ways prevailing norms of sovereignty and intervention.

2.1 Divisions over Kosovo

While NATO countries defended their intervention in Kosovo as necessary to avert a "humanitarian catastrophe," a large number of states actively opposed it, considering it a violation of the UN Charter's legal prohibition on the use of force. Within the Security Council, China and Russia, joined by a number of states that were not Council members, notably India, spoke out repeatedly against the bombing, condemning it as a violation of the UN Charter and the sovereignty of the FRY. A majority of non-NATO Council members, however, either explicitly supported or failed to condemn the NATO intervention. When Russia, India, and Belarus presented the Council with a draft resolution on 26 March 1999 condemning the NATO air campaign as a "flagrant violation" of the UN Charter and calling for an immediate cessation of hostilities,[168] it was defeated by an overwhelming majority of 12 votes to 3, with only China, Russia and Namibia voting for it.[169] This vote has drawn much attention in the scholarly literature on the Kosovo war. The fact that such a large proportion of Council members were unwilling to join China and Russia in condemning NATO's actions has been interpreted as a sign of broad international support for the intervention. Some international legal scholars have argued that the rejection of the Russian-Indian draft resolution can be interpreted as a sign of the emergence of a limited right in customary international law permitting the use of force to protect vulnerable populations when "the Security Council does not oppose the action,"[170] though this view, it must be said, does

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[168] United Nations Security Council, draft resolution, 26 March 1999 (UN document S/1999/328) .

[169] Roll-call vote in United Nations Security Council, 3989th meeting , provisional verbatim record, 26 March 1999 (UN document S/PV.3989), 6.

[170] Ruth Wedgewood, "NATO's Campaign in Yugoslavia," *American Journal of International Law* 93, no. 4 (October 1999): 828.

not appear to be widely held among international lawyers.[171] Among IR scholars interested in the evolution of international norms, some have argued that while the failure of the Russian-Indian draft resolution cannot be seen as constituting retrospective *legal* authorization of the intervention, it does serve as evidence of an international "*moral* consensus" around a "right of intervention in supreme humanitarian emergencies."[172] The fact that the majority voting against the draft included six developing states—Argentina, Bahrain, Brazil, Gabon, Gambia, and Malaysia—has led some to suggest that the emerging "moral consensus" around a right of intervention "extended beyond Western liberal states" to include at least some portion of the global South.[173]

As I will show in this section, this conclusion should be approached with caution. The split within the global South over the Kosovo war was largely a split over this *particular* intervention, rather than a fundamental division over the question of unauthorized "humanitarian intervention." Of the six developing countries in the Security Council that voted against the Russian-Indian draft resolution condemning the intervention, only one (Argentina) expressed principled support for the Northern belief in the legitimacy of unauthorized intervention in cases of extreme humanitarian necessity. Speaking in the Council on 24 March 1999, the Argentine representative argued that the NATO intervention deserved support as its only objective was "to avert a humanitarian catastrophe" resulting from the policies of the FRY government.[174] In the aftermath of the war, Argentina explicitly justified NATO's use of force as a "humanitarian intervention"

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[171] Cf. Peter Hilpold, "Humanitarian Intervention: Is There a Need for a Legal Reappraisal?" *European Journal of International Law* 12, no. 3 (2001): 449; Christine Gray, *International Law,* 17.

[172] Alex J. Bellamy, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq," *Ethics & International Affairs* 19, no. 2 (2005): 35.

[173] Ibid, 34.

[174] United Nations Security Council, 3988th meeting, provisional verbatim record, 24 March 1999 (UN document S/PV.3988), 10-11.

of last resort: "once diplomatic efforts have been exhausted, humanitarian tragedies of the magnitude that we have witnessed cannot, at the close of the century, be tolerated in the context of the letter and the spirit of the Charter."[175] Compared to Argentina, Brazil (the other Latin American country on the Council) was far more restrained, stressing its concern about the marginalization of the Security Council. Speaking in the Council near the end of the bombing campaign in June, the Brazilian representative argued that, "independent of the moral considerations invoked for these actions, with which we fully identify... problematic precedents have been set in the resort to military force without Security Council authorization. These have neither contributed to upholding the Council's authority nor improved the humanitarian situation."[176]

Of the remaining four developing countries on the Council that supported the NATO intervention, three—Bahrain, Gambia, and Malaysia—all had Muslim-majority populations and were members of the Organization of the Islamic Conference (OIC). It is likely therefore that their support for NATO was in part motivated by religious and organizational affinities, not only because of the identity of the primary victims of atrocities in Kosovo (ethnic Albanian Muslims), but also because of the long-standing engagement of the OIC in the wars of Yugoslav disintegration of which Kosovo was the latest chapter. During the earlier war in Bosnia, the OIC had publicly called for aid to the Bosnian Muslim forces fighting the FRY-backed Bosnian Serbs. In 1994, the OIC established a "Contact Group on Bosnia and Herzegovina" to coordinate OIC diplomacy

[175] United Nations Security Council, 4011th meeting , provisional verbatim record, 10 June 1999 (UN document S/PV.4011), 19.

[176] Ibid.

and humanitarian aid efforts vis-à-vis the Bosnian war.[177] Within the General Assembly, OIC states sponsored several resolutions on Bosnia between 1992 and 1995 which condemned Serb "aggression" against Bosnia, condemned Serb ethnic cleansing in Bosnia as genocide, and called on the Security Council to lift its arms embargo on the Bosniak forces and to grant Chapter VII authorization to UN member states to use "all necessary means" to assist the Bosnian government.[178] The roll-call votes on these resolutions illustrate the degree to which the Yugoslav issue divided the global South during this time. All were passed by substantial majorities, with OIC member states, joined by Northern states and a majority of Latin American states, voting for them while a sizable minority of developing countries, including rising powers like India and Brazil and a majority of non-OIC states in Africa, abstained.[179] The Bosnian war was also a highly divisive issue within the Non-Aligned Movement (NAM). At the NAM's first post-Cold War summit in Jakarta in September 1992, Muslim-majority states in the Movement, led by Malaysia, had pushed for the expulsion of the FRY from the Movement and the granting of Observer status to both Croatia and Slovenia (before either had become a member of the UN). A number of other states, including many African states, opposed these moves and continued to support the FRY, both because of

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[177] See Organization of the Islamic Conference (OIC). *Declaration on Bosnia and Herzegovina*, Seventh Islamic Summit Conference (Casablanca, 13-15 December 1994) http://www.oic-oci.org/english/conf/is/7/7th-is-summit.htm#DECLARATION ON BOSNIA AND HERZEGOVINA (accessed 15 July 2010).

[178] United Nations General Assembly Resolution 47/121, *The Situation in Bosnia and Herzegovina* (18 December 1992) para. 7(a); see also Resolution 48/88, *The Situation in Bosnia and Herzegovina* (20 December 1993); Resolution 49/10, *The Situation in Bosnia and Herzegovina* (3 November 1994).

[179] Roll call vote available in United Nations General Assembly, 47th session, provisional verbatim record, 91st plenary meeting, 18 December 1992 (UN document A/47/PV.91), 99. The North was also split over this resolution, with the US, Australia and a small number of European states voting in favour while most European countries and Canada abstained.

Yugoslavia's historic role in the founding of the Movement and also because of their concern over the impact of Yugoslavia's dissolution on the norm of territorial integrity.[180]

The Kosovo war in 1999, and the divide within the Southern response to NATO intervention, should be seen in this context. The OIC's annual foreign ministers' conferences had been consistently expressing concern over the discrimination and violence faced by ethnic Albanian Muslims in Kosovo since 1993,[181] and at their March 1998 conference in Doha, OIC foreign ministers specifically "called on the international community to take all necessary measures to immediately end all violations of the rights of the Muslims in Kosovo."[182] Also in 1998, the OIC added Kosovo to the agenda of its Bosnia Contact Group, which at the time was made up of Iran, Malaysia, Pakistan, Saudi Arabia, and Qatar. Against this background, when the NATO air campaign against the FRY began in March of 1999, the Contact Group issued a statement accusing the Milošević regime of committing "crimes of genocide and ethnic cleansing" in Kosovo and calling for "decisive international action" to "prevent a humanitarian catastrophe and further violations of human rights."[183] Two weeks later, meeting at the ministerial level in

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[180] Sally Morphet, "The Non-Aligned in the New World Order: the Jakarta Summit, September 1992," *International Relations* 9, no. 4 (April 1993): 360-363.

[181] See OIC, *Final Communiqué of the Twenty-First Islamic Conference of the Foreign Ministers* (Karachi, 25-28 April 1993), paragraph 39; *Final Communiqué of the Twenty-Second Islamic Conference of the Foreign Ministers* (Casablanca, 10-12 December 1994), paragraph 50; *Final Communiqué of the Twenty-Third Islamic Conference of the Foreign Ministers* (Conkary, 9-12 December 1995), paragraph 42; *Final Communiqué of the Twenty-Fourth Islamic Conference of the Foreign Ministers* (Jakarta, 9-13 December 1996), paragraph 133. All available at http://www.oic-oci.org/page_detail.asp?p_id=68 (accessed 15 July 2010).

[182] OIC, *Final Communiqué of the Twenty-Fifth Islamic Conference of the Foreign Ministers* (Doha, Qatar, 15-17 March 1998), paras. 71-73, http://www.oic-oci.org/page_detail.asp?p_id=68 (accessed 15 July 2010).

[183] OIC, *Statement of the OIC Contact Group on Bosnia and Herzegovina and Kosova on the Situation in Kosova* (New York, 26 March 1999) in annex to United Nations Security Council, Letter from the Permanent Representative of the Islamic Republic of Iran to the UN addressed to the President of the Security Council (UN document S/1999/363), 31 March 1999.

Geneva, the Contact Group issued a long declaration again condemning Serb ethnic cleansing and calling for Kosovar self-determination.[184]

While expressing support for NATO's resort to force, the OIC Contact Group was careful to reaffirm the Security Council's "primary responsibility for the maintenance of international peace and security" while also expressing "regret that the Security Council ha[d] been unable to discharge its responsibility" in this particular case.[185] This position—supporting NATO actions while expressing hope that the Security Council would be better able to take up its responsibilities—was repeated by a number of OIC states individually. Malaysian and Pakistani officials, for example, defended NATO air strikes as necessary to "prevent further violations of human rights in Kosovo and a humanitarian catastrophe" while expressing hope that "beyond this phase, the UN Security Council will be allowed ultimately to address" the situation.[186] Within the Security Council, the OIC Contact Group's position on the war—supporting the NATO bombing while simultaneously stressing the UNSC's primary responsibility for the maintenance of international peace and security—was reflected in the statements of the four OIC member states—Malaysia, Bahrain, Gabon and Gambia—that sat as non-permanent members on the Council for the duration of the crisis. All four voted against the March 26 Russian-Indian draft resolution condemning the NATO bombing as a

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[184] OIC, *Statement and Declaration by the Contact Group of the OIC on Bosnia and Herzegovina and Kosova* (Geneva, 7 April 1999) in UN Security Council, Letter from the Permanent Representative of the Islamic Republic of Iran to the UN addressed to the President of the SC (UN document S/1999/394), 7 April 1999.

[185] Ibid.

[186] See "Pakistan, Statement by the Foreign Minister at the Emergency Ministerial Meeting of the OIC Contact Group, Geneva, 7 April 1999" and "Malaysia, Speech by YB Datuk Dr. Leo Michael Toyad, Deupty Foreign Affairs at the Emergency Ministerial Meeting of the OIC Contact Group, Geneva, 7 April 1999" both in *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-1999*, ed. Heike Krieger (Cambridge: Cambridge University Press, 2001), 495-496.

violation of the UN charter, and all explicitly accepted the arguments of the NATO powers that the war was being fought out of "humanitarian necessity."

There were of course important exceptions to this general support for NATO among Muslim-majority countries. OIC members among the former Soviet republics (Kazakhstan, Kyrgyzstan, Tajikistan) joined Russia in decrying the NATO intervention as a violation of international law and threat to world peace.[187] Within the Middle East and North Africa, Iraq, Libya, Sudan and Iran—all branded as "rogue states" by the US and targeted with unilateral force or subversion in the 1990s—denounced the NATO campaign as illegal. For Sudan and Iran, this denunciation was carefully balanced with at least a formal commitment to the OIC position condemning Serb atrocities in Kosovo. Thus Sudan, while voting along with other OIC members on resolutions condemning Serb ethnic cleansing within the UN Commission on Human Rights, expressly argued that "unilateral action by certain States outside the framework of international law has resulted in violations of civil and political rights."[188] Iran's position was even more delicate as it was in 1999 the chair of both the OIC as a whole and of its Balkans Contact Group. Iranian leaders thus studiously balanced pan-Islamic solidarity with the victims of Serb repression with a condemnation of the illegality of NATO's war.[189]

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[187] Inter-Parliamentary Assembly of the Commonwealth of Independent States, *Declaration adopted by the Inter-Parliamentary Assembly of States members of the Commonwealth of Independent States concerning military operations by the North Atlantic Treaty Organization (NATO) in the territory of the Federal Republic of Yugoslavia,* 3 April 1999, in annex to Letter from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General (UN document A/53/920 - S/1999/461) 21 April 1999.

[188] United Nations Commission on Human Rights, 55th session, summary record, 28th meeting , 15 April 1999 (UN document E/CN.4/1999/SR.28), 5.

[189] See "Khamene'i blames 'despotic' Western states for Kosovo crisis," BBC Monitoring Service 7 April 1999; "IRAN-KOSOVO: Iran leader criticizes NATO bombing of Yugoslavia," EFE News Service, 19 May 1999, both available through Factiva database.

The strongest opposition to the NATO bombing campaign from the global South came from what we might call the "counterhegemonic bloc" made up of both rising powers and regional "rogue states" opposed to US hegemony. Cuba and China were undoubtedly NATO's most vociferous critics. Cuba denounced NATO intervention in Kosovo as an instance of US imperialism, and its destruction of civilian infrastructure in the FRY as genocide.[190] China insisted that the situation in Kosovo was an internal matter of the FRY to be resolved on the basis of its sovereignty and territorial integrity, and denounce NATO's air campaign as a "blatant violation of the United Nations Charter."[191] On March 26, China voted with Namibia and Russia (against the rest of the Council) in support of the Russian-Indian draft resolution.[192] Chinese opposition was reinforced on May 8 following the bombing of its embassy in Belgrade by NATO.[193] Beside Cuba and China, India was NATO's most severe critic. On the first day of bombing, India joined Council deliberations, denounced the illegality of NATO's use of force, and rejected its humanitarian justifications:

> No country, group of countries or regional arrangement, no matter how powerful, can arrogate to itself the right to take arbitrary and unilateral military action against others. That would be a return to anarchy, where might is right... [W]e have been told that the attacks are meant to prevent violations of human rights.

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[190] See United Nations Security Council, 4011th meeting, provisional verbatim record, 10 June 1999 (UN document S/PV.4011 (Resumption 1)), 6-9, and "Cuba: Excerpts from the speech made by Comrade Fidel Castro at a mass rally in the University of Havana, 4 May 1999" in *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-1999*, ed. Heike Krieger (Cambridge: Cambridge University Press, 2001), 497.

[191] United Nations Security Council, 3988th meeting, provisional verbatim record, 24 March 1999 (UN document S/PV.3988), 12-13.

[192] United Nations Security Council, 3989th meeting, provisional verbatim record, 26 March 1999 (UN document S/PV.3989), 9.

[193] United Nations Security Council, 4000th meeting, provisional verbatim record, 8 May 1999 (UN document S/PV.4000), 1.

> Even if that were to be so, it does not justify unprovoked military aggression. Two wrongs do not make a right.[194]

The following day, the India Foreign Ministry issued an official statement criticizing NATO's resort to force as a violation of the UN Charter, calling for an immediate halt to hostilities, and warning against the rise of "NATO extraterritorial engagement."[195] Together with Russia and Belarus, India sponsored the draft resolution condemning NATO's war as illegal which failed to pass a vote in the Council on March 26. Even after the defeat of the resolution, the Indian representative insisted that, given the fact that China, Russia and India had all opposed NATO actions, "the international community can hardly be said to have endorsed [NATO's war] when representatives of half of humanity have said that they do not agree with what they have done."[196]

Beyond the two extremes formed by the OIC states on the one hand and the "counterhegemonic bloc" of China, India, and the "rogue states" on the other, most developing states took positions on the NATO intervention that (with a few exceptions) fell short of outright support, but also avoided strong rhetorical denunciations. Within sub-Saharan Africa, NATO's most prominent critic was South Africa, then chair of both the Southern African Development Community (SADC) and the Non-Aligned Movement. On 25 March 1999, the South African Foreign Ministry issued a statement condemning NATO's actions as a violation of the UN Charter and "accepted norms of

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[194] United Nations Security Council, 3988th meeting, provisional verbatim record, 24 March 1999 (UN document S/PV.3988), 15-16.

[195] "India, Official Spokesman's Statement, New Delhi, 25 March 1999" in *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-1999*, ed. Heike Krieger (Cambridge: Cambridge University Press, 2001), 493.

[196] United Nations Security Council, 3989th meeting, provisional verbatim record, 26 March 1999 (UN document S/PV.3989), 16. For more on the Indian perspective see Satish Nambiar, "India: An uneasy precedent," in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship,* eds. Albrecht Schnabel and Ramesh Thakur (United Nations University Press, 2000), 260-269.

international law" and warning that it would erode the authority of the UN system.[197] On April 9, South Africa issued a statement in the name of the NAM "troika" (made up of current, former and future chairs of the NAM – South Africa, Colombia, and Bangladesh) which called for the immediate cessation of all hostilities, reaffirmed the primary responsibility of the UNSC for the maintenance of international peace and security, and reaffirmed the NAM's commitment to the "sovereignty, territorial integrity and political independence of all states."[198] Speaking in Beijing the following month, South African President Nelson Mandela delivered a balanced condemnation of both Serb atrocities and NATO's use of force:

> On the one hand, human rights set out in the Universal Declaration of Human Rights are being violated in ethnic cleansing. On the other hand, the United Nations Security Council is being ignored by the unilateral and destructive action of some of its permanent members. Both actions must be condemned in the strongest terms. This is a matter that troubles us not only because of its immediate impact...Can the world afford, at the end of a century that has seen so much pain and suffering, to risk damaging the authority of the world body that has the task of maintaining international peace and security on the basis of respect for the sovereignty of nations![199]

The evidence that exists suggests that other African countries adopted a broadly similar, balanced approach. Speaking on April 1 on behalf of the 14-member "Africa Group" in the UN Commission on Human Rights, the representative from Tunisia stated that the

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[197] "South Africa: Statement Issued by the Department of Foreign Affairs, Pretoria, 25 March 1999," in *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-1999*, ed. Heike Krieger (Cambridge: Cambridge University Press, 2001), 493.

[198] Non-Aligned Movement, *Statement on the situation in Kosovo, Federal Republic of Yugoslavia, issued on 9 April 1999 by the Movement of Non-Aligned Countries*, annex to Letter from the Permanent Representative of South Africa to the United Nations Addressed to the President of the Security Council (UN document S/1999/451), 21 April 1999.

[199] Nelson Mandela, address at Beijing University (Beijing, 6 May 1999) http://www.info.gov.za/speeches/1999/9905061139a1003.htm (accessed 15 July 2010). For more information on South Africa see Philip Nel, "South Africa: The demand for legitimate multilateralism," in *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship,* eds. Albrecht Schnabel and Ramesh Thakur (United Nations University Press, 2000), 245-59.

Group "condemned all acts of repression and destruction and all forms of human rights violations, including the reported acts of ethnic cleansing" in Kosovo, but simultaneously insisted on the primary responsibility of the Security Council for the maintenance of international peace and "deplored" NATO's resort to force.[200]

In Latin America, a majority of states expressed serious concern about NATO's resort to force, while also condemning Serb repression. On 25 March, the "Rio Group" of 23 Latin American and Caribbean countries issued a statement expressing "anxiety" about the commencement of NATO air strikes and "concern" that no peaceful means of solving the Kosovo conflict had been found "in conformity with international law." The statement explicitly declared NATO's use of force to be in contravention of Article 53(1) of the UN Charter which requires that enforcement action by regional arrangements obtain prior Security Council authorization.[201] However, in their individual statements, members of the Rio Group did not always speak with a single voice. At least one of them—El Salvador—openly supported NATO's resort to force as necessary to "prevent further aggression, repression and death" in Kosovo.[202] As we have seen, of the two Latin American countries (Argentina and Brazil) sitting in as non-permanent members of the Security Council during the intervention, Argentina was the most sympathetic to the NATO intervention while Brazil was decidedly more cautious. The reactions of Mexico and Costa Rica to the intervention were decidedly negative. On the day of the start of the

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[200] United Nations, Commission on Human Rights, 55th session, summary record, 14th meeting of, 1 April 1999 (UN document E/CN.4/1999/SR.14), 15.

[201] Rio Group, *Communiqué issued on 25 March 1999 by the Rio Group*, in annex to Letter from the Permanent Representative of Mexico to the United Nations addressed to the President of the Security Council (UN document A/53/884 - S/1999/347), 26 March 1999. Article 53(1) of the Charter states that "no enforcement action shall be undertaken under regional arrangements or by regional agencies without the authorization of the Security Council."

[202] See "El Salvador, Statement, Press Release 82/99, San Salvador, 24 March 1999" in *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-1999*, ed. Heike Krieger (Cambridge: Cambridge University Press, 2001), 492.

intervention, the Mexican Foreign Ministry published a statement which "deplore[d] the recourse to force in the Balkans without the explicit consent of the UN Security Council."[203] Speaking within the UN Commission on Human Rights, Mexico called for an immediate ceasefire, stressing that "under the Charter of the United Nations, the Security Council alone was empowered to authorize enforcement action under regional arrangements or by regional bodies."[204] Near the end of the bombing campaign, in June 1999, Costa Rica presented to the UNSC a clear repudiation of any resort to force outside of the Security Council framework, insisting that "the adoption of any measure involving the use of force or military troops should satisfy all the legal, political and strategic requirements called for by the Charter... With the very limited exception of the right to legitimate defence, *any option involving the use of force requires the clear authorization of the Security Council in each specific case.*"[205]

Given these strong statements, it is evident that the more supportive positions of developing states regarding the Kosovo intervention in the Security Council (by Argentina, Gambia, Malaysia) must be seen, to some extent, as outliers rather than the norm. While most developing states expressed concern over the gravity of the human rights and humanitarian crisis in Kosovo, and relatively few resorted to open denunciation of NATO in the manner of India or Cuba, most were quite clear in their unambiguous defence of existing international law and institutions. Based on this fact, it is hard to sustain the view that the support for (or non-opposition to) the Kosovo

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[203] "Mexico, Statement of Foreign Minister, NUM. 121/99, Tlatelolco, D.F., 24 March 1999," in *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-1999*, ed. Heike Krieger (Cambridge: Cambridge University Press, 2001), 492.

[204] United Nations Commission on Human Rights, 55th session, summary record, 14th meeting, 1 April 1999 (UN document E/CN.4/1999/SR.14), 21.

[205] United Nations Security Council, 4011th meeting , provisional verbatim record, 10 June 1999 (UN document S/PV.4011 (Resumption 1)), 4-5.

intervention by a majority of developing countries *within* the UNSC can be seen as evidence of a broader "moral consensus" on a new "right of intervention." As we shall see in the next section, when it came to the principled question of whether it might be permissible for a group of states to use force for humanitarian purposes without Security Council authorization, even NATO's strongest supporters among the OIC states adopted positions not far from those of NATO's principal (and principled) opponents.

2.2 The rejection of the "so-called 'right' of humanitarian intervention"

Once the Kosovo war was over, the gap between the OIC states on the one hand and the "counterhegemonic bloc" of China, India, and the "rogue states" on the other, became progressively smaller. One sign of this convergence can be seen in the positions taken by the Non-Aligned Movement in the months following the war. During the Kosovo crisis itself, the NAM "troika" made up of South Africa, Colombia and Bangladesh issued a statement on April 9 which called for the immediate cessation of all hostilities, reaffirmed the primary responsibility of the Security Council for the maintenance of international peace and security, and reaffirmed the NAM's commitment to the "sovereignty, territorial integrity and political independence of all states."[206] While issued in theory in the name of the entire Movement, it is clear that NAM was at this time deeply split on the Kosovo issue. In March and April, the Coordinating Bureau of the NAM met in New York but was apparently unable to come to an agreement on a

[206] Non-Aligned Movement *Statement on the situation in Kosovo, Federal Republic of Yugoslavia, issued on 9 April 1999 by the Movement of Non-Aligned Countries*, annex to Letter from the Permanent Representative of South Africa to the United Nations Addressed to the President of the Security Council (UN document S/1999/451), 21 April 1999.

movement-wide position on the war.[207] By the time of the NAM's annual ministerial meeting in New York in September, however, the NAM states put on at least an outward show of unity, issuing a communiqué in which they reaffirmed "the sanctity of the United Nations Charter," condemned "all unilateral military actions or threats of military actions against the sovereignty, territorial integrity and independence of the members of the Movement," and stressed that "the maintenance of international peace and security is a primary responsibility of the United Nations and that the role of regional arrangements, in that regard, should be in accordance with Chapter VIII of the United Nations Charter, and should not in any way substitute the role of the United Nations." Finally, the document explicitly rejected "the so-called 'right of humanitarian intervention' which has no legal basis in the UN Charter or in the general principles of international law."[208] The following day, the Group of 77 (made up of all the NAM states plus several others) issued its own Ministerial Declaration from New York which reiterated word-for-word the NAM's rejection of "the so-called right of humanitarian intervention."[209] In April 2000, the first joint NAM-G77-Chinese South Summit in Havana, attended by 122 heads of state from the global South, issued a final declaration which, while concerned primarily with economic matters, repeated the NAM's stance on "humanitarian intervention":

> We reject the so-called "right" of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law... we stress that humanitarian assistance should be conducted in full respect

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[207] See "Report on the Activities of the Non-Aligned Movement since the XII Summit," submitted by South Africa to the XIII NAM Ministerial Conference, Cartagena, 7 - 9 April 2000, http://www.nam.gov.za/reports/activexii.htm (accessed 15 July 2010)

[208] Non-Aligned Movement, *Final Communiqué of the Meeting of Ministers for Foreign Affairs and Heads of Delegation of the Non-Aligned Movement* (New York, 23 September 1999) http://www.nam.gov.za/minmeet/newyorkcom.htm (accessed 15 July 2010).

[209] Group of 77, *Ministerial Declaration of the Group of 77* (New York, 24 September 1999), para. 69. http://www.g77.org/doc/Decl1999.html (accessed 15 July 2010).

> of the sovereignty, territorial integrity, and political independence of host countries, and should be initiated in response to a request or with the approval of these States.[210]

It is difficult to say to what extent these collective positions by the NAM and G77 reflected a "consensus" within the NAM. In theory, according to the NAM's procedural norms, its communiqués and declaration are adopted by a "consensus" that is understood to reflect "substantial agreement" among its members.[211] States that have reservations concerning particular elements of the joint communiqué make them public in the days that follow its issuance. Of all the reservations issued concerning the above mentioned statements, none objected to the paragraphs concerning "humanitarian intervention." That the NAM's continued reiteration of its rejection of "humanitarian intervention" was not driven by the countries of the "counterhegemonic bloc" alone but reflected a genuine convergence between that group of states and the OIC states became evident in June 2000, when OIC foreign ministers—including from countries like Malaysia and Pakistan that had supported the Kosovo intervention—issued a communiqué from Kuala Lumpur that stressed the need for states "to abide by the principles of international law concerning the sovereignty, political independence and territorial integrity of States, the non-use of force in international relations, and non-interference in the internal affairs of states" and affirmed the OICs "rejection of the so-called right to humanitarian intervention under whatever name or from whatever source, for it has no basis in the Charter of the United

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[210] *Declaration of the South Summit* (Havana, 10-14 April 2000), para. 54. http://www.g77.org/summit/Declaration_G77Summit.htm (accessed 15 July 2010)

[211] See Non-Aligned Movement, "Cartagena Document on Methodology," adopted at the Meeting of the Ministerial Committee on Methodology of the Movement of the Non-Aligned Countries (Caratagena, May 14-16, 1996) http://www.nam.gov.za/background/methodology.htm#METHODOLOGY (accessed 15 July 2010).

Nations or in the provisions of the principles of the general international law."[212] Rather than revealing an emerging "moral consensus" on the "right of intervention" then, the aftermath of the Kosovo intervention if anything revealed a high level of coherence in the South's *rejection* of this "right."

2.3 Remaining differences

But if developing states were largely united in rejecting NATO's claim to a right of unauthorized "humanitarian intervention," there remained important differences among them on issues related to what mechanisms for *legitimate* intervention might look like. At the very moment when the divide between the "counterhegemonic bloc" and the OIC states over Kosovo was being bridged within the NAM, a second divide was beginning to emerge between most African states and most of the rest of the global South over the question of intervention by regional organizations in situations of gross violation of human rights. In July 2000, soon after the South Summit's rejection of the "so-called 'right' of humanitarian intervention," the heads of government of 53 African states signed the Constitutive Act establishing the African Union (AU). While the Constitutive Act, like the Charter of the Organization of African Unity which it replaced as the constitutional document of African international society, cited the defence of the "sovereignty, territorial integrity and independence of its Member States" and the non-use of force as among its foundational principles, it also enshrined a novel regional "right of intervention" by the AU as a whole in its member states in certain circumstances. Specifically, Article 4(h) of the Act declared the "right of the Union to intervene in a

[212] Organization of the Islamic Conference, *Final Communiqué of the Twenty-Seventh Session of the Islamic Conference of Foreign Ministers* (Kuala Lumpur, 27-30 June 2000) para. 79, http://www.oic-oci.org/english/conf/fm/27/final27.htm (accessed 15 July 2010).

Member State pursuant to a decision of the [AU] Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity".[213] Article 4(h) has been seen as the sign of an important normative shift in African international society away from rigid adherence to the norm of non-intervention (not mentioned explicitly in the Constitutive Act) towards a norm of "non-indifference" to grave human rights abuses, a shift spurred by both a concern with OAU's past failures in addressing such abuses (from Idi Amin's Uganda and Bokkassa's Central African Republic to Rwanda) and a disappointment with international responses to African conflicts.[214]

While the actual practice of African states in dealing with grave human rights crises since the adoption of the Constitutive Act suggests that the normative shift has not been as revolutionary in practice as on paper,[215] the AU "right of intervention" is notable for our purposes in that it potentially challenges the core norms of the postcolonial sovereignty regime in several ways. To begin with, this new "right of intervention," if operationalized would likely challenge the norms of non-intervention and non-use of force by carving out a new exception to these norms allowing for forceful intervention by the AU (and potentially by other regional organizations) beyond what is generally thought to be permitted under the Charter. Specifically, Article 53(1) of the Charter permits "regional arrangements" to use force only with authorization of the Security Council. While this has historically been understood to refer to *prior* authorization, certain developments in the 1990s raised the possibility that this understanding was

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[213] African Union, Constitutive Act of the African Union, article 4(h), http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm (accessed 15 July 2010)

[214] Ben Kioko, "The Right of Intervention under the African Union's Constitutive Act: From Non-Interference to Non-Indifference," *International Review of the Red Cross* 85, no. 852 (December 2003): 807-825.

[215] For a balanced assessment see Paul D. Williams, "The 'Responsibility to Protect,' Norm Localisation, and African International Society." *Global Responsibility to Protect* 1 (2009): 392-416.

changing. Within Africa, the Economic Community of West African States (ECOWAS) twice intervened militarily in situations of civil conflict (in Sierra Leone and Liberia) *without* prior Security Council authorization. In both cases, the Council welcomed the interventions after the fact, leading some observers to believe that a new practice of *ex post facto* Council authorization of regional and sub-regional interventions was emerging.[216] Article 4(h) of the Constitutive Act seemed to seek to formalize this practice by creating permanent mechanisms to regulate the use of force within the African continent separate from those of the UN, though African states did not immediately make clear how they conceived of the relationship between article 4(h) and the UN Charter framework.

Outside of Africa, however, most developing states were quite reluctant to depart from the understanding that intervention by regional organizations could proceed only with prior Security Council authorization. In arguing this point, however, they were concerned primarily not with the nascent AU, however, but with *NATO,* which after all was itself a "regional arrangement" and which had resorted to force in Kosovo without Security Council authorization. Thus the NAM—of which the AU states were of course members—argued in response to NATO's intervention in Kosovo, that "that the role of regional arrangements [in the maintenance of international peace and security] should be in accordance with Chapter VIII of the United Nations Charter, and should not in any way substitute the role of the United Nations."[217] The apparent contradiction between this assertion and the new African regional "right of intervention" would become an

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[216] Cristina G. Badescu, "Authorizing Humanitarian Intervention: Hard Choices in Saving Strangers," *Canadian Journal of Political Science* 40, no. 1 (March 2007): 73-74.

[217] Non-Aligned Movement, *Final Communiqué of the Meeting of Ministers for Foreign Affairs and Heads of Delegation of the Non-Aligned Movement* (New York, 23 September 1999).http://www.nam.gov.za/minmeet/newyorkcom.htm (accessed 15 July 2010).

important issue undermining the coherence of Southern diplomacy in later years, as we shall see in the next chapter.

3. Institutional environment

The primary venues of the debates concerning "humanitarian intervention" during and after the Kosovo intervention were the UN Security Council and the General Assembly. Within the Security Council, as we have seen above, NATO countries failed to obtain Security Council authorization for their use of force against the FRY because of the threatened Chinese and Russian vetoes. They did succeed, however, in obtaining a kind of symbolic victory with the defeat of the 26 March 1999 Russian-Indian draft resolution condemning NATO's use of force as a flagrant violation of the Charter's prohibition on the use of force. This vote has been widely referred to by subsequent observers as evidence that the NATO intervention, even if "technically illegal," was "widely" seen as "legitimate."[218] As we have seen above, we should be sceptical of the claim that this vote can be seen as having legitimated a new "right of intervention" without Security Council authorization. It nonetheless remains the case that the defeat of the Russian-Indian draft, created a widely held impression (at least in the West) that the NATO intervention was "illegal but legitimate."[219] Important for our purposes here is to note the way in which the membership and decision-making rules of the Security Council facilitated this impression. As the survey of Southern responses to the NATO intervention in the previous section has shown, the developing countries in the Council that strongly supported NATO can be seen as outliers in the global South rather than the

[218] E.g. Franck, "Legality and Legitimacy," *op cit.*

[219] See Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford and New York: Oxford University Press, 2000), 4.

norm. A look beyond the Council shows much greater concern with NATO's unauthorized use of force, even if not all developing countries with such concerns resorted to rhetorical denunciations of NATO in the manner of Cuba, India and China. This broader spectrum of opinion was not reflected in the vote of the Security Council on the Russian-Indian draft as the rules and procedures of the Council—restricting membership and voting rights to five permanent and ten non-permanent members—prevented a majority of UN members states from voting on it.

There are good reasons to believe that, had a substantially larger number of states been allowed to vote on the Russian-Indian draft resolution, the result may have been different, better reflecting the deep scepticism towards the unauthorized use of force within much of the South. NATO powers themselves seemed to be aware of this. According to Adam Roberts, when the idea was proposed within the UK government to take the Kosovo issue to the General Assembly and seek a "Uniting for Peace" resolution in support of NATO's intervention, this was rejected because of uncertainty about whether the necessary two-thirds majority necessary to pass such a resolution could be achieved.[220] Unlike the Security Council, the procedures of the General Assembly, based on the principle of sovereign equality and "one country, one vote," ensured that whatever came out of the Assembly on Kosovo or the question of intervention more broadly would reflect the scepticism of a large segment of the global South. Indeed when then Secretary-General Kofi Annan initiated the debate on intervention within the Assembly during the general debates of 1999 and 2000, this scepticism came out in force. In 2000, Annan had hoped that the Assembly would take up the question of intervention in the final

[220] Cited in UK House of Commons, Select Committee on Foreign Affairs, *Fourth Report on Kosovo* (7 June 2000), para. 128, http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2813.htm (accessed 15 July 2010).

declaration of its Millennium Summit. The controversial nature of the question ensured that this was not to be. Not only was "humanitarian intervention" nowhere mentioned in the *Millennium Declaration* (adopted without a vote by the Assembly on 8 September 2000), but paragraph 4 of the declaration included a ringing endorsement of the existing norms of sovereignty and intervention:

> We rededicate ourselves to support all efforts to uphold the sovereign equality of all States, respect for their territorial integrity and political independence, resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms...[221]

Not only did the Assembly not endorse Annan's view on "humanitarian intervention" or welcome NATO's intervention in Kosovo, but some of the most ardent Southern critics of NATO and "humanitarian intervention" were able to use the rules and procedures of the Assembly to put forward and gain considerable support for their views. This occurred for example in December 2000 with the resolution passed by the Assembly on *Respect for the purposes and principles contained in the Charter of the UN to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character.*[222] This resolution originated in the Third Committee (Social, Humanitarian and Cultural) of the Assembly as a draft proposed by Cuba and several other developing countries. The main committees of the Assembly are, like the Assembly itself, universal bodies with "one country, one vote" decision-making procedures. During the Cold War,

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[221] United Nations General Assembly Resolution 55/2 *Millennium Declaration* (UN document A/RES/55/2) 8 September 2000, para. 4.

[222] United Nations General Assembly Resolution 55/101 *Respect for the purposes and principles contained in the Charter of the UN to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character* (4 December 2000).

they had been important venues for initiatives from the global South related to disarmament (First Committee), development (Second Committee), and decolonization, apartheid, and Palestinian self-determination (Fourth Committee).[223] Throughout the post-Cold War period, Southern opponents of US hegemony, especially Cuba, had used the Third Committee to advance resolutions to the full Assembly that sought to reaffirm traditional notions of sovereignty, for example on the subject of elections.[224] Now Cuba and 16 other states put forward a draft resolution in the Third Committee which affirmed the importance of inter-state cooperation in the realm of human rights and humanitarian assistance, but also affirmed, in clear reference to NATO's intervention in Kosovo, that "no State or group of States has the right to intervene unilaterally in any other State, particularly through armed force."[225]

A subsequent revised version of the draft strengthened this emphasis on non-intervention, quoting directly from the 1970 *Declaration on Principles of International Law for Friendly Relations*, stating that "no State or group of States has the right to intervene, for any reason whatever, directly or indirectly, in the internal or external affairs of any other State, and, consequently, that armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political

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[223] M.J. Peterson, *The UN General Assembly* (London and New York: Routledge, 2006), 60.

[224] See the numerous resolutions on *Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes* adopted between 1989 and 2003: A/RES/44/147, A/RES/45/151, A/RES/46/130, A/RES/47/130, A/RES/48/124, A/RES/49/180, A/RES/50/172, A/RES/52/119, A/RES/54/168, A/RES/56/154, A/RES/58/189.

[225] United Nations General Assembly, Third Committee, draft resolution, *Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of humanitarian character* (UN document. A/C.3/55/L.47), 2 November 2000, operative para. 2.

economic and cultural elements, are in violation of international law."[226] In order to gain the support of African states, which apparently found this expansive formulation of non-intervention to be potentially in conflict with the regional "right of intervention" enshrined in Article 4(h) of the AU Constitutive Act, Cuba subsequently orally revised this paragraph so that it now stated merely that humanitarian activities had to "fully comply with the principles set forth in Article 2 of the Charter, in particular respecting the sovereign equality of all States and refraining from the threat or use of force against the territorial integrity or political independence of any State."[227]

Within the Third Committee and again before the full Assembly, the US, EU countries, Australia, New Zealand and Canada all claimed that the draft resolution was a selective reflection of existing international law, and that (in the words of the Canadian delegate), "it focused too strongly on national sovereignty without including counterbalancing language on human rights, suggesting that sovereignty was a shield behind which human rights could be violated with impunity."[228] These concerns were shared by some developing countries, such as Argentina, which argued that draft resolution sought to pre-empt a necessary debate over the proper international response to massive violations of human rights, and Mali, which argued that intervention had to be better defined so that "sovereignty did not give States a licence to flout universal

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[226] United Nations General Assembly, Third Committee, draft resolution, *Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of humanitarian character* (UN document. A/C.3/L.47/Rev.1), 8 November 2000, operative para. 2.

[227] Oral revision in United Nations General Assembly, Third Committee, 55th session, summary record, 55th meeting. 10 November 2000 (UN document A/C.3/55/SR.55), 6. Explaining the revision, the Cuban delegate stated that "the direct reference to non-intervention in the affairs of other States had been removed to take into account the concerns expressed, in particular, by African delegations in the light of recent developments on their continent."

[228] Ibid., 6-7 (Canada); see also statements by New Zealand in ibid., 8.

standards."[229] Ultimately, however, these concerns were not sufficient to discourage a large number of developing states from supporting the resolution: it was passed by the Third Committee by a vote of 78 to 52 with 21 countries abstaining. The supporters included China, Russia, and a majority of developing states. All 52 opposed were Northern, Eastern European and small island states. The 21 abstaining represented a mix of developing countries from Latin America, Africa and Asia.[230] In the full Assembly, the Committee's resolution was adopted in December 2000 by a vote of 104 to 52 with 15 abstentions. Again, besides Russia and China, all supporters were developing countries (including a number of states which had abstained in the Third Committee); nearly all opponents were from the North. The 15 abstentions were mainly from Latin America (Argentina, Brazil, Chile, Guatemala, Nicaragua, Paraguay, Peru, Uruguay), with a few from Africa (South Africa, Cape Verde, Sao Tome and Principe) and Thailand and Singapore from Asia.[231] The history of this resolution illustrates the way a small groups of developing states strongly opposed to norm change can potentially use international institutions with universal membership and "one country, one vote" decision-making procedures to promote their agendas against Northern opposition. Cuba's concession to the African position on intervention in the Third Committee effectively enabled it to obtain a resolution in the Assembly that implicitly criticized NATO's claims regarding the permissibility of "humanitarian intervention" without Security Council authorization,

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[229] See ibid., 8 (Argentina), 9 (Mali).

[230] Argentina, Brazil, Chile, Côte d'Ivoire, Guatemala, Madagascar, Malawi, Malaysia, Mali, Nicaragua, Paraguay, Peru, Philippines, Rwanda, Senegal, Singapore, South Africa, Thailand, Uganda, and Uruguay.

[231] Roll-call vote in United Nations General Assembly, Third Committee, 55th session, summary record, 55th meeting, 10 November 2000 (UN document A/C.3/55/SR.55), 18.

and reaffirmed existing norms of non-intervention and non-use of force, while splitting the membership quite dramatically along North-South lines.

By the time this resolution was passed by the Assembly, countries in the global North that hoped that Kosovo would provide the impetus for a fundamental rethinking of the question of sovereignty and intervention at the UN, had become frustrated with the polarized nature of the debate that this resolution exemplified. Canada in particular took the initiative and, responding to the call of the Secretary-General, appointed an independent international commission to consider the question. The creation of the International Commission on Intervention and State Sovereignty (ICISS), announced by the government of Canada in late 2000, was thus a direct response to the divisive debate on intervention within the Assembly. As Canadian Minister of Foreign Affairs Lloyd Axworthy explained in a speech in June 2000, since Annan's initial bold challenge to the Assembly, "the negative reaction of many countries...[had] resulted in a loss of momentum." This loss of momentum, Axworthy argued, convinced the Canadian government to take the initiative and appoint an "International Commission on Humanitarian Intervention" to consider the subject.[232] While the reference to "humanitarian intervention" in the commission's title was dropped, its mandate was to build consensus and "find common ground" on the issue of intervention in humanitarian emergencies.[233] Significantly for our purposes, it did so not through an intergovernmental process of consultation with UN members states but through a series of "regional roundtables" involving both governmental and non-governmental (academic and NGO)

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[232] Lloyd Axworthy, speech at the Woodrow Wilson International Center for Scholars, 16 June 2000, http://www.peace.ca/axworthyaddresstwoodrow.htm (accessed 15 July 2000).

[233] International Commission on Intervention and State Sovereignty (ICISS), *Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* vol. 1 (Ottawa: International Development Research Centre, 2001), vii.

representatives. While five of these roundtables were conducted in the global South—in Maputo, Santiago, Cairo, New Delhi and Beijing—only one of these (in Santiago) involved significant numbers of government officials.[234] The participation of Southern governments in determining the outcome of these consultations was thus less direct than it would have been in a universal membership, intergovernmental institution such as the General Assembly (though participation of Southern civil society was more *direct* than it would have otherwise been). The separate regional consultations also prevented trans-regional coordination through a platform like the NAM, or the kind of forging of collective positions that we have seen in the case of the December 2000 resolution in the General Assembly. As we shall see, below, the end product of the ICISS consultations, while sensitive to concerns of the anti-interventionists among developing countries, also reflected some of the differences within the global South. In several important respects, however, the ICISS's report challenged the central norms of the postcolonial sovereignty regime in a way that many developing countries would be unlikely to countenance.

4. Success of developing countries in shaping the direction of norm change

In this section I assess the impact of Northern attitudes, the ideological coherence of Southern diplomacy, and institutional environments between 1999 and 2001 on the success of developing countries in shaping the direction of change in international norms of sovereignty and intervention. Over all, I conclude that, in this part of my case study, my three working hypotheses are largely confirmed by the case material.

[234] For a description of these roundtables see ICISS, *Responsibility to Protect: Research, Bibliography, Background* vol. 2 (Ottawa: International Development Research Centre, 2001), 349-398. The remaining roundtables were in Ottawa, Geneva, London, Washington, Paris, St. Petersburg.

4.1 Impact of Northern attitudes

As we have seen above, Northern states promoting "humanitarian intervention" in 1999 were willing to resort to force in Kosovo without Security Council authorization, and thus to seriously challenge existing norms of non-intervention, non-use of force and sovereign equality. At the same time, a number of these states still sought to work through the multilateral mechanisms of the UN in order to reform the norms of sovereignty in a way that would legitimate their actions. Northern attitudes were thus characterized by both a commitment to multilateral UN mechanisms and a willingness to act through narrower, North-only channels when these mechanisms failed to deliver the outcomes desired. As we have seen the continued commitment to UN mechanisms ensured that Northern states seeking to promote norm change were forced to engage with the views of developing countries. The result was that Southern states were given the opportunity to decisively shape the subsequent debate on "humanitarian intervention" in a way that would not have been possible had Northern states been content to fully commit to enshrining a new North-only mechanism for future interventions. Bearing in mind that I am keeping "Northern capabilities" as constant, this finding supports my third hypothesis that the success of developing countries in influencing the direction change in international norms of sovereignty and intervention should increase if Northern attitudes remain committed to action through multilateral institutions.

4.2 Impact of Southern ideological coherence

As we have seen above, the coherence of Southern diplomacy was initially quite low on the question of intervention in Kosovo, with the global South largely split between ardent supporters of NATO's intervention among the OIC states and NATO's ardent opponents

within the "counterhegemonic bloc," with a majority of states falling somewhere in the middle, many expressing serious concern over NATO unilateralism while also condemning the violence in Kosovo. Following the intervention, partly it seems, through the medium of the Non-Aligned Movement, ideological coherence on the question of intervention increased as the global South declared its collective rejection of the "so-called 'right' of humanitarian intervention." As ideological coherence increased, so too did the ability of developing states to resist the radical norm change proposed by proponents of "humanitarian intervention." Thus, while the initial Southern split over the Kosovo war allowed NATO to secure the appearance of legitimacy for its intervention within the Security Council (through the rejection of the Russian-Indian draft resolution condemning the intervention), the subsequent coherence of the Southern diplomacy in the General Assembly dispelled any possibility of legitimating a new norm of unauthorized "humanitarian intervention." While there is no question of ideological *unanimity* within the global South, there was nonetheless a broad enough consensus to enable ardent opponents of "humanitarian intervention" to mobilize general Southern support for an anti-interventionist position. This finding thus lends support to my second hypothesis, that the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should increase as the ideological coherence of Southern diplomacy increases.

4.3 Impact of institutional environments

Finally, as we have seen above, the post-Kosovo debate on "humanitarian intervention" occurred in at least three important institutional venues: the Security Council, the UN General Assembly, and the non-governmental ICISS and its consultation

process. As was described above, in institutional environments which facilitated the participation of developing countries in decision-making processes (i.e. the General Assembly), developing countries were largely able to defuse the radical challenge posed by "humanitarian intervention" and reaffirm the central norms of the postcolonial sovereignty regime (for example in the December 2000 General Assembly resolution on international cooperation in the realm of human rights and humanitarian assistance). This encouraged Northern proponents of "humanitarian intervention" to seek an alternative, non-government institutional setting to further the debate on intervention. In this setting, participation by Southern states was only indirect and not as broad as would have been possible in a universal, inter-governmental process. As I will describe presently, the ideas that emerged from this alternative institutional setting posed a greater challenge to postcolonial sovereignty norms than those affirmed by the General Assembly.

The ICISS published its report, *The Responsibility to Protect*, in December 2001. It introduced three key innovations in the international debate over "humanitarian intervention." First, the Commission suggested a shift in language, moving away from the concept of the "right of intervention" towards the concept of "responsibility to protect." This was intended to "shift the terms of the debate" over "humanitarian intervention" from a zero-sum confrontation between sovereignty and human rights, to a reconciliation of the two through a redefinition of sovereignty itself as a responsibility of the state to protect its population from grave human rights abuses. Conceptualizing "sovereignty as responsibility," in the words of the Commission's report, had three important implications: "First, it implies that state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare.

Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of the state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission."[235] In addition, the concept of sovereignty as a "responsibility to protect" had the implication that the "international community" itself had acquired a responsibility to protect vulnerable populations in cases where the state was "unwilling or unable" to protect them. In such cases, the report argued, "the principle of non-intervention yields to the international responsibility to protect."[236]

The second important modification introduced by the ICISS, was to broaden the conception of "intervention" beyond the use of military force in humanitarian and human rights emergencies, conceptualizing it as a continuum of measures including actions focused on the *prevention* of crises, *reaction* (including, but not limited to, military intervention), and post-conflict *rebuilding*. Indeed the report stressed that "prevention is the single most important dimension of the responsibility to protect" and that "prevention options should always be exhausted before intervention is contemplated and more commitment and resources must be devoted to it."[237]

Despite this emphasis on prevention, however, the bulk of the ICISS report dealt with the issue of military intervention rather than prevention, leading some to suggest that its discussion of prevention was added as a "superficially attractive but highly unrealistic way to try...[to] finesse the hard issue of what essentially amounts to humanitarian intervention."[238] Indeed the report was quite explicit in stating that it *was* primarily

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[235] ICISS, *Responsibility to Protect* vol. 1, 13.
[236] Ibid., xi.
[237] Ibid.
[238] Weiss, *Humanitarian Intervention*, 104.

concerned with armed "humanitarian intervention," stating in its opening chapter: "This report is about the so-called 'right of humanitarian intervention': the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protection people at risk in that other state."[239] The third important element of the report, then, was its discussion of the conditions under which the use of force for humanitarian ends might be permissible. Borrowing from previous attempts to articulate criteria governing "humanitarian intervention," the Commission suggested six criteria drawn from just war theory to guide military intervention for "human protection" purposes. The first, *just cause*, established the threshold which would justify international military intervention in cases where states were unable or unwilling to halt atrocities. Here the Commission recommended that military intervention was justifiable only in extreme cases to halt or avert "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation," and "large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."[240] The remaining criteria were made up of five "precautionary principles": *right intention* ("the primary purpose of the intervention must be to halt or avert human suffering"), *last resort* ("every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored"), *proportional means* ("the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the

[239] ICISS, *Responsibility to Protect* vol. 1, vii.
[240] Ibid., 32.

humanitarian objective in question"), and *reasonable prospects* ("military action can only be justified if it stands a reasonable chance of success").[241]

On the key question of who had the authority to decide on whether these criteria had been met and whether military intervention was therefore warranted in any particular case, the Commission's formulation was notably equivocal. The report strongly endorsed the central role of the Security Council in authorizing any use of force for humanitarian purposes, arguing that "there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes" and that "the task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has." Arguing that Council authorization should always be sought prior to any intervention, the Commission further argued that the Council had a duty to deal promptly with any requests for authorization in cases of large scale loss of life or ethnic cleansing and recommended that the P5 should agree not to use their veto power to obstruct authorization of humanitarian intervention "in matters where their vital state interests are not involved." In instances in which the Security Council failed to authorize necessary interventions, the Commission suggested two "alternative options": the "Uniting for Peace" procedure in the General Assembly (requiring a two thirds vote of the Assembly) and "action within area of jurisdiction" by regional or subregional organizations "subject to their seeking subsequent authorization from the Security Council."[242]

Both of these options, it should be noted, had their advocates within the developing world. As we have seen above, the development of regional mechanisms for

[241] Ibid., 35-37.
[242] Ibid., xii-xiii.

intervention by regional organizations supported by *ex post facto* Security Council authorization was supported by the states of the nascent African Union. The ICISS report specifically cited the precedent of ECOWAS interventions in Liberia and Sierra Leone, and argued that "there may be certain leeway for future action" of the same type.[243] As for the proposal regarding the "Uniting for Peace" procedure, this too had its supporters within the global South. Several Southern states at the 1999 and 2000 General Assembly plenaries spoke in favour of granting the General Assembly a greater role in international peace and security matter in general, and in interventions in civil conflicts and humanitarian emergencies in particular. Speaking before the Assembly in late September 1999, Egyptian Foreign Minister Amre Moussa stressed that "any international [military] action must stem from the Security Council as the competent organ primarily responsible for the maintenance of international peace and security," but that, in cases where the Council was "unable" to fulfill its role, "the General Assembly would be the organ that must deal with any threats to international peace and security, as it represents the common interest of all its members."[244] Speaking to the Assembly the next day, the Uruguayan foreign minister recalled the "paralyzing effect of the veto" in the Kosovo case and suggested "entrusting the General Assembly, under certain conditions...with new competencies so that it could be formally informed and its decision be required in situations which demand it, particularly when it concerns cases that could involve the legitimate use of force."[245] As we shall see in the next chapter, proposals for including

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[243] Ibid., 54.

[244] United Nations General Assembly, 54th session, provisional verbatim record, 10th plenary meeting , 23 September 1999 (UN document A/54/PV.10), 22.

[245] United Nations General Assembly, 54th session, provisional verbatim record, 11th plenary meeting, 23 September 1999 (UN document A/54/PV.11), 23.

the General Assembly in mechanisms for authorizing military intervention would continued to be articulated in the global South.

The ICISS report was thus significantly sensitive to the concerns and opinions of developing countries, as these had been expressed to commission-members in regional roundtables. On one issue, however, the Commission seems to have gone significantly further in challenging the norms of sovereignty and intervention than most developing countries would have been prepared to go. This concerned the controversial issue of unauthorized "humanitarian intervention" by individual states or ad hoc coalitions. Here the report was notably equivocal:

> Interventions by ad hoc coalitions (or, even more, individual states) acting without the approval of the Security Council, or the General Assembly, or a regional or sub-regional grouping of the which the target state is a member, do not...find wide favour... As a matter of political reality, it would be impossible to find consensus, in the Commission's view, around any set of proposals for military intervention which acknowledged the validity of any intervention not authorized by the Security Council or General Assembly. But that may still leave circumstances when the Security Council fails to discharge what this Commission would regard as its responsibility to protect...[I]f the Security Council fails to discharge its responsibility in conscience shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations. If collective organizations will not authorize collective interventions against regimes that flout the most elementary norms of legitimate governmental behaviour, then the pressures for intervention by ad hoc coalitions or individual states will surely intensify...[I]f, following the failure of the Council to act, a military intervention is undertaken by an ad hoc coalition or individual state which does fully observe and respect all the criteria we have identified, and if the intervention is carried through successfully...then this may have enduringly serious consequences for the stature and credibility of the UN itself.[246]

While reaffirming the centrality of the Security Council and noting the impossibility of finding consensus on unauthorized intervention by ad hoc coalitions, the report

[246] ICISS, *Responsibility to Protect* vol. 1, 54-55.

nonetheless hedged its bets, arguing that there existed situations that objectively required intervention regardless of whether the Council could agree to them, and that the Council's "failure to act" in such situations meant that unauthorized interventions would occur anyway.

The ICISS report notably refrained from opposing unauthorized interventions as such, and has been interpreted by numerous observers as having left open a possible loophole for such interventions.[247] The fact that the report specifically argued that unauthorized interventions that followed the report's proposed criteria for military intervention would undermine the reputation and legitimacy of the Council suggested an attitude towards UN mechanisms similar to that adopted by the US and UK during the Kosovo war: it was "preferable" to act through such mechanisms, but when these "failed" to produce the desired outcome, then a higher morality could be invoked to justify unauthorized action. This attitude posed a potentially radical challenge to sovereignty norms. It opened up the possibility of a new exception to the norm of non-intervention and non-use of force in cases where a group of states determined that both the target state and the Security Council had failed to fulfill their respective "responsibilities to protect." It also suggested a further erosion of legislative and existential sovereign equality through the granting of special intervention rights to self-selected group of states based on their assessment (according to apparently objective criteria) of the gravity of a given crisis. As we shall see in the next chapter, these proposed departures from the norms of sovereignty and intervention were greater than those that most developing states were willing to contemplate. As a result, in the next part of the international debate over "humanitarian

[247] E.g. Amitav Acharya, "Redefining the Dilemmas of Humanitarian Intervention," *Australian Journal of International Affairs* 56, no. 3 (2002): 373-82.

intervention," "R2P," as the new concept became known, would undergo further evolution, bringing it closer to the views of the global South.

4.3 *Alternative explanations*

The failure of the NATO intervention in Kosovo to bring about radical change in international norms of sovereignty and intervention, by creating a new exception to both the norms of non-intervention and non-use of force and by significantly diminishing the significance of existential and legislative sovereign equality, was clearly congruent with the expressed preferences of a majority of developing countries. While these countries may have been split on the Kosovo intervention itself, they were largely united in rejecting the "so-called right of humanitarian intervention," and a number of them successfully used universal-membership international institutions to reaffirm traditional norms of sovereignty in the wake of the Kosovo war. This congruence does not, however, necessarily prove that the failure of Northern states to bring about radical norm change was the result of developing country influence and of the three factors which I have argued facilitated that influence. Other potential factors could have been equally or more important.

One alternative explanation for the failure of the intervention to radically change the norms of sovereignty and intervention is that Northern states themselves sought no such change. As legal scholars in particular have pointed out, NATO countries were notably reluctant to claim a *legal* right of unauthorized "humanitarian intervention," invoking instead legal rationales based on existing Security Council resolutions.[248] Moreover, as we saw above, several NATO countries (Germany, Norway) argued

[248] See Chesterman, "Legality vs Legitimacy"; Gray, "From Unity to Polarization."

explicitly that the Kosovo intervention should not serve as a precedent for "humanitarian intervention" outside the framework of the UN. Nonetheless, as is clear from my survey of Northern attitudes above, a number of NATO powers, including, most significantly, the US, *did* view the Kosovo intervention as a model for possible future autonomous action by NATO independently of the UN. This is the core message of the comment quoted above from the American Deputy Secretary of State Strobe Talbott ("the alliance must reserve the right and the freedom to act when its members, by consensus, deem it necessary"[249]) and is implicit in the UK's assessment that the NATO intervention was sufficiently a "collective action" to qualify under its proposed criteria for "humanitarian intervention"—i.e. that "collective action" did *not* necessarily mean *UN* action. This is not an argument, moreover, that NATO "middle powers" like Canada, despite their evident commitment to UN multilateralism, at any time actively contested.

Another possible explanation for the failure of the NATO intervention in Kosovo to radically alter existing norms of intervention and sovereignty is opposition to such change by non-NATO major powers, rather than by the global South as a whole. To be sure, both Russia and China stridently opposed both the NATO bombing of the FRY and the larger claim of NATO's right to intervene on humanitarian grounds even without Security Council authorization. Even so, that such opposition might not itself have been enough to defuse the challenge posed by the intervention to existing norms of sovereignty and intervention can be seen in the 26 March 1999 Security Council vote on the Russian-Indian draft resolution condemning NATO. The Council's overwhelming rejection of that resolution has been widely interpreted as conferring "legitimacy" (if not legality) on NATO actions, and has even been suggested as a model of a new mechanism for

[249] Quoted in ibid., emphasis added.

"jurying" future interventions whose authorization by the Council is blocked by a prospective veto.[250] As I have argued above, this symbolic victory for NATO and for proponents of unauthorized "humanitarian intervention" was in large part a result of the institutional environment of the Security Council, whose membership rules limited representation of the spectrum of views within the global South that were far more sceptical of the intervention. A similar victory was not achieved in the General Assembly where all developing countries were represented. On the contrary, opponents of NATO and "humanitarian intervention" were able to use this venue to reaffirm traditional sovereignty norms. Though Russia and China joined the South in this reaffirmation, they could not have achieved it alone. Instead, it took the organizational platform of the NAM to reconcile differences and mobilize a common Southern rejection of the proposed change in sovereignty norms.

[250] See Franck, "Legality and Legitimacy"

Chapter 4: Case Study – Part Two, 2002-2005

Following the publication of the report of the ICISS in December 2001, the international debate on "humanitarian intervention" was temporarily sidelined as a result of the September 11 terrorist attacks on the United States, and the ensuing US-declared "global war on terror." The hugely controversial US-UK-led invasion of Iraq in March 2003, conducted without specific Security Council authorization and justified publicly in part on humanitarian grounds, seemed to seriously harm the prospects for the emergence of the new international consensus on military intervention for human protection purposes sought by the ICISS. The Iraq war arguably revealed the ease with which humanitarian justifications for the use of force could be abused for narrow security and geopolitical ends.[251] Within two and a half years of the Iraq invasion, however, a version of the "responsibility to protect" concept was enshrined in a declaration by the largest-ever gathering of world leaders, the September 2005 High-Level Plenary meeting of the General Assembly, also known as the World Summit. This version of the "responsibility to protect," however, differed in several important respects from the version of the concept first articulated by the ICISS. Indeed, as some have suggested, the very speed with which agreement was reached on "R2P" in 2005 was due to the fact that important elements of the concept were altered or omitted. This chapter surveys the evolution of the "responsibility to protect" from 2001 to 2005, focusing in particular on the role of Northern attitudes, the ideological coherence of Southern diplomacy, and institutional

[251] Nicholas J. Wheeler and Justin Morris, "Justifying the Iraq War as a Humanitarian Intervention: The Cure is Worse than the Disease," in *The Iraq Crisis and World Order: Structural, Institutional and Normative Challenges*, eds. Ramesh Thakur and Waheguru Pal Singh Sidhu (Tokyo and New York: United Nations University Press, 2006) 444-463.

environments on the emergence of what some proponents of the original version of the "responsibility to protect" have called "R2P-lite." Based on this survey I conclude that developments during the period largely support my working hypotheses:

-First, Northern attitudes during the period following the publication of the ICISS report exhibited both a willingness to use force unilaterally and a commitment to multilateralism. Specifically, while the US under the administration of George W. Bush embraced a foreign policy that dispensed with multilateral organizations when these failed to suit US security interests and geopolitical objectives—most controversially during the US-led invasion of Iraq—Northern countries promoting the "responsibility to protect" (e.g. Canada) reacted to the reassertion of US unilateralism by trying increasingly to tie "R2P" more firmly to multilateral mechanisms. As a result of this commitment to multilateralism, these states were forced to engage with the views of Southern states in a manner that would not have been necessary had they decided to fully join the US in unilateralism or moved towards a new North-only mechanism for future interventions. This finding supports my third hypothesis that the success of developing countries in influencing the direction change in international norms of sovereignty and intervention should increase if Northern attitudes remain committed to action through multilateral institutions.

-Second, Southern states continued to exhibit a high degree of ideological coherence in terms of their collective rejection of unauthorized "humanitarian intervention" by ad hoc coalitions, particularly in the wake of the Iraq war. This was probably the primary cause of the emergence of "R2P-lite" in 2005, and, in particular, its exclusive focus on Security Council authorization of military intervention which, in

effect, reinforced existing norms of non-intervention and the non-use of force. In addition, the global South was able for the first time to articulate a collective position recognizing the problem of Security Council inaction in cases of grave human rights abuses. But it signally failed to translate this recognition into a coherent diplomatic position on possible solutions to this problem. While virtually all developing countries argued for reform of the Security Council as the primary means of legitimating any increase in future interventionist behaviour by the UN, the deep divisions within the global South over the shape of Security Council reform ensured that the project of reform would, for the time being, go nowhere. This then was notable *failure* of the South to influence the direction of change in the norms of sovereignty and intervention in a direction that would have enhanced legislative sovereign equality.

-Finally, the debate on the "responsibility to protect" between 2001 and 2005 took place primarily within the General Assembly, including in a series of informal consultations of the Assembly plenary held in the spring and summer of 2005 in preparation for the September 2005 World Summit. The universal membership and voting rules of the Assembly ensured that the views of developing countries would be well represented. The ability of the Non-Aligned Movement to block the passage in 2002 of a Canadian-backed Assembly resolution on the "responsibility to protect," and then to pass against Northern opposition a resolution in 2004 reaffirming existing norms of non-intervention, non-use of force and sovereign equality, illustrates the leverage of developing countries in the Assembly. These events support the hypothesis that the success of developing countries in influencing the direction of change in international

norms of sovereignty and intervention should increase where institutional environments facilitate the participation of developing countries in decision-making.

1. Northern attitudes

The ICISS's report was published three months after the September 11 attacks in New York City and Washington D.C. and two months after the US-led invasion of Afghanistan. The report addressed the September 11 attacks in the introduction to its report, arguing that the framework it was proposing for thinking about the use of force for humanitarian ends should not be confused with the existing international framework for the use of force in response to transnational terrorist attacks. The latter form of force, the report argued, was already covered by the existing exception to the norm of non-use of force embodied in Article 51 of the UN Charter which allowed for an "inherent right of individual and collective self-defence" against armed attack. Despite the Commission's desire to keep the two issues of "humanitarian intervention" and counter-terrorism separate, however, the reaction of the George W. Bush administration to the 9/11 attacks—proclaiming a "global war on terror" and resorting to the use of force in Afghanistan and later Iraq—had a profound impact on the prospects for and evolution of the "responsibility to protect."

The first effect was the marginalization of the entire debate over "humanitarian intervention" in international diplomatic fora. In the words of Thomas G. Weiss, "when the dust from the World Trade Center and the Pentagon settled, humanitarian intervention became a tertiary issue" on the international agenda.[252] While the war in Afghanistan was

[252]Thomas G. Weiss, "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era," *Security Dialogue* 35, no. 2 (2004): 136.

justified by the US and other NATO powers in part in humanitarian terms—particularly by reference to the plight of women under the Taliban's extreme interpretation of Islam—the primary legal and political rationale for the war was based on self-defence and security.[253] The second effect of 9/11 and its aftermath, and in particular of the Iraq war and its post-hoc rationalization by the US and UK in humanitarian terms, was the intensification, particularly in the global South, of concerns over the potential abuse of humanitarian justifications for the use of force by great powers for narrow security and geopolitical ends. [254] In the aftermath of the Iraq war, even one-time friends of the "responsibility to protect" became more cautious, and advocates of the concept (both state and non-state) sought to allay concerns over the issue of abuse by more firmly tying the concept to multilateral mechanisms for the authorization of the use of force. The consequence of the Iraq war for the "responsibility to protect" was thus paradoxical: while US commitment to multilateralism under the George W. Bush administration was at its lowest perhaps since Ronald Reagan, Northern proponents of the "responsibility to protect" (particularly Canada and several European countries) reacted to resurgent US unilateralism by reaffirming *their* commitment to multilateral institutions, and by emphasizing the centrality of these institutions to the "responsibility to protect."

The "R2P" concept itself was not universally welcomed in the North. Middle powers such as Canada, Sweden, New Zealand and Australia were highly supportive. The reaction of the US, on the other hand, was largely negative. The George W. Bush administration reportedly decided early on not to support any formal UN declaration on the subject and in particular rejected the notion of criteria of legitimacy to guide Security

[253] See UN Security Council Resolutions 1368 (12 September 2001) and 1373 (28 September 2001).

[254] Bellamy, "Responsibility to Protect or Trojan Horse?" *op cit.*

Council decision-making "on the grounds that it would not bind itself in ways that might constrain its right to decide when and where to use force."[255] The UK and France were more positive, though both remained concerned that even agreement on criteria for intervention would not guarantee the political will and consensus to act.[256] On the key issue of "right authority," the Western members of the US, UK, and France all "flatly rejected the view that unauthorized intervention should be prohibited in all circumstances."[257] The US in particular maintained its traditional approach of "exceptionalism" on the issue of use of force, now articulated in the context of an even more expansive framework for the unilateral use of force. This framework was articulated in the administration's September 2002 *National Security Strategy* (NSS), which argued that, faced with the dual threat of transnational terrorism and "rogue states" seeking weapons of mass destruction (WMD), the US would not hesitate to use force unilaterally and "preemptively." In the words of the NSS

> The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively... While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting preemptively.[258]

While the US claim to a right of the unilateral "pre-emptive" (actually *preventive*) use of force was articulated specifically as a doctrine of "self-defence" against

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[255] Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), 67.

[256] Ibid., 67-8.

[257] Ibid.

[258] United States, White House, *National Security Strategy*, 15.

transnational terrorism and the proliferation of WMD, the NSS also included a militant defence of liberal-humanitarian universalism which unmistakably echoed previous justifications of "humanitarian intervention." "The values of freedom are right and true for every person, in every society," the NSS declared, "and the duty of protecting these values against their enemies is the common calling of freedom-loving people across the globe and across the ages."[259] The NSS further determined that "rogue states"—i.e. states that the US unilaterally decided were threats to the world—were characterized not only by their determination to acquire weapons of mass destruction and by their sponsorship of international terrorism, but also by the fact that they "brutalize[d] their own people" and "reject[ed] basic human values."[260] The NSS specifically labelled genocide as "behaviour that no respectable government can condone or support and all must oppose"[261] and argued that dealing with protracted conflicts and humanitarian crises was not only a moral duty, but was intimately related to security concerns, as the kinds of regimes and "failed state" situations which threatened "basic human values" also tended to become breeding grounds for extremism and terrorism. This, the NSS argued, was the lesson of 9/11, "that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states."[262]

The mixture of security and moral arguments found in the 2002 NSS was also characteristic of the justifications provided by the US for the subsequent invasion of Iraq in 2003. While the primary public justification for the war concerned the threat posed by Iraq's alleged desire to develop WMD, humanitarian justifications for the war were also

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[259] Ibid., i.
[260] Ibid., 14.
[261] Ibid., 6.
[262] Ibid., ii.

advanced, particularly after post-invasion investigations found no evidence of a significant Iraqi WMD capability. But it was the UK which made particularly strong use of humanitarian arguments to justify the war. Speaking before the beginning of the war, in February 2003, British Prime Minister Tony Blair argued that, given the history of grave human rights abuses in Saddam Hussein's Iraq, "ridding the world of Saddam Hussein would be an act of humanity," while leaving him in power would be "inhumane."[263]

Some of the humanitarian justifications proffered by the US and UK echoed or drew directly on the language of the "responsibility to protect." In the US, then-director of policy planning at the US State Department Richard Haas justified the use of force against Iraq in terms reminiscent of the "responsibility to protect" in February 2003. Writing the *New York Times*, Haas argued that there was "an emerging global consensus that sovereignty, rather than being a blank check, is contingent on each state fulfilling certain fundamental obligations, both to its own citizens and to the international community," and that "when a government fails to live up to these responsibilities or abuses its prerogatives, it risks forfeiting its sovereign privileges — including, in extreme cases, its immunity from armed intervention." For Haas such forfeiture of sovereignty could occur for three reasons: when a state harboured terrorists, when it threatened global security, and when it committed or failed to prevent genocide or crimes against humanity from occurring on its territory. In the latter case, Haas argued, "the international community has the right, and in some cases the obligation, to act to safeguard the lives of

[263] Quoted in Wheeler and Morris, "Justifying the Iraq War," 449.

innocents."[264] Speaking a year after the beginning of the war, Tony Blair also echoed the terms of the "responsibility to protect," arguing that "the essence of [international] community is common rights and responsibilities...We do not accept in a community that others have a right to oppress and brutalise their people. We value the freedom and dignity of the human race and each individual in it... we surely have a responsibility to act when a nation's people are subject to a regime such as Saddam's."[265]

The willingness of the US and UK to use force against Iraq in the absence of explicit authorization by the Security Council, and to justify it in part by humanitarian arguments, was highly controversial, even among key NATO allies. Unlike the intervention in Kosovo and the war in Afghanistan, in both of which numerous NATO countries participated, key NATO countries such as France, Germany and Canada declined to participate in the invasion of Iraq. Among these, Canada in particular, was a key supporter of the "responsibility to protect" and was evidently aware of the potential for Iraq to damage the prospects for gaining support for the new concept. This potential was evident already in July 2003, at a summit of left-of-centre governments in the UK, during which attempts by Canada and the UK to include a reference to the "responsibility to protect" in the summit's communiqué were actively opposed by Northern governments that had been hitherto considered supporters of the "R2P" concept, including Germany, New Zealand and Sweden. The wording of the communiqué proposed by Canada and the UK—"where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to

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[264] Richard Haas, "Armed intervention : When nations forfeit their sovereign privileges," *New York Times,* 7 February 2003, http://www.nytimes.com/2003/02/07/opinion/07iht-edhaass.html?pagewanted=1?pagewanted=1 (accessed 15 July 2010)

[265] Tony Blair, speech in Sedgefield, UK, 5 March 2004, reproduced in *The Guardian*, 5 March 2004, http://www.guardian.co.uk/politics/2004/mar/05/iraq.iraq (accessed 15 July 2010)

halt or avert it, the principle of non-intervention yields to international responsibility"—was rejected, reportedly because it was feared that it could be construed as providing post hoc justification to the invasion of Iraq. The final communiqué limited itself to calling on the General Assembly to discuss the "responsibility to protect" and declaring that "the Security Council remains the sole body to authorise global action."[266]

Reacting to the widespread negative reaction against US and UK unilateralism, key "norm entrepreneurs" promoting the "responsibility to protect" now sought to tie the concept more closely to multilateral mechanisms and institutions. According to Alex Bellamy, Canada in particular consciously adopted a policy of "tying non-consensual force under the banner of R2P *exclusively* with Security Council authorisation – rather than *primarily*, as proposed by the ICISS."[267] Speaking before the plenary of the General Assembly in 2004, Canadian Prime Minister Paul Martin argued explicitly that the Security Council was central to the authorization of any use of force under the aegis of the "responsibility to protect," and that R2P advocates were "not arguing for a unilateral right to intervene in one country whenever another country feels like it."[268] Other important "norm entrepreneurs" promoting the "responsibility to protect," similarly emphasized the central role of existing UN mechanisms for the authorization of force. Secretary-General Kofi Annan embraced the "responsibility to protect" and, in the wake of Iraq, sought to propel the UN membership towards a new consensus on the concept. In September 2003, Annan appointed a UN High-Level Panel on Threats, Challenges and Change to produce an in-depth study of global threats and challenges, including those

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[266] Cited in Bellamy, *Responsibility to Protect*, 69.

[267] Ibid., 73, emphasis in original.

[268] United Nations General Assembly, 59th session, provisional verbatim record, 5th plenary meeting, 22 September 2004 (UN document A/59/PV.5), 31.

posed by civil conflict and humanitarian crisis. The Panel, chaired by the former prime minister of Thailand Anand Panyarachun, included among its members Gareth Evans, former foreign minister of Australia and co-chair of the ICISS. The report of the High-Level Panel, published in December 2004, endorsed the concept of the "responsibility to protect" but, unlike the ICISS, reserved the exclusive authority to decide on the use of force for humanitarian purposes to the Security Council (see discussion below).[269] The Panel's conclusion was endorsed by the Secretary-General himself in his report on UN reform published in March 2005.[270]

Along with this commitment to multilateralism on the part of the key state and non-state promoters of the "responsibility to protect," it is important to note that the agreement on "R2P" at the 2005 World Summit was also preceded by an important, if subtle, shift in *US* attitudes. While the Bush administration did not renounce its doctrine of unilateralism, the post-Iraq invasion period saw signs of significant US reengagement with the UN and the debate over the "responsibility to protect." As Bellamy argues, the groundwork for this reengagement was laid within the US by a high profile bipartisan task force on UN reform organized by the US Institute of Peace and co-chaired by US senators George Mitchell and Newt Gingrich. The task force's report, published in June 2005, included an endorsement of the "responsibility to protect," arguing that "governments have a responsibility to protect their people" and that "if a government fails in its primary responsibility to protect the lives of those living within its jurisdiction from genocide, mass killings, and massive and sustained human rights violations, it

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[269] United Nations, High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responibility* (United Nations, 2004), para. 203.

[270] United Nations General Assembly, *In larger freedom: towards development, security and human rights for all. Report of the Secretary-General* (UN document A/59/2005), 21 March 2005, para. 135.

forfeits claims to immunity from intervention." In such cases, the report argued the "United States should be prepared to lead the Security Council in finding the most effective action across the full range of legal, economic, political, and military tools." In cases in which non-military means of stopping massive human rights abuses proved insufficient, the Security Council should authorize the use of force and ensure that any intervention possessed "the authority and capability to achieve its objective of preventing or halting genocide, mass killing, and massive and sustained human rights violations."[271] Unlike other promoters of R2P in the global North and at the UN, however, the Task Force explicitly left open the possibility of unauthorized armed intervention "in cases in which the Security Council is unable to take effective action in response to massive human rights abuses and/or genocide."[272] As Bellamy argues, this permissive attitude towards unauthorized intervention arguably facilitated American engagement with the R2P debate by addressing one of the primary concerns of the Bush administration with the concept, namely its potential to restrain the US's ability to use force unilaterally when it decided that this was in the US's national interest.

2. Ideological coherence of Southern diplomacy

As during the debate over "humanitarian intervention" that followed the Kosovo intervention, the commitment of Northern states that promoted the "responsibility to protect" to going through the multilateral mechanisms of the UN and making the "R2P" part of their program for UN reform, meant that they would have to engage with views of the global South. As we saw in the previous chapter, there was a great deal of coherence

[271] Task Force on the United Nations, *American Interests and UN Reform: Report of the Task Force on the United Nations* (Washington D.C.: United States Institute of Peace, 2005), 7, 15, 29.
[272] Ibid., 16.

among countries in the global South after the Kosovo intervention on the question of unauthorized "humanitarian intervention" by self-selected groups of states. The invasion of Iraq by the US-led "coalition of the willing" without explicit Security Council authorization, and the use of humanitarian arguments to justify it, reinforced the opposition of developing countries to legitimizing any framework of intervention that could permit self-appointed ad hoc coalitions to intervene in the name of the international community. Beyond a general opposition to unilateralism, however, the Southern response to the "responsibility to protect" showed that a number of important differences on the question of intervention persisted within the global South. These concerned three questions in particular: first, the degree to which the "responsibility to protect" was or was not essentially the same thing as the "right of humanitarian intervention" which the South had rejected in 1999 and 2000, and thus the degree to which the new concept should be opposed as a threat to traditional norms of sovereignty; second, the question of the usefulness and/or legitimacy of formally recognizing criteria for the use of force as proposed by the ICISS, the High-Level Panel and the Secretary General; and third, the question of what solutions were possible to the problem of Security Council inaction in cases of grave human rights abuse and humanitarian need. On all three questions, the organizational platform of the Non-Aligned Movement was able to serve as a venue for reconciling differences only to a very limited extent. On the first question, divisions among NAM members over whether to support or oppose the new R2P concept meant that the Movement was able to present only a noncommittal stance, a stance which persisted due to the strong opposition of a small group of ardent R2P sceptics, even as most other NAM countries moved towards at least a willingness to consider the concept,

which they increasingly viewed as being different from the "so-called right of humanitarian intervention." On the question of criteria for the use of force, the NAM declared the South's fundamental opposition to the formalization of such criteria even though many developing countries evidently *support* them. On the issue of Security Council inaction, the NAM was able for this first time in its history to collectively agree that this was indeed a problem (hitherto the Movement had largely focused on the Council's *overuse* of coercive action), but none of the three possible solutions proposed by NAM members—intervention by regional organizations with *ex post facto* authorization by the Security Council, the formalization of mechanisms to overrule the veto power of the P5 through the General Assembly, and reform and expansion of the Security Council—managed to secure sufficient consensus to form the basis of a collective bargaining position. Security Council expansion and reform, seen by many as a potential answer to the problem of the Security Council's ineffectiveness and illegitimacy, was particularly divisive.

2.1 "Responsibility to Protect" vs. "Humanitarian Intervention"

Following the release of the ICISS report in late 2001, few developing countries directly addressed the "responsibility to protect" in their public statements at the United Nations. Those that did, especially Latin American and African states, were supportive, while a few others (e.g. India) were sceptical.[273] After the "responsibility to protect" was endorsed by the reports of the High-Level Panel and Secretary-General, and as preparations for the September 2005 High-Level Plenary got underway, the

[273] For an early expression of Indian skepticism see United Nations General Assembly, 57th session, provisional verbatim record, 58th plenary meeting, 25 November 2002 (UN document A/57/PV.58), 16.

"responsibility to protect" was discussed more frequently within the General Assembly, providing developing countries several opportunities to voice their opinions on the concept. Between January and April of 2005, the General Assembly held a series of "informal thematic consultations" on the reports of the High-Level Panel and the Secretary-General. During these meetings, at least 24 developing countries presented statements directly addressing the "responsibility to protect," while several others addressed the concept by endorsing the collective statements of either the NAM or the 53-member African Group. In broad terms, these statements revealed that the global South was split roughly evenly between those countries that basically supported (though often cautiously and with numerous qualifications) the concept of a "responsibility to protect" as articulated by the High-Level Panel and the Secretary-General, and those whose responses were largely negative or even outright hostile. In general, the former group included most Latin American countries (with the notable exceptions of Cuba and Venezuela) and most sub-Saharan African countries. The latter group included Cuba, Venezuela and Egypt as the most hostile to the concept, and a variety of Middle Eastern, South Asian and East Asian states which expressed varying degrees of scepticism or hostility.

Among Latin American states, Argentina, Chile, Costa Rica, Guatemala, Mexico and Peru were strongly supportive of the "responsibility to protect" during the informal General Assembly consultations of early 2005, while Colombia was notably cautious. Brazil initially said very little on the subject, limiting its comments to a call for a detailed examination of the concept by the General Assembly.[274] At the informal thematic

[274] Statement by Ambassador Ronaldo Sardenberg, Permanent Representative of Brazil to the UN at the Informal Thematic Consultations on the Report of the Secretary-General, *In Larger Freedom:*

consultations held by the General Assembly on the Secretary-General's report in April 2005, the Argentine representative argued that the "responsibility to protect" was a legitimate expansion of the definition of threat to international peace and security, and therefore could be used by the Security Council under chapter VII of the UN Charter to suspend the non-intervention rule enshrined in Article 2(7). However, any use of force under the auspices of the "responsibility to protect" had to be a "last resort [used only] once all methods not implying the use of force have been exhausted, in order to impede or stop massive, systematic and flagrant violations of human rights."[275] Costa Rica agreed with the Secretary-General's contention that the principle of sovereignty could not shield the commission of crimes against humanity and stressed that the international community had an obligation to act to prevent and stop such crimes when governments were unable or unwilling. Any such action, however, had to have prior Security Council authorization under Chapter VII, and the "responsibility to protect" could not become a pretext for unilateral interventionism.[276] The representative of Mexico expressed support for the Secretary-General's view that the "collective responsibility to protect" constituted an emerging international norm in the practice of the Security Council, in particular in its expansion of the definition of threats to international peace and security.[277] Colombia was more cautious but also supportive, agreeing that states had a duty to protect their citizens

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Towards Development, Security and Human Rights for All, Cluster III: Freedom to Live in Dignity (19 April 2005), 2. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[275] Statement by Ambassador Cesar Mayoral, Permanent Representative of Argentina to the UN at the Informal Thematic Consultations on the Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, Cluster III: Freedom to Live in Dignity, 19 April 2005, 1. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010).

[276] Intervención del Embajador Bruno Stagno Ugarte, Representante Permanente de Costa Rica ante las Naciones Unidas, Consultas sobre Informe del Secretario General, Grupo Temático III – Libertad para vivir con dignidad, 20 April 2005. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010).

[277] Intervención del Embajador Juan Manuel Gómez-Robledo, Representate Permanente Alterno de México ante las Naciones Unidas, en el Cluster III : Libertad para vivir en dignidad, 20 April 2005, 3. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010).

but insisting that the concept of the "responsibility to protect" had to strictly accord with the UN Charter and emerge from intergovernmental negotiations so as to prevent it from becoming "an excuse to impose, intervene, and judge."[278] It is notable that none of these statements viewed the "responsibility to protect" as in any significant way altering the norms of non-intervention or non-use of force. Instead, they reaffirmed the expansion of the definition of "threats to international peace and security" which allowed for Security Council to pursue enforcement action as an exception to Article 2(7), and several Latin American states argued explicitly that R2P should not become an excuse for unilateral intervention.

Among sub-Saharan African states, the strongest supporters of the "responsibility to protect" in discussions leading up to the 2005 World Summit were Côte d'Ivoire, Senegal, Uganda, Benin and Tanzania. Tanzanian president Benjamin Mkapa was a strong supporter of the "responsibility to protect", declaring that the concept recognized that, in the wake of Rwanda

> the principle of non-intervention in the internal affairs of a State can no longer find unqualified, absolute legitimacy... States must firmly be placed on notice that the humanity we all share demands that we should collectively have an interest in its promotion as well as in its protection. Governments must first be held responsible for the life and welfare of their people. But there must also be common agreed rules and benchmarks that would trigger collective action, through our regional organizations and the United Nations, against Governments that commit unacceptable human rights abuses or threaten regional peace and security.[279]

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[278] Statement by H.E. Mrs. María Angela Holguin Cuéllar, Ambassador, Permanent Representative of Colombia to the United Nations, Informal Thematic Consultations of the General Assembly on Cluster III: Freedom to Live in Dignity, 20 April 2005, 5. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010).

[279] Quoted in statement by delegate from Tanzania in UN General Assembly, 59th session, provisional verbatim record, 90th plenary meeting, 8 April 2005(UN document A/59/PV.90), 26.

Not all African states were equally supportive of intervention and R2P however, and many expressed varying degrees of caution, stressing that the "responsibility to protect" should not serve as a pretext for unilateral intervention by powerful states in the affairs of the weak, and that its exercise had to be closely supervised to prevent misuse in a way that would undermine state sovereignty.[280] This caution was reflected in the official collective statement of the 53-member African Group, presented at the General Assembly consultations by the representative of Malawi. While expressing support for "the moral obligation behind the 'responsibility to protect' as a basis for collective action" in humanitarian emergencies, the Group's statement stressed that "care must be taken to ensure that responsibility to protect must not lend itself to subjective interpretation." In particular, the Group argued for a clear distinction to be maintained between the "unwillingness" and "inability" of states to protect their populations, and between "crimes against humanity" and "gross violations of human rights" as thresholds for external involvement. The Group also argued that the emphasis of the "responsibility to protect" should be on "building the capacity of states to assist in efforts to protect" rather than on coercive intervention. With regard to who should decide whether a state was "unwilling" to protect its population and whether or not non-forceful means of international engagement had proven insufficient in any given case, the Group referred to the Constitutive Act of the African Union and the collective African position on UN reform (the so-called "Ezulwini Consensus" - see below), both of which gave this authority to the AU Assembly, with the latter document explicitly allowing for regional

[280] See e.g. Déclaration de S.E.M. Philippe Djangone-Bi, Représentant Permanent de la Côte d'Ivoire Auprès des Nations Unies, Sur le module IIIL : Vivre dans la dignité, 19 April 2005. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010).

interventions authorized *ex post facto* by the Security Council.[281] The African Group thus both welcomed the R2P concept and warned that "the protection of citizens should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of States."[282]

North African, Middle Eastern, and Asian states, as well as Cuba and Venezuela in Latin America, were far more sceptical of, and even hostile to, the "responsibility to protect." Egypt argued that the concept "conflict[ed] directly with well established principles enshrined in the Charter, particularly those related to the use of force, sovereignty, territorial integrity and non interference in the internal affairs of states," and that "it would allow the strong to judge the weak" and "further deepen suspicions among civilization and cultures."[283] The Algerian representative, while acknowledging that states had a duty to protect their populations and the international community could not remain indifferent to gross violations of rights, stressed that the "responsibility to protect" was a vague concept which was highly reminiscent of the older "right to intervene" and thus had to be careful examined to determine its implications for the principles of sovereignty and non-intervention.[284] From the Middle East, Syria and Iran were highly

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[281] Statement by H.E. Prof. Brown Beswick Chimphamba, Ambassador and Permanent Representative of Malawi to the United Nations, Chairperson of the African Group for the Month of April 2005, on Behalf of the African Group at the Informal Thematic Consultations of the General Assembly on Cluster III (Freedom to Live in Dignity), 19 April 2005. Document in possession of author; I thank the Permanent Mission of the Republic of Malawi to the United Nations for providing me with this statement.

[282] Statement by representative of Malawi on behalf of the African Group in the UN General Assembly, 59th session, provisional verbatim record, 85th plenary meeting, 6 April 2005 (UN document A/59/PV.85), 22.

[283] Statement by H.E. Ambassador Maged Abdelaziz, Permanent Representative of the Arab Republic of Egypt, Informal Thematic Consultations on Clutser III: Freedom to Live in Dignity, in the Report of the Secretary General entitled *On Larger Freedom: Towards Development, Security, and Human Rights for All*, 19 April 2005, 3. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[284] Statement By H.E.M. Abdallah Baali, Ambassador, Permanent Representative of Algeria, during the Informal Consultations On The Cluster 3 (Live In Dignity) of the Secretary General's Report *In*

sceptical, with the latter warning that the "responsibility to protect" could "pave the ground for certain powers to pursue their political agenda under the pretext of humanitarian intervention and protection."[285] Qatar was less hostile though still quite cautious, arguing that "a concept such as the 'collective responsibility to protect' cannot be adopted without clarifying all its aspects, including the grounds that must be present and the methods and measures that have to be exhausted before it is enforced, provided such enforcement conforms with the U.N. Charter." Qatar also insisted that the concept could not be considered legitimate unless the Security Council was reformed and made more representative.[286]

From South Asia, India, Pakistan, Bangladesh and Sri Lanka were notably sceptical. The Pakistani ambassador, while acknowledging that the international community should seek to deter and punish violations of international humanitarian law in conflict situations, argued that "Pakistan cannot embrace the concept of a 'responsibility to protect' [as] it appears to us that this is an evolution of the earlier concept of 'humanitarian intervention'." The Pakistani representative did concede that international action may be necessary in situations of state *collapse*, but that even then, "it will be essential to guard against unilateral or unauthorized intervention by regional or global powers to promote their own political, economic or strategic interest."

Larger Freedom: Towards Development, Security, And Human Rights For All, 19 April 2005, 2. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[285] Statement by Ambassador Mehdi Danesh-Yazdi, Deputy Permanent Representative of the Islamic Republic of Iran at the Informal Thematic Consultations of the General Assembly on the Report of the Secretary-General, "In Larger Freedom: Towards Development, Security and Human Rights for All," Cluster III issues (freedom to live in dignity), 20 April 2005, 2. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[286] Statement of the State of Qatar, Delivered by H.E. Ambassador Nassir Bin Abdulaziz Al-Nasser, Permanent Representative of the State of Qatar to the United Nations, in the Informal Consultations of the General Assembly on The Report of the Secretary-General entitled "In Larger Freedom: Towards development, security and human rights for all" (Cluster III: Freedom to Live in Dignity), 19 April 2005, 3. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

Interestingly, the Pakistani representative argued that any such international actions in collapsed states had to be authorized collectively by the Security Council "or, failing this, by the General Assembly." Even in such circumstances, however, "the sovereignty, unity and territorial integrity of the State concerned must be fully safeguarded and preserved and authority transferred back as soon as possible to its own people." Pakistan also emphasized that any credible "responsibility to protect" would have to rely on prior "responsibility to assist" states in fulfilling their right to development.[287] The Bangladeshi representative was similarly critical, disagreeing with the Secretary-General's assertion that the "responsibility to protect" constituted an "emerging norm," arguing that, "at present, there is no consensus whatsoever in the membership about the notions of 'responsibility to protect' or 'humanitarian intervention'." While agreeing that genocide and ethnic cleansing deserved unequivocal condemnation, Bangladesh urged "extreme caution against subjective application of these so-called principles of 'responsibility to protect' or 'humanitarian intervention,' which would ignore some and acknowledge other atrocities."[288] Echoing the concerns of others, the Indian representative argued that discussion of the "responsibility to protect should not become a "cover for conferring any legitimacy on the so-called 'right of humanitarian intervention'."[289] Among East Asian

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[287] Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the United Nations, in the Informal Thematic Consultations on Cluster III "Freedom to Live in Dignity," 19 April 2005, 5. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[288] Statement by H.E. Dr. Iftekhar Ahmed Chowdhury, Ambassador and Permanent Representative of Bangladesh to the United Nations, at the informal consultations on cluster III (Freedom to Live in Dignity) issues of the Report of the Secretary-General "In larger freedom: towards development, security and human rights for all," 19 April 2005.
http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[289] Statement by Mr. Nirupam Sen, Permanent Representative, at the Informal thematic consultations of the General Assembly on The Report of the Secretary-General Entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" (A/59/2005) (On Cluster III Issues: Freedom to Live in Dignity), 20 April 2005, 3.
http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

states, Indonesia, Malaysia and Vietnam all expressed reservations regarding the R2P principle.[290]

The most critical of the new concept were Cuba and Venezuela. Cuba argued that "responsibility to protect" was little more than a new version of the "right of intervention," and that its adoption by the UN would be "suicidal" to small states under conditions "characterized by the existence of an economic and military dictatorship exerted by the superpower," double-standards, contempt for international law and the political manipulation of human rights.[291] The Venezuelan delegate was scathing in his criticisms of the Secretary-General's recommendation "that the so-called international community — a euphemism for the major Powers and their representatives — should shoulder the 'responsibility to protect' as a basis for collective action against genocide, ethnic cleansing and crimes against humanity." R2P was "a pretext for interfering in the internal affairs of States — the weak ones, of course — applying double standards and concealing unmentionable motives," and would encourage the Security Council to adopt "coercive measures against the States — States of the South — which, on the basis of the views of just a few, would be stigmatized as systematic violators of collective human rights and punished through 'humanitarian intervention'."[292]

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[290] See Statement by the Indonesian Delegation at the Informal Thematic Consultations of the General Assembly on Cluster III of the Secretary-General's Report (Freedom to live in dignity), 20 April 2005, 2 and Statement by H.E. Rastam Mohd Isa, Permanent Representative of Malaysia to the United Nations at the Informal Thematic Consultations of the General Assembly on the Report of the Secretary-General entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" (A/59/2005) Cluster III: Freedom to live in dignity, 20 April 2005, http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010). See also statement by Permanent Representative of Viet Nam to the General Assembly, 59th session, provsional verbatim record, 89th plenary meeting, 8 April 2005 (UN document A/59/PV.89), 22.

[291] Statement of Orlando Requijo, Permanent Representative of the Republic of Cuba to the United Nations, Informal Thematic Consultations: Cluster III, 19 April 2005, 2. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

[292] Statement by the Permanent Representative of Venezuela to the General Assembly, 59th session, provisional verbatim record, 89th plenary meeting, 8 April 2005 (UN document A/59/PV.89), 24.

There was thus very little "ideological coherence" apparent in the initial reactions of the developing countries to the "responsibility to protect." While opponents like Cuba, Venezuela and Egypt saw it as a fig-leaf for interference by great powers in the internal affairs of weaker states, supporters, especially in Latin America and sub-Saharan Africa, welcomed it as an innovation that could facilitate future action by the United Nations in response to mass atrocities. The NAM remained unable to bridge this gap. When they first addressed the "responsibility to protect" directly in February 2003 during the NAM's thirteenth conference of heads of state and government in Kuala Lumpur, NAM members could agree only to take note of "similarities between the new expression 'responsibility to protect' and 'humanitarian intervention'" and request the Movement's Co-ordinating Bureau in New York to "carefully study and consider the expression 'the responsibility to protect' and its implications on the basis of the principles of non-interference and non-intervention as well as the respect for territorial integrity and national sovereignty of States."[293] This noncommittal position was repeated word for word in the NAM's August 2004 ministerial declaration from Durban, South Africa,[294] and in the NAM's official statements on the High-Level Panel report[295] and the report of the Secretary-General.[296]

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[293] Non-Aligned Movement, *Final Document of the Thirteenth Conference of Heads of State and Government of the Non-Aligned Movement*, Kuala Lumpur, 25 February 2003, para. 16 (contained in UN document A/57/759–S/2003/332).

[294] Non-Aligned Movement, *Final Document of the Fourteenth Ministerial Meeting of the Non-Aligned Movement*, Durban, 19 August 2004, para. 8. http://www.nam.gov.za/media/040820.pdf (accessed 15 July 2005).

[295] Non-Aligned Movement, *Comments of the Non-Aligned Movement on the Observations and Recommendations Contained in the Report of the High-Level Panel on Threats, Challenges and Change* 28 February 2005, para. 15. http://www.un.int/malaysia/NAM/NAM.html (accessed 15 July 2005).

[296] Statement by H.E. Ambasador Rastam Mohd Isa, Permanent Representative of Malaysia to the United Nations, in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement, on behalf of the Non-Aligned Movement, at the Informal Thematic Consultations of the General Assembly on the Report of the Secretary-General entitled "In larger freedom: towards development, security and human rights for all," (A/59/2005) on Cluster III: Freedom to live in dignity, 19 April 2005, para. 4. http://www.reformtheun.org/index.php/issues/102?theme=alt4 (accessed 15 July 2010)

As the NAM's position indicates, a key concern of many developing countries was the degree to which the "responsibility to protect" concept could be used to reintroduce the "right of humanitarian intervention" which the South had decisively rejected in 1999 and 2000. Supporters of the "responsibility to protect," from the North and South, thus went out of their way in the lead-up to the 2005 World Summit to assert that the "responsibility to protect" and "humanitarian intervention" were *not* the same thing. While ardent critics like Venezuela, Cuba and Iran could not be won over—thus ensuring that the NAM as a whole stuck to its noncommittal position in the ensuing discussions of the successive drafts of the World Summit Outcome Document[297]—an important development in the last few months before the World Summit was the slow shift in position of a number of other sceptical states such as Malaysia, Pakistan and Egypt. This shift was facilitated by the successful distancing of R2P from its association with "humanitarian intervention" and the emphasis in newer iterations of the concept on non-coercive measures, including those aimed at assisting states in building their capacity to protect and those aimed at addressing "root causes" of conflict and humanitarian crises. The new emphasis on R2P as a "continuum" of measures, most of them non-coercive, was evident in the first draft of the Outcome Document presented by the President of the General Assembly on 3 June 2005. The document characterized the "responsibility to protect" as follows:

> We agree that the responsibility to protect civilian populations lies first and foremost with each individual State. The international community should, as

[297] See Statement by the Chairman of the Coordinating Bureau of the Non-Aligned Movement on Behalf of the Non-Aligned Movement at the Informal Plenary Meeting of the General Assembly Concerning the Draft Outcome Document of the High-Level Plenary Meeting of the General Assembly, Delivered by H.E. Ambassador Radzi Rahman, Charge d'Affaires A.I. of the Permanent Mission of Malaysia to the United Nations, 21 Jun 2005, para. g(i). http://www.un.int/malaysia/NAM/NAM.html (accessed 15 July 2005).

> necessary, encourage and help States to exercise this responsibility. The international community has also the responsibility to use diplomatic, humanitarian and other peaceful means under Chapter VI and VIII of the UN Charter to help protect civilian populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. If such peaceful means appear insufficient, we recognize our shared responsibility to take collective action, through the Security Council and, as appropriate, in cooperation with relevant regional organizations under Chapter VII of the Charter.[298]

The sequential nature of R2P—moving from state responsibility to international encouragement and assistance, the use of peaceful means under Chapter VI and VIII, and finally collective action under Chapter VII—was also emphasized by several R2P supporters during the GA President's first informal consultations on the draft Outcome Document held in the Assembly in late June and late July-early August. Tanzania, reiterating its claim that "the responsibility to protect is not humanitarian intervention," and insisting that the concept was entirely compatible with the principles of sovereignty, territorial integrity and non-interference, argued that R2P be seen as progressing through four stages: first, a "national responsibility to protect"; second, international prevention efforts through diplomatic means and early warning mechanisms; third, international assistance including technical, social and humanitarian; and, fourth, as a last resort "collective action to protect civilians by the Security Council under chapters VI and VII of the Charter or by regional organisations in consultations with the Security Council on matters related to genocide, crimes against humanity and war crimes."[299] The Chilean representative at the these meeting argued that the "responsibility to protect" implied an

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[298] United Nations General Assembly, draft Outcome Document of the High-Level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly, (UN document A/59/HLPM/CRP.1), 8 June 2005, para. 72.

[299] Statement by Ambassador Augustine Mahiga, Permanent Representative of the United Republic of Tanzania to the United Nations on the Draft Outcome Document of the High-Level Plenary Meeting of the United Nations General Assembly, 30 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

international "responsibility to prevent and assist" and that, in order to protect populations from atrocity crimes, "the international community is obliged to have recourse first of all to the peaceful means provided for in Chapters VI and VIII of the Charter... Collective action under Chapter VII, through the Security Council and with the cooperation of regional organizations, must be undertaken only if the peaceful means and instruments provided for in Chapters VI and VIII prove ineffective."[300] The Mexican delegate similarly proposed "emphasizing that the concept is a continuum and that it therefore includes prevention and international assistance, including development and capacity-building."[301] The Argentine representative acknowledged the legitimacy of fears that R2P could be misused for political purposes, but insisted that "the [draft outcome] document clearly establishes that this is a last resort, when all diplomatic, humanitarian and pacific means have failed and it comes to the protection of a civil population of a genocide, of war crimes or other crimes against humanity."[302]

This sequential approach, with its emphasis on state responsibility and non-coercive means, seemed to be more acceptable to several R2P sceptics. Thus Pakistan, while reiterating that "many doubts remain regarding the concept of the so-called 'responsibility to protect'," also allowed that the concept should be further discussed and studied. The Pakistani delegate declared that while all states agreed on the necessity of

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[300] Statement by Ambassador Alfredo Labbé, Deputy Permanent Representative of Chile to the United Nations, Meeting of the Plenary Assembly on the Reform of the United Nations, 21 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

[301] Statement by the Permanent Representative of Mexico, Ambassador Enrique Berruga, during the Plenary Meeting on the Final Draft Outcome for the High-Level Plenary Session to be Held in September 2005, Presented by the President of the 59th General Assembly, Mr. Jean Ping. 20 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

[302] Statement by the Argentine Delegation at the UN General Assembly, Exchange of views on the President's draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005, 22 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

civilian protection in armed conflicts, it was necessary to ensure that international efforts to promote such protection did not contravene the principles of non-intervention, national sovereignty and territorial integrity.[303] Egypt also seemed to indicate that it would be prepared to support a declaration on R2P provided it did not alter existing international law concerning intervention and the use of force. The Egyptian delegate declared: "States are fully responsible for the protection of their own citizens. In doing so, states are free to receive assistance or support from regional and international organizations and arrangements, or from the international community as they see fit. In cases of violations to international law that could constitute a breach to international peace and security, the Security Council may interfere in accordance with its mandate in the Charter."[304] The Sri Lankan delegate declared that his country "agree[d] with the proposition that primary responsibility to protect the civilian population lies exclusively within the sovereign domain of each individual State" and that "the international community should, where necessary, encourage and help States to exercise this responsibility." International action had to begin with "peaceful means under Chapter VI and Chapter VII of the Charter to protect civilians... and if such measures prove insufficient, the exercise of shared responsibility to take action through the Security Council, must be in full conformity with the purposes and principles of the UN Charter and discharged in a manner that the

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[303] Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the United Nations, in the informal meeting of the Plenary to exchange views on the President's draft Outcome Document of the High-level Plenary Meeting of the General Assembly of September 2005 (A/59/HLPM/CRP.1), 21 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

[304] Statement H.E. Ambassador Maged Abdelaziz, The Permanent Representative of Egypt before the Informal Meeting of the Plenary on the High-Level Plenary Meeting of the General Assembly of September 2005, 21 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

concept of responsibility to protect is not diverted for the achievement of political ends."[305]

While the hardcore R2P sceptics in the NAM (Cuba, Venezuela, Iran) continued to reject any inclusion of the concept in the Outcome Document, the shift in emphasis towards non-coercive measures, and assurances that R2P was not the same thing as "humanitarian intervention," ensured that enough developing countries were willing to agree to its inclusion in the final document.

2.2 Criteria for the use of force

This shift on the part of notable Southern R2P sceptics made some consensus position on R2P possible, provided it emphasized the "continuum" nature of R2P, emphasized state responsibility, preventive and non-coercive measures, and limited coercive action to that authorized by the Security Council. On the question of coercive measures, however, important divergences of views remained within the global South on the question of the usefulness and legitimacy of criteria for guiding decision making on the use of force. As we saw in the previous chapter, the ICISS had proposed several criteria—just cause, right intention, last resort, proportional means and reasonable prospects—that the Security Council should use to guide decision-making on whether to authorize coercive intervention for human protection purposes. The Commission had also suggested that such criteria could be used by ad hoc coalitions or individual states in

[305] Statement by Mr. V. Padukkage, Charge d'Affaires of the Permanent Mission of Sri Lanka to the United Nations, At the Informal Meeting of the Plenary on the Draft Outcome Document A/59/HLPM/CRP.1, 30 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

cases where the Security Council failed to authorize prompt action.[306] The report of the High-Level Panel essentially reiterated the proposed criteria, though without any discussion of the possibility of unauthorized intervention.[307] The Secretary General called on the Security Council to adopt a resolution setting out these criteria and expressing its intention to be guided by them in decisions on the use of force.[308] The early drafts of the World Summit Outcome Document proposed that states "recognize the need to continue discussing principles for the use of force, as identified by the Secretary-General, and that such principles should be among the factors considered by the Security Council in deciding to authorize the use of force as provided under the Charter."[309]

Within the global South, there was a division of opinion between those who accepted that the criteria could be useful in both enabling the Security Council to come to agreement on the necessity of collective action in R2P-type situations and constraining the abuse of the concept for political ends, and those who feared that the formalization of such criteria would actually *encourage* abuse by giving interveners more arguments to use to justify illegitimate intervention. Among the supporters of criteria were several African as well as a Latin American states.[310] The AU's official position on UN reform,

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[306] ICISS, *Responsibility to Protect* vol. 1, 55.

[307] See United Nations, High-Level Panel on Threats Challenges and Change, *A More Secure World*, 67.

[308] United Nations, General Assembly, *In Larger Freedom,* para. 126.

[309] United Nations General Assembly, draft Outcome Document of the High-Level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly (UN document A/59/HLPM/CRP.1) 8 June 2005, para. 47. http://www.reformtheun.org/index.php/issues/974?theme=alt4 (accessed 15 July 2010).

[310] Statement by Permanent Representative of Chile in UN General Assembly, 59th session, provisional verbatim record, 86th plenary meeting, 6 April 2005 (UN document A/59/PV.86), 20; Statement by H.E. Ambassador DS Kumalo, Permanent Representative of South Africa, at the 4th Informal Meeting of the Plenary to Continue an Exchange of Views on the Recommendations Contained in the Report of the High-Level Panel on Threats, Challenges and Changes, 27 January 2005, http://www.southafrica-newyork.net/pmun/speeches/2005/highlevelpanelreport.htm (accessed 15 July 2010) ; Statement by the Permanent Representative of Mexico, Ambassador Enrique Berruga Filloy at the Informal Session of the

the so-called "Ezulwini Consensus" (see below) also supported the use of the criteria by the Security Council when authorizing the use of force in R2P situations.[311] Among the opponents of criteria were the R2P sceptics in the NAM. Pakistan, for example, argued that the criteria would be subjectively and selectively applied and frequently abused.[312] The permanent representative from Algeria pointed to the difficulty of having any proposed criteria interpreted by a unrepresentative body like the Security Council, and that there was no guarantee that these criteria would facilitate agreement between great powers if these continued to pursue their narrow political interests.[313] Egypt and Vietnam expressed similar concerns.[314] Other states (such as Malaysia) rejected the development of criteria by the Security Council but supported their discussion within the General Assembly.[315] At least one state (Uruguay) opposed the formalization of criteria on the use

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General Assembly's Plenary Session, 24 February 2005, http://www.un.int/mexico/2005/interv_012405ing.htm (accessed 15 July 2010)

[311] African Union, Executive Council, *The Common African Position on the Proposed Reform of the United Nations: "The Ezulwini consensus,"* 8 March 2005 (AU document Ext/EX.CL/2 (VII)), para. b(i). http://www.responsibilitytoprotect.org/files/AU_Ezulwini%20Consensus.pdf (accessed 15 July 2010).

[312] Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the United Nations at the informal meeting of the General Assembly Plenary, 27 January 2005. http://www.pakun.org/statements/Plenary_of_General_Assembly/2005/01272005-01.pdf (accessed 15 July 2010).

[313] United Nations General Assembly, 59th session, provisional verbatim record, 86th plenary meeting, 6 April 2005 (UN document A/59/PV.86), 9.

[314] Statement by H.E. Ambassador Maged Abdelaziz, Permanent Representative of the Arab Republic of Egypt, Informal Thematic Consultations on Cluster II: Freedom from fear, in the Report of the Secretary-General entitled *In Larger Freedom: Towards Development, Security and Human Rights for All*, 21 April 2005. http://www.reformtheun.org/index.php/government_statements/c303?theme=alt2 (accessed 15 July 2010); Statement by Mr. Nguyen Duy Chien, Deputy Permanent Representative of Viet Nam at the informal thematic consultations of the General Assembly on the Report of the Secretary-General entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" (on cluster II: Freedom from fear), 22 April 2005. http://www.reformtheun.org/index.php/government_statements/c303?theme=alt2 (accessed 15 July 2010).

[315] Statement by H.E. Rastam Mohd Isa, Permanent Representative of Malaysia to the United Nations, at the Informal Thematic Consultations of the General Assembly on the Report of the Secretary-General entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005), Cluster II: Freedom from fear, 22 April 2005 http://www.reformtheun.org/index.php/government_statements/c303?theme=alt2 (accessed 15 July 2010).

of force for fear that they could *inhibit* rather than facilitate collective action under Chapter VII.[316]

Despite this evident difference of opinion, the position of those opposed to the formalization of criteria on the use of force by the Security Council carried the day within the NAM. While the NAM's official response to the High-Level Panel report contained no statement on the question of criteria, by the time of the informal consultations on the Secretary-General's report a few months later, the NAM was official opposed to the Security Council adopting a resolution laying out criteria for the use of force,[317] a position which the NAM reiterated in the informal Assembly consultations on successive drafts of the Outcome Document.[318] Of course, this does not mean that those developing countries in favour of the adoption of criteria had changed their minds; a number of them continued to promote the adoption of criteria by the Security Council,[319] though a significant number seem to have agreed on a compromise position whereby any criteria on the use of force should be elaborated and adopted by the General Assembly rather

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[316] United Nations General Assembly, 59th session, provisional verbatim record, 87th plenary meeting, 7 April 2005 (UN document A/59/PV.8), 11.

[317] See Statement by H.E. Ambassador Rastam Mohd Isa, Permanent Representative of Malaysia to the United Nations, in his capacity as Chairman of the Coordinating Bureau of the Non-Aligned Movement, on behalf of the Non-Aligned Movement, at the Informal Thematic Consultations of the General Assembly on the Report of the Secretary-General entitled "In larger freedom: towards development, security and human rights for all" (a/59/2005) on Cluster II: Freedom from fear, 21 April 2005, para. 17. http://www.un.int/malaysia/NAM/NAM.html (accessed 15 July 2010).

[318] Statement by the Chairman of the Coordinating Bureau of the Non-Aligned Movement on Behalf of the Non-Aligned Movement at the Informal Plenary Meeting of the General Assembly Concerning the Draft Outcome Document of the High-Level Plenary Meeting of the General Assembly, Delivered by H.E. Ambassador Radzi Rahman, Charge d'Affaires A.I. of the Permanent Mission of Malaysia to the United Nations, 21 Jun 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

[319] See e.g. Statement by Ambassador Alfredo Labbé, Deputy Permanent Representative of Chile to the United Nations Meeting of the Plenary Assembly on the Reform of the United Nations, 21 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

than the Security Council.[320] In early September 2005, as the Outcome Document was nearing its final draft, the NAM submitted to the President of the General Assembly a final set of proposed amendments which again called for removing any reference to criteria from the Outcome Document.[321] In the end, reference to the criteria on the use of force, included in the early drafts of the Outcome Document, were dropped in the final draft, though this was likely because of the opposition of the US to the proposal as well as that of the NAM.[322]

2.3 The problem of Security Council inaction

All developing countries that supported (or at least stopped actively opposing) the "responsibility to protect" in the lead-up to the 2005 World Summit did so on the understanding that the concept should not be used to legitimate unauthorized unilateral "humanitarian intervention." Those developing countries that opposed the concept argued that it was dangerous precisely because it would facilitate such intervention. There was thus largely a consensus in the global South, as there had been since the Kosovo war, against any consecration of unilateral "humanitarian intervention." There was also an awareness, however, that the problem that gave rise to unilateral "humanitarian intervention"—the problem of Security Council *inaction* in the face of grave crises—had to be faced if such intervention was to be avoided. In February 2005, this awareness was,

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[320] This was the position e.g. of Brazil, South Africa, Algeria, Argentina, Panama, Mexico and Malaysia as expressed during the first round of informal consultations on the first draft of the Outcome Document in late June. See statements at http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

[321] Non-Aligned Movement, *Proposed Amendments by the Non-Aligned Movement to the Draft Outcome Document of the High-level Plenary Meeting of the General Assembly(A/59/HLPM/CRP.1/Rev.2), 1 September 2005*.http://www.globalpolicy.org/images/pdfs/0901nam.pdf (accessed 15 July 2010)

[322] The US expressed its opposition to criteria in the document circulated by US Ambassador John Bolton containing proposed US revisions to August 5 draft of Summit Outcome Document. Available at http://www.reformtheun.org/index.php/articles/1352 (accessed 15 July 2010)

for the first time, translated into a collective position by the Non-Aligned Movement. Where the NAM had in the past routinely criticized (and continued to criticize) the Security Council's overreliance on coercive measures under Chapter VII, it now added criticism of the Council's inaction, arguing that "the Security Council has been too quick to threaten or authorize action [under Chapter VII] in some cases *while being silent and inactive in others*."[323] This novel formulation was likely the result of pressure from African states which had consistently expressed concern over the Council's inaction in the case of Rwanda, but it may also have been supported by Arab states which had long sought greater Council activism in the context of the conflict in Palestine. Part of the problem in the latter case in particular (as it had been the case of Kosovo) was the power of the veto. In March 2001, NAM countries on the Council had proposed a resolution calling for the deployment of an international intervention force in the Palestinian Occupied Territories which obtained nine affirmative votes but was vetoed by the US.[324]

If there was some coherence in the South on the diagnosis of the problem of Security Council inaction, there was little agreement on possible solutions. Three possible solutions were proposed by NAM countries: a new "right of intervention" for regional organizations with only *ex post facto* Security Council authorization; a formal mechanism allowing the Security Council to override the veto; and reform of the Security Council to increase its membership and make it more accountable to the general UN membership. None of these proposals, however, gained general adherence among

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[323] Non-Aligned Movement, *Comments of the Non-Aligned Movement on the Observations and Recommendations Contained in the Report of the High-Level Panel on Threats, Challenges and Change* 28 February 2005, para. 64.1. http://www.un.int/malaysia/NAM/NAM.html (accessed 15 July 2005).

[324] See "Draft Resolution on Middle East Situation Rejected by Security Council," United Nations Press Release SC/7040, 27 March 2001. http://www.un.org/News/Press/docs/2001/sc7040.doc.htm (accessed 15 July 2010).

Southern states in the lead-up to the 2005 World Summit. Security Council enlargement and reform, while generally agreed to be necessary, was particularly divisive.

2.3.1 Regional intervention and *ex post facto* authorization

As we saw in the previous chapter, African states had committed themselves in the Constitutive Act of the African Union to a regional "right of intervention" which would allow the AU Assembly to authorize regional intervention in AU member states in "grave circumstances" involving war crimes, genocide and crimes against humanity.[325] As numerous scholars have noted, this proposal emerged directly out of the African experience of the lack of international political will in dealing with its crises, most notably and disastrously in Rwanda. In Rwanda, international inaction—what Simon Chesterman calls "inhumanitarian non-intervention"—occurred not because of concerns with Rwanda's sovereignty, but because of a lack of interest or will by the permanent members of the Security Council to address the looming genocide. This lack of will was famously symbolized by the Council's April 21, 1994 vote to withdraw (rather than reinforce) most of the UN peacekeeping mission in Rwanda, leaving the Rwandan Tutsi to their fate. At least one African state proposed that it would intervene but requested logistical support which was not forthcoming. The experience of international inaction over Rwanda was arguably the formative experience of African international politics of the second half of the 1990s and spurred serious consideration of the development of

[325] African Union, Constitutive Act of the African Union, article 4(h).

regional mechanisms to provide "African solutions to African problems" without being dependent on an inattentive Security Council.[326]

The Constitutive Act, which entered into force in 2002, left unanswered the question of the compatibility of the AU's "right to intervene" with the UN Charter's proscription of regional resort to force without Security Council authorization. A strict reading of the Charter, Article 53 of which provides that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council," would suggest that any AU-authorized intervention would have to be pre-authorized by the Council. In practice, however, subregional interventions in the 1990s (by ECOWAS in Liberia and Sierra Leone) had proceeded without prior authorization, and had been subsequently welcomed and authorized by the Council. As we saw in the previous chapter, the ICISS had argued that the Liberian and Sierra Leonean cases had created a "certain leeway" for future interventions by regional organizations that receiving *ex post facto* Security Council authorization.[327] The High-Level Panel similarly suggested that while "peace operations" undertaken by regional organizations should in all cases seek Security Council authorization, "in some urgent situations that authorization may be sought after such operations have commenced."[328] This was largely in accordance with the view of most AU states. The AU position on regional intervention was fleshed out in March 2005 by the AU Executive Council

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[326] For an African perspective on Rwanda see Ibrahim Gambari, "An African Perspective," in *The UN Security Council: From the Cold War to the 21st Century*, ed. David M. Malone (Boulder, CO: Lynne Rienner Publishers, 2004), 512-520. For the influence of Rwanda on African thinking on intervention see Jennifer Welsh, "The Rwanda Effect: The Development and Endorsement of the 'Responsibility to Protect'," in *After Genocide: Transitional Justice, Post-Conflict Reconstruction, and Reconciliation in Rwanda and Beyond*, eds. Phil Clark and Zachary D. Kaufman (New York: Columbia University Press, 2009), 333-350.

[327] ICISS, *Responsibility to Protect* vol. 1, 54.

[328] Ibid., 85.

(composed of foreign ministers from all AU states) which met in Ezulwini, Swaziland and agreed on a common AU position on UN reform. The "Ezulwini Consensus" endorsed the "responsibility to protect," and, recalling Article 4(h) of the AU Constitutive Act, argued for a larger role for regional organizations in fulfilling the responsibility to protect:

> Since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is imperative that Regional Organisations, in areas of proximity to conflicts, are empowered to take actions in this regard. The African Union agrees with the [High-Level] Panel that the intervention of Regional Organisations should be with the approval of the Security Council; although *in certain situations, such approval could be granted "after the fact" in circumstances requiring urgent action.*[329]

This position was an important challenge to existing norms of non-intervention and non-use of force, seeking to carve out a new exception to these norms, in a way not unlike that sought by Northern defenders of NATO's right of "humanitarian intervention." Unlike unauthorized "humanitarian intervention" of the kind conducted by NATO in Kosovo, however, the AU "right of intervention" had less drastic implications for legislative and existential sovereign equality, largely because it did not grant special rights to a self-selecting group of states to unilaterally determine which states had forfeited their sovereign inviolability, but instead vested the ability to make such a determination in a body that represented all states that were potentially subject to intervention. In principle, this safeguarded the legislative equality of all states in Union as they *consented* to the right of intervention by their adherence to the Constitutive Act. Despite this, beyond Africa there was little enthusiasm for the new exception to the rule of non-intervention and non-use of force that the AU's "right of intervention" implied.

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[329] African Union, Executive Council, *"Ezulwini Consensus"*, b(i), emphasis added.

Most developing countries, while refraining from criticizing the AU, opted for a strict reading of Article 53 (Chapter VIII) of the Charter. The Non-Aligned Movement's official comments on the report of the High-Level Panel thus argued that "the role of regional arrangements [with regard to international peace and security] should be in accordance with Chapter VIII of the UN Charter and should not in any way substitute the role of the UN."[330] In these same consultations, AU states were not particularly assertive in their promotion of the argument for *ex post facto* authorization, with no African states arguing explicitly for the formalization of such a mechanism, except indirectly through their endorsement of the "Ezulwini Consensus." As such, no reference to *ex post facto* authorization of regional intervention was included in the successive drafts of the Outcome Document, which referred only to "cooperation" between the Security Council and "relevant regional organizations" and specifically stated that such cooperation should be in accordance with Chapter VIII of the Charter.[331]

2.3.2 Overruling the veto

If the impediment to intervention in Rwanda was lack of political will on the part of the P5, the impediment to intervention in Kosovo was, as we have seen, the power of the veto. The ICISS, the High-Level Panel, and the Secretary-General's report all addressed the problem of the veto. The ICISS noted that the veto was widely viewed "as likely to be the principal obstacle to effective international action in cases where quick and decisive action is needed to stop or avert a significant humanitarian crisis." In order to deal with this problem the ICISS endorsed the concept of a "code of conduct" for the

[330] Non-Aligned Movement, *Comments of the Non-Aligned Movement,* para. 52.
[331] United Nations General Assembly, *World Summit Outcome Document* (UN document A/RES/60/1), 24 October 2005.

P5 whereby every permanent member of the Council, "in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct the passage of what would otherwise be a majority resolution" authorizing action on the "responsibility to protect."[332] The High-Level Panel also endorsed this view and further suggested a system of "indicative voting" under which Council members could call for a public indication of positions on a proposed action before an actual vote in order to force powers contemplating the veto to explain their positions.[333] The Secretary-General endorsed the proposals of the High Level Panel.[334]

In its official comments on the report of the High-Level Panel, the NAM addressed the problem of the veto directly, and criticized the High-Level Panel's proposals as insufficient. Instead of voluntary "self-restraint" by the P5 and "indicative voting" the NAM proposed three possible measures to formally restrain or overrule the use of the veto:

> -limiting the right of veto to actions taken by the Council under Chapter VII
>
> -introducing a possibility of overruling the veto by an affirmative vote of certain number of members of an expanded Security Council
>
> -introducing a possibility of overruling the veto by a two-thirds majority vote in the General Assembly under the Uniting for Peace procedure.[335]

While the NAM had been calling for the restraint and eventual abolishing of the veto for many years, these were the first concrete proposals for mechanisms to overrule the veto that the NAM had ever proposed, and they were proposed specifically to

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[332] ICISS, *Responsibility to Protect*, vol. 1, 51.
[333] UN High-Level Panel, *A More Secure World*, para. 257.
[334] United Nations General Assembly, *In Larger Freedom*, para. 170.
[335] Non-Aligned Movement, *Comments of the Non-Aligned Movement*, paras. 66.1.1-66.1.3.

overcome Security Council failure to authorize coercive measures to address conflict situations and humanitarian crises. Of these proposals, the last one was the only one which developing countries spoke in favour of in any number during the informal consultations on the reports of the High-Level Panel and Secretary-General and the drafts of the World Summit Outcome Document. The proposal to empower the General Assembly with a competence to override the veto was in consonance with the broader desire expressed by the NAM and by developing countries to claim a larger role for the General Assembly, in which the South was fully represented, and to reverse what the NAM viewed as the Council's "encroachment" on the prerogatives of the Assembly. This desire was clearly reflected in the NAM's response to the report of the High-Level Panel, which affirmed the role of the Assembly on issues related to peace and security, and argued that the General Assembly was "better equipped to address a broader range of threats and challenges than the Security Council."[336] In discussing the need to enhance the role and authority of General Assembly, the NAM document expressed support for the use of the "Uniting for Peace" procedure, which it recommended simplifying "in order to enable swifter and urgent action by the General Assembly."[337] All of these proposals were again put forward by the Chairman of the NAM Coordinating Committee in the informal consultations on the Secretary-General's report in April 2005,[338] and were echoed by a number of states in their individual comments in the informal Assembly consultations on the drafts of the Outcome Document. A number of states (including

[336] Ibid., para 20

[337] Ibid., para 61.5.

[338] Statement by H.E. Ambassador Radzi Rahman, Charge d'Affaires A.I. of the Permanent Mission of Malaysia to the United Nations on Behalf of the Non-Aligned Movement at the Informal Thematic Consultations of the General Assembly on the Report of the Secretary-General entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" (A/59/2005) on Cluster IV: Strengthening the United Nations, 27 April 2005. http://www.reformtheun.org/index.php/government_statements/c305?theme=alt2 (accessed 15 July 2010).

India and Mexico) referred in a general way to the competencies of the General Assembly in the realm of international peace and security,[339] while others (El Salvador, Colombia) referred specifically to the "Uniting for Peace" procedure as a means of overcoming "paralysis" in the Security Council.[340] Pakistan, still a prominent critic of the "responsibility to protect," argued that international intervention in collapsed states "when necessary can only be authorized collectively by the Security Council and, failing this, *by the General Assembly.*"[341]

In general, however, there was no coherent and consistent demand from the global South for the formalization of the competencies of the General Assembly in authorizing coercive action in humanitarian crises or overruling the veto. After April 2005, the NAM stopped proposing the formalization of mechanisms for overruling the veto. In early September 2005, as the Outcome Document was nearing its final draft, the NAM submitted to the President of the General Assembly a final set of proposed amendments to his draft document. These included a call for the recognition of the General Assembly's role in the realm of international peace and security, but made no more reference to the "Uniting for Peace" procedure or the overruling of the veto.[342] Following this

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[339] Proposals by Mexico for the draft outcome document of the High-Level Plenary Meeting of the General Assembly, submitted by the President of the 59th General Assembly of the United Nations, Mr. Jean Ping, 30 June 2005. http://www.reformtheun.org/index.php/government_statements/c395?theme=alt2 (accessed 15 July 2010).

[340] See Intervención de la Embajadora Carmen Maria Gallardo Hernández, Representate Permanente de El Salvador, Asamblea General, 59 Periodo de Sesiones, Cluster IV: "El imperativo de acción colectiva: Fortalecimiento de las Naciones Unidas," 28 April 2005, 2; Statement by H.E. Mrs. María Ángela Holguín Cuéllar, Ambassador, Permanent Representative of Colombia to the United Nations, Informal Thematic Consultations of the General Assembly on Cluster IV: Strengthening the United Nations, 28 April 2005, 9. Both available at http://www.reformtheun.org/index.php/government_statements/c305?theme=alt2 (accessed 15 July 2010).

[341] Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the United Nations, in the Informal Thematic Consultations on Cluster-III "Freedom to Live in Dignity," 19 April 2005. http://www.reformtheun.org/index.php/government_statements/c304?theme=alt2 (accessed 15 July 2010)

[342] Non-Aligned Movement, *Proposed Amendments*, para. 55bis.

intervention by the NAM, reference to "the role of the General Assembly relating to the maintenance of international peace and security in accordance with the relevant provisions of the Charter" appeared in subsequent drafts of the Outcome Document and in the final resolution adopted by the Assembly, but the veto was not mentioned.[343]

2.3.3 Security Council reform

Developing countries were much more persistent in arguing for expansion and reform of the Security Council than they were in arguing for either *ex post facto* authorization of regional intervention or the overruling of the veto by the General Assembly. While Security Council enlargement and reform was presented as a crucial means of making the UN more democratic and representative of the realities of the early 21st century world, it was also considered by some representatives of developing countries as a prerequisite for enhancing both the effectiveness and legitimacy of future Security Council action in R2P-type situations. The rationale behind this argument was explained subsequently by the Indian ambassador to the UN (and noted R2P sceptic) Nirupam Sen. In Sen's opinion, mere affirmation by UN member states of an abstract "responsibility to protect" would not be enough to prevent or halt mass atrocities. As he explained

> The genocide in Rwanda happened because the strategic interests of the permanent five members were not affected and each of them has a veto. The responsibility to protect is not enough (if their strategic interests are not involved, the permanent five would not exercise it). Therefore, a key part of the solution is democratizing the Security Council. If major developing countries, including

[343] See United Nations General Assembly, *World Summit Outcome Document*, para 80.

from Africa, had been permanent members, it is inconceivable that the genocide in Rwanda would have been permitted to occur.[344]

Even more than the issue of *ex post facto* Security Council authorization of regional interventions or the overruling of the veto by the General Assembly, however, the question of Security Council expansion and reform failed to garner any consensus among developing countries. While virtually all developing states (and many Northern states) called for Security Council reform, the precise *form* that such reform should take was perhaps the single most divisive issue discussed in the run-up to the World Summit. The High-Level Panel had argued that Security Council expansion was crucial if Council decisions were to be seen as legitimate by UN member states, but failed to produce a single proposed model for Council expansion. Instead it proposed two models for expanding the Council. The first ("Model A") would have expanded it from 15 to 24 members by adding both permanent (though non-veto-wielding) and non-permanent members from all geographical regions (but especially from Africa and Asia). The second ("Model B") would also have expanded the Council to 24 members, but by adding only non-permanent (but renewable) seats.[345] The report of the Secretary-General failed to endorse either option and only urged members states to consider both, "or any other viable proposals."[346] Over the course of the summer of 2005, several such proposals emerged. On the one hand, Germany, Japan, Brazil and India, known collectively as the "G-4," proposed adding four non-permanent and six permanent seats, with the latter

[344] Nirupam Sen, "Nonstate Threats and the Principled Reform of the UN," *Ethics & International Affairs* 20, no. 2 (Summer 2006): 231-232.

[345] UN High-Level Panel, *A More Secure World*, 81.

[346] UN General Assembly, *In Larger Freedom*, para. 170.

assigned to themselves and to two African states.[347] This proposal was vigorously opposed by the so-called "Uniting for Consensus" group, made up largely of regional rivals of the G-4. These states ardently opposed any expansion of the Council that granted their rivals permanent status.[348] Meanwhile, African states staked out their own position on Security Council expansion in the "Ezulwini Consensus" which demanded not less than two permanent seats *with veto powers* for African states, as well as five non-permanent seats. On the key question of *which* two African states would get the new permanent seats, however, the Ezulwini Consensus left it to the AU to decide, noting only that it should take into consideration "the representative nature and capacity of those chosen."[349] In July 2005, these contending proposals were presented as draft resolutions to the General Assembly. Though there was a real possibility that the G-4 would push for a vote, in the end no vote was taken on any of them. Reflecting the divisiveness of the issue, the final draft of the World Summit Outcome Document contained very little on Security Council reform, merely committing states to "support early reform of the Security Council...in order to make it more broadly representative, efficient and transparent."[350]

Expansion of membership was not the only aspect of Security Council reform. It was clear to many that the Council would act effectively in future humanitarian crises only if its working methods were also reformed, particularly the veto. As we have seen, both the ICISS and the High Level Panel had proposed voluntary self-restraint on the part

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[347] See United Nations General Assembly, draft resolution A/59/L.64, 6 July 2005. http://www.globalpolicy.org/images/pdfs/0706g4resolution.pdf (accessed 15 July 2010).

[348] See United Nations General Assembly, draft resolution A/59/L.68, 21 July 2005. http://documents-dds-ny.un.org/doc/UNDOC/LTD/N05/434/76/pdf/N0543476.pdf?OpenElement (accessed 15 July 2010).

[349] African Union, Executive Council, *"Ezulwini Consensus"*, para. c(e) 2-5.

[350] United Nations General Assembly, *World Summit Outcome Document*, para. 153.

of the P5 in R2P-type cases, while the NAM had proposed more formal mechanisms for overruling the veto once it was cast. The NAM countries did not, however, collectively push for any such mechanisms during the negotiations over the Outcome Document. In any case, it is unlikely that the P5 would have agree to any such proposal. While the penultimate draft of the Outcome Document still included a bracketed text in the section on the "responsibility to protect" which invited the P5 to refrain from using the veto "in cases of genocide, war crimes, ethnic cleansing and crimes against humanity,"[351] this was dropped from subsequent drafts and the veto was not mentioned in the final outcome document.

3. Institutional environment

As with the debate over "humanitarian intervention" that followed the Kosovo war, the discussions of the "responsibility to protect" between 2001 and 2005 took place primarily within the UN General Assembly, especially in the informal thematic consultations on the reports of the High-Level Panel and Secretary-General and on the drafts of the Outcome Document held in the lead-up to the September 2005 World Summit. This institutional environment ensured that the opinions of developing countries would be heard and taken into account—provided Northern states remained committed to existing multilateral processes. As we have already seen, even as the US under the administration of George W. Bush increasingly favoured unilateralism over multilateralism, key Northern proponents of the "responsibility to protect," especially Canada, sought to attach R2P firmly to multilateral mechanisms, particularly after the

[351] General Assembly President's Draft Negotiating Document for the High-Level Plenary Meeting of the General Assembly of September 2005, 6 September 2005, para. 129. http://www.reformtheun.org/index.php/united_nations/c427?theme=alt2 (accessed 15 July 2005).

highly controversial US-led invasion of Iraq. Within the General Assembly, the Canadian delegation announced its intention to seek a resolution the "responsibility to protect" in October 2002.[352] While Canada was encouraged by the good reception of the ICISS report among many member states, particularly those from sub-Saharan African and Latin America, it quickly ran into a roadblock with the Non-Aligned Movement. As we have seen above, by 2002 the NAM had reiterated multiple times its rejection of the "so-called 'right' of humanitarian intervention," and even though the ICISS report had sought to shift the terms of debate, its overriding concern with military intervention "for human protection purposes" still raised suspicions in much of the developing world. Thus, while many Southern states may have welcomed R2P as an improvement on the earlier concept "humanitarian intervention," opponents of both concepts in the NAM were able, at least initially, to muster enough support within the Assembly to block Canadian efforts to promote the new concept. Thus, in 2002, the NAM succeeded in blocking a draft technical resolution proposed by Canada which would have bound the Assembly to deliberate the ICISS report. A revised draft that limited itself to asking the Secretary-General to facilitate dialogue on the "responsibility to protect" also failed to win support, largely because most Southern states decided to vote with the NAM.[353]

The Iraq war, and the use of humanitarian claims to justify it, enhanced the ability of the countries in the NAM most sceptical of the "responsibility to protect" to mobilize the support of other developing countries in opposition to the kind of change in norms implied by the new concept. While Canada sought and failed to persuade the General Assembly to pass a resolution that would "revise its interpretation of sovereignty to

[352] United Nations General Assembly, 57th session, provisional verbatim record, 26th plenary meeting, 8 October 2002 (UN document A/57/PV.26), 26.

[353] Bellamy, *Responsibility to Protect,* 70.

reflect...the core concepts inherent in *The Responsibility to Protect*,"[354] R2P sceptics in the NAM sought to mobilize the Assembly to *reaffirm* traditional norms of sovereignty and intervention. This they succeeded in doing in August 2004, when the Assembly passed resolution 58/317, *Reaffirming the central role of the United Nations in the maintenance of international peace and security and the promotion of international cooperation*. Based on a draft resolution proposed by Malaysia on behalf of the NAM, the resolution explicitly recalled the 1970 *Declaration on Principles of International Law Concerning Friendly Relations* and committed member states to "upholding the need to abide strictly by the relevant provisions of the Charter on the sovereign equality of all Member States, respect for their territorial integrity and political independence and non-interference in their internal affairs, the non-use of force or threat of force, [and the] resolution of disputes by peaceful means in conformity with the principles of justice and international law."[355] While calling upon states to "cooperate through constructive dialogue to ensure the full enjoyment, promotion and protection of all human rights...the prevention and end of genocide, crimes against humanity and war crimes and the prosecution of those responsible for such crimes," it also expressed "deep concern over any act or threat of foreign intervention or occupation of any State or territory in contravention of the Charter."[356] The resolution was passed by the Assembly in August by a vote of 93 to 2 with 47 abstentions. As with the resolution on *Respect for the purposes and principles of the Charter* passed by the Assembly following the Kosovo

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[354] Canada, Department of Foreign Affairs and International Trade, *Canadian Non-Paper on the Responsibility to Protect and the Evolution of the United Nations Peace and Security Mandate*, para. 4.3 http://www.responsibilitytoprotect.org/files/Canada_NonPaper_R2P.pdf (accessed 15 July 2010).

[355] United Nations General Assembly, draft resolution *Reaffirming the central role of the United Nations in the maintenance of international peace and security and the promotion of international cooperation* (UN document A/58/L.67), 27 July 2004.

[356] Ibid., operative. paras. 6 and 8.

war (see previous chapter), the vote on Resolution 58/317 divided the membership starkly along North-South lines, with virtually all developing countries voting for it, while virtually all Northern states abstained, with the exception of the US and Israel which voted against it.[357] Both Canada and EU states explained that their abstentions were based on a concern that the resolution over-emphasized the principles of sovereignty and non-intervention without including reference to the "responsibility that States have vis-à-vis their own populations."[358] As the Canadian delegate explained: "we cannot agree to explicitly raising the principles of sovereignty and noninterference without clearly identifying the responsibilities inherent in those principles. Member States carry the primary responsibility to protect their people from threats to their physical security. We believe that, when they fail to do so, the United Nations has a clear responsibility to act."[359] It is notable that even supporters of R2P in the South such as Argentina and Chile felt that these concerns were not sufficient to warrant not supporting the resolution.

The informal consultations that took place throughout 2005 on the reports of the High-Level Panel and Secretary-General and on the successive drafts of the Outcome Document were conducted within the framework of the General Assembly and according to its principles of sovereign equality and "one country one vote." They therefore provided developing countries with significant opportunities to state their positions on the "responsibility to protect." As the World Summit was billed as an important opportunity

[357] Roll-call vote in UN General Assembly, 58th session, provisional verbatim record, 93rd plenary meeting, 5 August 2004 (UN document A/58/PV.93), 5. The US objected to the resolutions characterization of international law, its failure to mention the proliferation of WMD and its call for a role for the UN in the management of the global economy.

[358] Ibid., 7 (Netherlands on behalf of the EU).

[359] Ibid., 5.

for the UN membership to affirm its collective commitment to implementing the commitments of the Millennium Declaration, it was expected in advance that the Outcome Document would be adopted unanimously rather than through a vote of the Assembly. This probably enhanced the leverage of the developing states, whose consent would be sought on all issues, though it also put pressure on dissidents to compromise in order not to be seen as spoilers. With respect to the "responsibility to protect," this was significant. Now that the concept had been distanced from "humanitarian intervention" and had been firmly tied with multilateral mechanisms for the authorization of the use of force, enough developing countries could agree to support (or not oppose it) to allow for its inclusion in all drafts of the Outcome Document. It is notable that very few Southern states called for the concept's complete removal from the draft. Those few that did (Venezuela, Cuba) could theoretically still have derailed the entire negotiations, but the political costs of this would have been very large. In the end, the Outcome Document, along with its section on the "responsibility to protect," was adopted by the Assembly on 16 September 2005 without a vote. Venezuela and Cuba (but no other state) subsequently expressed reservations both on the content of the document and on the manner in which it had been negotiated and adopted.[360]

4. Success of developing countries in shaping the direction of norm change

In this section I assess the impact of Northern attitudes, the ideological coherence of Southern diplomacy, and institutional environments between 2002 and 2005 on the success of developing countries in shaping the direction of change in international norms

[360] See United Nations General Assembly, 60th session, provisional verbatim record, 8th plenary meeting, 16 September 2005 (UN document A/60/PV.8), 45-8.

of sovereignty and intervention. Over all, I conclude that, in this part of my case study, my three working hypotheses are largely confirmed by the case material.

4.1 Impact of Northern attitudes

As we have seen above, Northern attitudes during the period following the publication of the ICISS report exhibited both a willingness to use force unilaterally and a commitment to multilateralism. Specifically, the US under the administration of George W. Bush embraced a foreign policy that dispensed with multilateral organizations when these failed to suit US security interests and geopolitical objectives. Some key figures in the administration were actively hostile to multilateral institutions such as the United Nations; Bush's ambassador to the UN, John R. Bolton, was notably sceptical of the very organization to which he was appointed as representative.[361] With regard to the use of force, the so-called "Bush doctrine," which called for the preventive use of force in response to the threat of transnational terrorism and "rogue states" seeking WMD, posed a radical challenge to the central norms of the postcolonial sovereignty regime. In effect, it claimed an special right for the US to intervene coercively at will against what it perceived as emerging threats, exempting it from the norms of non-intervention and non-use of force, and empowering it to unilaterally withdraw the sovereign rights of countries it designated to be "rogue states."

This assertion of unilateralism was highly controversial internationally, including among key US allies. The 2003 US-led invasion of Iraq, joined by the UK and a few other NATO countries, was opposed by NATO allies like France, Germany and Canada.

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[361] See John R. Bolton, "America's Skepticism About the United Nations," *US Foreign Policy Agenda* 2, no. 2 (1997): 25-27.

The use of humanitarian arguments to justify this invasion—including arguments that drew on the language and logic of the "responsibility to protect—seemed to illustrate to many the danger of abuse of humanitarian justifications for political ends, and led key Northern proponents of the "responsibility to protect" to try to tie that concept more firmly to multilateral mechanisms. As a result of this commitment to multilateralism, these states were forced to engage with the views of Southern states in a manner that would not have been necessary had they decided to fully join the US in unilateralism or moved towards a new North-only mechanism for future interventions. Bearing in mind that I am keeping "Northern capabilities" as constant, this finding supports my third hypothesis that the success of developing countries in influencing the direction change in international norms of sovereignty and intervention should increase if Northern attitudes are committed to action through multilateral institutions.

4.2 Impact of Southern ideological coherence

As we have seen above, Southern ideological coherence was high in the post-Kosovo period on the issue of unauthorized "humanitarian intervention" by ad hoc coalitions of states. This coherence was reinforced by the Iraq war, which seemed to vindicate the long-standing critique of US hegemony articulated by its most ardent critics in the NAM. Beyond its consensus against US unilateralism, however, the global South was divided over other issues related to the "responsibility to protect," specifically the question of whether R2P was essentially the same or different from "humanitarian intervention" (and thus whether it should be welcomed or opposed), the question of the usefulness and legitimacy of the formalization of criteria for the use of force for

humanitarian purposes, and the problem of Security Council inaction in grave human rights crises. On some of these issues, a degree of ideological coherence eventually emerged, while on others deep divisions remained. Thus most developing countries were eventually won over to the position that the "responsibility to protect" was not essentially the same thing as "humanitarian intervention," and that it was therefore acceptable for the concept to be endorsed by the General Assembly. Most developing countries also agreed that Security Council inaction in grave crises was a genuine problem. On the issue of how to deal with this problem, however, no consensus emerged. While most developing states favoured expansion and reform of the Council, no single model could be agreed on.

On issues on which a high degree of ideological coherence emerged among developing countries, the global South appears to have been more successful in shaping the direction of the debate over the "responsibility to protect" and the eventual area of consensus represented by the 2005 World Summit Outcome Document than on issues on which ideological coherence was low. This then supports my second working hypothesis, according to which the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should increase as the ideological coherence of the Southern diplomacy increases. This is clear for example when we look at the question of unauthorized intervention. As described in the previous chapter, the ICISS was equivocal on the question of who had the authority to decide upon the use of force in the context of the "responsibility to protect." While expressing a preference for the Security Council as "the first port of call on any matter relating to military intervention for human protection purpose," the Commission argued that it could

not be the last in cases where it failed to discharge its responsibilities.[362] While Southern reactions to the ICISS report were split, this split was largely about whether or not R2P was same as "humanitarian intervention" and could be used to legitimize unauthorized intervention. On the issue of unauthorized "humanitarian intervention" itself, the South was highly united in opposition. Conscious of this, those promoting the "responsibility to protect" now sought to tie the concept more firmly to existing norms of non-intervention and non-use of force and to the Security Council as the only legitimate mechanism for authorizing coercive action.

Unlike the ICISS, neither the High-Level Panel nor the Secretary-General's report discussed possible alternatives to the Security Council for authorizing the use of force as part of the "responsibility to protect." The High-Level Panel argued that the Security Council was "fully empowered under Chapter VII of the Charter of the United Nations to address the full range of security threats with which states are concerned" and tied the use of force for humanitarian ends exclusively to action by the Council, arguing that "there is a collective international responsibility to protect, *exercisable by the Security Council* authorizing military intervention as a last resort."[363] The Secretary-General's report essentially endorsed the HLP's formulation of the "responsibility to protect," tying the use of force for humanitarian purposes explicitly to the Security Council. In discussing the use of force, the Secretary-General argued that the Charter gave the Council "full authority to use military force, including preventively, to preserve international peace and security," and that this could be applied in cases of genocide, ethnic cleansing or other crimes against humanity which threatened international peace and security. In such cases,

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[362] ICISS, *Responsibility to Protect*, 53.
[363] UN High-Level Panel, *A More Secure World*, 66.

the Secretary-General argued, "the Security Council may out of necessity decide to take action under the Charter, including enforcement action, if so required."[364]

The exclusive emphasis on the Security Council as the body empowered to authorize the use of force in the context of the "responsibility to protect" remained a key element of the subsequent articulations of the concept in all successive drafts of the Outcome Document of the World Summit. While these drafts, unlike the High-Level Panel and Secretary-General's reports, did refer explicitly to the role of regional organizations in the use of force, they made clear that this role was always *subordinate* to that of the Council, and one of collaboration rather than authorization. Thus the June 3 and July 11 drafts referred to states "shared responsibility to take collective action, *through the Security Council* and, as appropriate [or "as necessary" in the July 11 draft], in *cooperation with* relevant regional organizations ["arrangements"] under Chapter VII of the Charter."[365] By the final draft in September the wording had changed slightly, but the primacy of the Council remained evident, with the document stating that states "were prepared to take collective action, in a timely and decisive manner, *through the Security Council*, in accordance with the UN Charter, including Chapter VII, on a case by case basis and *in cooperation with relevant regional organizations as appropriate.*"[366] Elsewhere, in their sections on the use of force, all the drafts between June and September 2005 reaffirmed the authority of the Council to authorize force "to maintain and restore international peace and security, in accordance with the pertinent provisions

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[364] United Nations General Assembly, *In Larger Freedom*, 35.

[365] General Assembly President's Draft Outcome Document, 3 June 2005, para. 72; General Assembly President's Draft Outcome Document, 11 July 2005, para. 100. Both at http://www.reformtheun.org/index.php/united_nations/c395?theme=alt2 (accessed 15 July 2010).

[366] Draft World Summit Outcome Document, 13 Sept 2005, para. 139. http://www.reformtheun.org/index.php/united_nations/c395?theme=alt2 (accessed 15 July 2010).

of the Charter" and all drafts except the first included reference to a "commitment" or "obligation" of states "to refrain from the threats or use of force in any manner inconsistent with the purposes of the United Nations."

While it is difficult to demonstrate that the views of developing countries on unauthorized intervention were the driving force behind this shift in the conceptualization of the "responsibility to protect," it is likely that this was the case. Between 2002 and 2005, developing countries, including Southern supporters of R2P, repeatedly stressed that any use of force under the aegis of the new concept had to be in conformity with the UN Charter, including Chapter VII which gave the Security Council the power to authorize the use of force. During the negotiations on the draft Outcome Document, the NAM succeeded in inserting references to the norms of non-use of force and non-intervention, and to the 1970 *Declaration of Principles of International Law concerning Friendly Relations*, that were not there in the earlier drafts.[367] Developing countries also stressed that R2P should form a "continuum" with coercive measures resorted to only after non-coercive means had been exhausted.

Where developing countries were less united, however, they were also less successful in shaping the direction of norm change. As we saw above, developing countries were divided over what solutions were desirable to the problem of Security Council inaction. While African states favoured the recognition of the role of regional organizations in intervening with *ex post facto* Security Council authorization, this position found little support elsewhere in the global South, and African states did not push vigorously for its inclusion in the Outcome Document. Similarly, while several

[367] United Nations General Assembly, *World Summit Outcome Document*, paras 5, 73, 77. Cf. General Assembly President's Draft Outcome Document, 3 June 2005.

states spoke favourably of empowering the General Assembly to override the veto through the "Uniting for Peace" procedure, the NAM dropped this demand early in the negotiation process. Finally, while all developing countries agreed on the importance of Security Council enlargement and reform to improve the effectiveness and legitimacy of Security Council action, including coercive action for the protection of civilians, irreconcilable differences over the model of any expansion ensured that no collective Southern position on Security Council reform could emerge. It is not inconceivable that, had such a position emerged, the South could in fact have forced through a more concrete commitment by the P5 to Security Council expansion and eventually the desired reform itself. This, after all, is exactly how the first round of Council expansion was brought about in 1965, beginning with a General Assembly resolution supported by developing countries and the Soviet bloc but initially opposed by the Western P5.[368] A similar vote in 2005 may have brought enough pressure to bear on the P5 to allow for Council enlargement, a development which could have significantly enhanced legislative sovereign equality. In the event, low ideological coherence among developing countries prevented this from occurring.

4.3 Impact of institutional environments

Finally, as we have seen above, the debate on the "responsibility to protect" between 2001 and 2005 took place primarily within the General Assembly, including in a series of informal consultations of the Assembly plenary held in the spring and summer of 2005 in preparation for the September 2005 World Summit. The universal membership

[368] See Edward Luck, "Reforming the United Nations: Lessons from a History in Progress," in *The United Nations: Confronting the Challenges of a Global Society*, ed. Jean E. Krasno (Boulder, Colo.: Lynne Rienner Publishers, 2004), 359-397.

and voting rules of the Assembly ensured that the views of developing countries would be well represented. Indeed, the ability of the Non-Aligned Movement to block the passage in 2002 of a Canadian-backed Assembly resolution on the "responsibility to protect," and then to pass against Northern opposition a resolution in 2004 reaffirming existing norms of non-intervention, non-use of force and sovereign equality, illustrates the leverage of developing countries in the Assembly. These events thus support my first working hypothesis, namely that the success of developing countries in influencing the direction of change in international norms of sovereignty and intervention should increase where institutional environments facilitate the participation of developing countries in decision-making.

4.4 Alternative explanations

The emergence of "R2P-lite" from the 2005 World Summit was clearly congruent in a number of ways with the articulated preferences of much of the global South, particularly its clear linking of the use of force to authorization by the Security Council. Assessing the degree to which the "dilution" of the "responsibility to protect" between 2001 and 2005 was a result of the influence of developing countries, however, requires evaluation of possible alternative explanations and examining whether the empirical material revealed by process-tracing supports them.

One possible explanation for the shape of the "international consensus" on R2P articulated at the 2005 World Summit is that it was influenced by the preferences of the great powers, especially the permanent members of the Security Council. To some extent this is undoubtedly true. For example, the absence of any reference to criteria for the use

of force in the Outcome Document, was quite likely due to the opposition of most of the P5, including especially the US. As Alex Bellamy explains, the US "rejected the idea of criteria on the grounds that it could not offer precommitments to engage its military forces where it had no national interests, and that it would not bind itself to criteria that would constrain its right to decide when and where to use force."[369] Thus while the NAM also opposed the inclusion of any reference to criteria in the final Outcome Document (even though, as we have seen, numerous developing countries individually supported it), it is difficult to differentiate the effects of this opposition from that of the P5. In any case, the opposition of both seemed to guarantee its exclusion from the final document.

One area in which a distinct effect developing country influence arguably can be observed is in the explicit tying of coercive measures under the "responsibility to protect" to the Security Council, and the emphasis on non-coercive measures as preceding any use of force. Then-Bangladeshi ambassador to the UN Iftekhar Ahmed Chowdhury, who along with the Slovenian ambassador served in 2005 as the General Assembly President's "facilitator" in negotiating the language of the paragraphs on the "responsibility to protect" in the Outcome Document, has described these aspects of the 2005 version of "R2P" as its "safety clauses" and has attributed their inclusion directly to a desire on the part of the General Assembly President to address the concerns of the NAM countries. Chowdhury describes the negotiations on the "responsibility to protect" section of document in the following terms:

> A number of the NAM countries, including Cuba, Iran, Pakistan and Egypt, had strong reservations, arguing that the concept would enable 'neo-imperialist'-type interventions by the powerful countries in pursuance of their own interests. Russia

[369] Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," *Ethics & International Affairs* 20, no. 2 (2006): 151.

> and China opposed it in sympathy with these views. The United States was indifferent to the proposal... The European Union and Canada were supportive but realised *it was impossible to build a consensus around it without including sufficient 'safety clauses' to satisfy the NAM detractors.*[370]

The specific "safety clauses" that Chowdhury points to are fourfold: the tying of the "responsibility to protect" to four very specific circumstances and legally defined crimes (genocide, war crimes, crimes against humanity, and ethnic cleansing) rather than to a broader "just cause" criteria proposed by the ICISS; the prioritization of the non-coercive, diplomatic and humanitarian means, to be pursued "through the UN"; the tying of coercive action to Security Council authorization; and the conditioning of coercive action on the "manifest failure" of the target state to fulfill its responsibilities.[371] According to then-GA President, former foreign minister of Gabon and current AU Commission Chairman Jean Ping, the inclusion of the first safeguard—the specification of the four crimes in response to which R2P could be invoked—was suggested by one of the more sceptical of the NAM ambassadors, Pakistan's Akram Munir. This proposal, according to Ping, helped weaken opposition among the R2P-sceptics and "enabled us to reach an agreement."[372] The need to tie coercive action to Security Council action was undoubtedly supported more broadly than just by the South, but their role was undoubtedly important: as noted above, the NAM succeeded in inserting references to the norms of non-use of force and non-intervention, and to the 1970 *Declaration of*

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[370] Iftekhar Ahmed Chowdhury, "The Sri Lankan Situation and the Principle of the 'Responsibility to Protect'," *ISAS Insights* no. 61 (Singapore: Institute of South Asian Studies, 30 April 2009), 2. http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=cab359a3-9328-19cc-a1d2-8023e646b22c&lng=en&id=100127 (accessed 15 July 2010).

[371] Ibid., 2-3.

[372] Jean Ping, Chairperson of the African Union Commission, keynote address at the Round-Table High-Level Meeting of Experts on "The Responsibility to Protect in Africa," Addis Ababa, Ethiopia, 23 October 2008. http://webcache.googleusercontent.com/search?q=cache:H8sLeV3bQzIJ:www.africa-union.org/root/ua/Conferences/2008/oct/BCP/23oct/Speech%2520221008.doc+jean+ping+responsibility+to+protect&cd=5&hl=en&ct=clnk&gl=ca (accessed 15 July 2010)

Principles of International Law concerning Friendly Relations, that were not there in the earlier drafts.[373] Moreover, Chowdhury argues that the inclusion in the Outcome Document of reference to the commitment of the international community to assist states in "capacity building" to help them fulfill their "responsibility to protect"[374] was at the insistence of the NAM countries, "much to the chagrin of some western donors."[375]

[373] United Nations General Assembly, *World Summit Outcome Document*, paras. 5, 73, 77. Cf. General Assembly President's Draft Outcome Document, 3 June 2005.

[374] United Nations General Assembly, *World Summit Outcome Document*, para. 139.

[375] Chowdhury, "The Sri Lankan Situation," 3.

Conclusion

The preceding case study indicates that my three working hypotheses are supported by the evidence in the case of the international debates between 1999 and 2005 on the subject of "humanitarian intervention" and the "responsibility to protect." In this case at least, developing countries were able to act in some part as active "norm-makers" rather than merely as passive "norm-takers," and were successful in influencing the direction of change in the norms of sovereignty and intervention. Following NATO's intervention in Kosovo in 1999, developing countries were successful in defusing a potentially radical challenge to existing norms of non-intervention and non-use of force, and a further downgrading of legislative and existential sovereign equality; since 2001, developing countries have been successful in ensuring that the "responsibility to protect" concept, proposed originally by the ICISS as means of overcoming the divisive post-Kosovo debate over "humanitarian intervention," evolved in a direction that posed less of a challenge to traditional norms of sovereignty and intervention. In both periods, I have argued, the success of developing countries in influencing the direction of norm change has been facilitated by three factors: Northern capabilities and attitudes, the ideological coherence of Southern diplomacy, and the degree to which international institutions facilitated the participation of developing countries in decision-making. Bearing in mind that Northern capabilities (in the sense of overwhelming military superiority) over this period remained essentially constant, my case study has shown that where Northern states have sought to bring about reform of the norms of sovereignty and intervention through multilateral institutions that grant developing countries the opportunity to participate in decision-making, and where the global South has managed to forge some coherence in its

response to these Northern initiatives, developing countries have been able to shape the direction of norm change. Where Northern states have chosen to act through narrower mechanisms, where institutional environments have allowed for less direct Southern participation in decision-making, or where developing states have been divided over the issue of sovereignty and intervention, the global South as a whole has been less able to influence the direction of norm change.

The fact that I find support for my hypotheses in my case study suggests that my theoretical framework drawn from Krasner's theory of "international regime change" could be useful for further analysis of the role of developing states in international norm change in contemporary international politics. Hypotheses about the role of international institutions, Northern capabilities and attitudes and Southern ideological coherence in facilitating the South's role as "norm-makers" could be tested in a variety of other issue-areas related to other pressing global issues such as climate change, global financial regulation etc. At a time when the global landscape is changing rapidly with the rise of new major powers in the global South and increasing Southern regionalism, this theoretical framework could be useful for grasping the dynamics of norm change that will likely accompany these developments.

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