SETTING NORM BOUNDARIES: THE CASE OF THE RESPONSIBILITY TO PROTECT

by

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ABSTRACT

Much debate has focused on the issue of so-called unilateral humanitarian intervention – those operations which take place without the authorization of the Security Council. Much less attention, on the other hand, has been paid to the issue of authorized humanitarian interventions, because they are superficially legal. Legality and legitimacy, however, can be separated. That fact, combined with recent developments in the law of humanitarian intervention necessitates a closer examination of Security Council-mandated operations to establish the level and character of the normative consensus underpinning this new Council practice and precisely how bound up it is with other legal and normative standards in international society. In so doing, it is possible to contribute to the debate on unilateral intervention by establishing why it might be that States prefer the international community’s responsibility to protect to be exercised under the auspices of the United Nations and, therefore, whether unilateral intervention will be legitimated in the future. It is also possible to utilize the case of the responsibility to protect to examine how norms interact with other standards of behaviour in a norm complex, itself informed by background understandings of appropriate conduct within an overall normative context. In developing this idea, it is possible to theorise how and why States are able to set norm boundaries and, consequently, the processes that dictate why a new norm takes the shape it does at a given moment.
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J.S.B., Vancouver
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Dedicated to my friends and family.
INTRODUCTION

The United Nations Charter is a living document, interpreted within the context of the United Nations system by the practice of a Security Council composed of fifteen members of international society. Since its inception, the normative constitution of international society has altered, demanding the reinterpretation of traditional rules of sovereignty and non-intervention. The Security Council, through the 1990s, came to authorize a number of so-called humanitarian interventions to protect populations from human rights violations in the context of conflict or instability. It did so on the basis of interpreting the internal situation within target States as threats to international peace and security. When, however, the Council was unwilling to fully legitimize intervention in the case of Kosovo, powerful States acted unilaterally, and outside of the legal framework for authorizing the use of force in international society. This move was highly contentious and sparked wide-ranging political and academic debate about the potential normative and legal status of unilateral humanitarian intervention. Much less attention has been paid to the issue of Security Council-authorized intervention because of the superficial legality of that practice.

Legality and legitimacy, however, are separate and it is critical to consider the issue of Security Council-authorized humanitarian intervention to gain a full understanding of the legitimacy, or lack thereof, of unilateral action to prevent suffering. This project is even more central given the recent development, embodied in the outcome document of the 2005 World Summit and endorsed in UN Security Council Resolution 1674 (S/RES/1674, 2006), in the law of humanitarian intervention that places the Security Council at the heart of the legitimacy of the practice. Paradoxically, however, it has been judged by one scholar (Bannon, 2006) to potentially give greater legal weight to unilateral action to halt human rights violations by offering would-be interveners new legal arguments. This thesis will, therefore, aim to understand the reasons why States prefer the authorization of humanitarian interventions to remain within the competency of the Security Council. It will do so with the broader aims of concluding whether unilateral operations will indeed be greeted with greater support in the future and also with the intention of understanding how norms come to be modified by
States which employ arguments that conform to standards of behaviour within a wider international norm complex.

The investigation will unfold in five parts: first we will introduce the issue of humanitarian intervention and consider the evolution of the practice and its legal status in international society. Included in this section is an analysis of the ramifications of the recent legal developments we have already mentioned. Following that will be a chapter on the theoretical and methodological basis of the thesis. The evidence will then be examined in two parts: the first will involve an examination of States' positions on humanitarian intervention and the Security Council in abstract debates on the issue, while the second will examine those positions in concrete cases. Our analysis of that evidence will primarily be conducted in the penultimate chapter which will examine two potential explanations for why States may prefer the Security Council to remain central to the authorization of humanitarian intervention and how the norm has developed in this way, as well as discussing the implications of those explanations on the likelihood of unilateral action being legitimated. We will then briefly conclude the thesis and provide an agenda for future research.
I. THE LEGAL CONSTITUTION OF INTERNATIONAL SOCIETY

i. The United Nations Charter and the Security Council

The United Nations Charter was signed after the Second World War, in 1945, when its drafters were concerned to prevent a repeat of the devastating conflicts that had occurred between States during the first half of the twentieth century. Since then, however, the number of inter-state wars has declined substantially, while intra-state conflicts have come to predominate much more (see Human Security Centre, 2005: 23). These New Wars (Kaldor, 1999), as they have been termed, frequently involve considerable civilian suffering, with non-combatants regularly being targeted by state and rebel forces alike. The worst conflicts have witnessed ethnic cleansing and genocide, fuelled by nationalistic hatred of minorities and perceived outsiders. To enable the international community to fulfil the central purpose of the organization - to save succeeding generations from the scourge of war - as well as some of the other aims in its preamble, the Charter regime has undergone substantial evolution since its inception over sixty years ago.

For the United Nations Charter was designed to provide the legal constitution of an international society of States, codifying their rights and obligations, rather than those of peoples. Its primary purpose was to outlaw the use of force for any purpose other than self-defence. Article 2(4) asserts 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.” To operationalise a system of collective security, the Charter also provided for the establishment of an executive body - the Security Council - in Article 24(1), which states: “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their

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1 The preamble also includes a determination to “reaffirm faith in fundamental human rights... to promote social progress and better standards of life in larger freedom... to employ international machinery for the promotion of the economic and social advancement of all peoples...”
behalf.” In so doing, the signatories delegated their right to make decisions regarding the use of force in international society to five permanent and, originally six, but, later, ten non-permanent members of this political body.

Consistent with its state-centric arrangements, however, even the United Nations itself was not permitted to “intervene in matters which are essentially within the domestic jurisdiction of any state” (Article 2(7)). There are, however, few constitutional limits on the Security Council. Article 39 empowers the Council to “determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” Articles 41 and 42 provide the body with the option of taking either peaceful or forceful actions respectively. In reality, therefore, the Charter combines relatively indeterminate terminology while delegating wide-ranging powers to a body to determine its own competency in interpreting the Charter to render it effective. Indeed, The Security Council itself has been judged by one author to have, on occasion, acted as an, albeit rather inefficient and not unlimited, world legislature (Talmon, 2005, for an opposing view see de Brichambaut, 2000). The Charter has, therefore, been described as a “living document” and there has accumulated a substantial body of Security Council practice that has seen its procedures clarified and its executive powers reach much further than the original drafters of the Charter may have imagined (see Kirgis, 1995).

To be sure, the Security Council has even been able to circumvent the apparent limitation on its ability to intervene in the internal affairs of States by interpreting events that have occurred within national borders to constitute a threat to international peace and security (see Gowlland-Debbas, 2000). Such operations have been termed “humanitarian interventions,” which may be defined as “the use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the government of the state within whose territory force is applied” (Farer, 2003: 55, emphasis original). In reality, therefore, interventions may occur either when an outside force does not have permission to be within a State, or when the original terms of its
deployment alter without host consent. It is important to emphasise, however, that Security Council-authorized humanitarian interventions are legal because, in signing the UN Charter, States delegated their authority to engage in the use of force for any reason other than self-defence to the Security Council. As we have noted, the Council has few limitations on its own ability to define a threat to international peace and security, which is all that is required to provide it with the legal right to authorize forceful military action. Unilateral humanitarian intervention – that which takes place without such authorization – has, on the other hand, been the source of much debate. The history of unilateral actions to forestall human rights violations culminated with the Kosovo campaign of 1999, but there were a number of other military operations with varying humanitarian credentials during the Cold War period.

**ii. The Security Council and the Growth of the Practice of Humanitarian Intervention**

Both Finnemore (2003: 52-85) and Wheeler (2000) have analysed a number of interventions which occurred during and after the Cold War and concluded that there has been a shift in the justifications which are accepted by other actors in the international system as legitimating forceful military action. They and other constructivists consider that we exist in a social world, constituted by inter-subjective understandings, or norms, of appropriate behaviour that constrain and enable certain kinds of action. On that basis, human rights, humanitarian intervention, the entitlement to democratic governance and other recent legal developments have been judged to provide a challenge to traditional sovereignty and, thus, to the State-based international order that other theorists consider to be static. The once legitimate pluralist conception of international justice may, therefore, be giving way to a solidarist conception of the purpose of international society (Wheeler, 2000). These changing understandings of appropriate conduct – or norms – underpin new forms of behaviour that are judged as legitimate given the new social reality.

Finnemore and Sikkink (1998) have theorised that norms evolve through several stages in a lifecycle from their inception by norm entrepreneurs, to their adoption and promotion by increasing numbers of state and non-state actors, until the norm reaches a tipping point - a critical mass of
supporters - that leads to a cascade as it is adopted by most of the rest of the states in the system through an external socialisation process. Finally, the norm becomes adhered to through such force of habit that it is internalised and rarely questioned in every day practice. Norms are not eternal, however, and, as well as having the potential to fail at any stage during their evolution, they may be modified or completely transformed even when they have reached maturity. Norms, however, often exist in an uneasy tension with one another, meaning that there may not be uniformity of practice across the board in a given issue area. It is, moreover, advanced in this analysis that norms cannot be understood in isolation, and must be placed in an overall norm complex of standards of appropriate behaviour to understand the complete set of circumstances that make a particular behaviour fully legitimate.

International legal scholars have, similarly, attempted to develop theories of customary international law and we will discuss fully the complementary nature of their work with that of constructivists below. Indeed, in a similar way to constructivists, they focus on what states believe to be law - or *opinio juris* - in addition to their actual practice. For D'Amato (1971: 10), “law itself is ultimately a psychological, immaterial concept; it is a convenient abstraction that enables us to help predict, shape, and control human behavior by reference to the abstract ‘norms’ of law that allegedly exert a psychological pressure upon people to adapt their behavior to such norms.” Customary international laws, therefore, are that body of practice and inter-subjective beliefs that constitute the unwritten rules of international society and are related to norms, though they can be more accurately described as a particular kind of norm with legal status. The evolution of customary international law has traditionally been thought to have been comprised of the practice of the entire system of States, though some scholars have suggested that the practice of International Organizations can contribute to the development of custom as well (Franck, 2002). It has been argued, on that basis, that the United Nations Charter has been altered by customary rules, which have arisen from the practice of the Security Council.

Indeed, Byers (1999: 125) notes, “treaty rules might actually be modified, without formal renegotiation, as a result of changes to parallel customary rules.” But he also notes there is a
qualitative difference between the evolution of customary law among the entire State membership of international society, and that which is driven by only fifteen of its members in the Security Council (see Byers, 2003). Indeed, though the practice of the Security Council has seemingly altered the laws of force, those alterations have been the product of changing secondary rules which govern the legitimate practice of the body. In other words, it seems that its five permanent and ten rotating members have created new customary secondary rules of procedure within the Council which, in turn, allow that body to interpret the laws of force creatively through a process akin to executive direction. In essence, therefore, the evolution of those rules may not have even happened as they did if enough States in the Council had been unwilling to legitimate the body bringing humanitarian concerns within the boundaries of its competency.

As a consequence, there can have been no parallel development in international customary law providing a basis for humanitarian intervention regardless of the Security Council. For, if that were the case, the entire process of customary law formation would have altered in a way that does not seem to be supported by State practice. There is no evidence to suggest that a majority of States consider the Security Council a body that defines and creates customary or written primary rules: it merely empowers itself to interpret them and act on the basis of that interpretation. In other words, the Security Council has carved out an exception in the laws of force for itself, and itself only – not for would-be unilateral actors. A customary right to unilateral intervention, on the other hand, would require State practice and the supporting opinio juris of, in fact, nearly the entire membership of international society, because the Charter is superior to custom and can only itself be superceded by jus cogens laws, which outrank all other categories of international rules and require universal – or near universal – assent.

Alternatively, it is technically within the power of the Security Council to change its rules of procedure and, therefore, indirectly alter the Charter provisions on the use of force for itself without

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2 Hart suggested that a mature legal system is composed of primary rules, which outline what the members of a society must do, or forbear from doing, as well as a set of secondary rules which empower and define the competency of those organs such as the judiciary and legislature which make changes to the law or decide when it has been broken (Hart, 1961).
much of a consensus in the rest of international society at all. For the only universal organ of the system – the General Assembly – has no powers of oversight or legislative review. Presumably, however, the members of the Council would be mindful of the need to preserve the authority of the body. But, understanding the normative status of the practice of humanitarian intervention in isolation is of central importance in judging the legitimacy of this recently emerged Security Council practice. The level of that legitimacy will, then, impact on the likely international reception to unilateral intervention. However, whether there is indeed a new consensus in favour of unilateral intervention will depend on precisely how bound up the practice is with Security Council authorization. To establish that, we must understand to what degree and, more important, why the practice has become legitimate when it takes place under the auspices of the Council. Indeed, many authors have looked at the changing social understandings that have enabled the practice to take place but few have considered the relationship of the Security Council with humanitarian intervention. Indeed, although some supporting practice for a new law of humanitarian intervention conceivably took place before the fall of the Berlin Wall, it did not do so with Security Council approval.

During the Cold War, find Finnemore and Wheeler, the norm underpinning the legal concept of sovereignty was paramount. India’s intervention in Bangladesh, Vietnam’s campaign in Cambodia and Tanzania’s action in Uganda all served to halt grave violations of human rights, but were justified in, to use Wheeler’s vocabulary, pluralist terms. In other words, they relied on a procedural concept of justice that views the purpose of international society as preserving states as the guardians of the interests and values of their populations. For, in the Charter era, the only legitimate unilateral use of force is that employed in the pursuit of self-defence. Indeed, the only country to advance a supporting humanitarian claim was India, but it was roundly defeated in both the Security Council and the General Assembly as States scrambled to reaffirm the primacy of sovereignty and non-interference in the domestic affairs of States (Wheeler, 2000: 68). The Cold War interventions could not have contributed to the development of a customary law, because the humanitarian justifications were opposed in favour of the existing rules of international law and, for that same reason, because they were not primarily justified in humanitarian terms. In a constructivist vocabulary, the normative
consensus was that the pluralist rules of international society were legitimate, while a solidarist conception of justice was illegal and pernicious to global order.

In the aftermath of the first Gulf War, however, the allied forces which had ejected the Iraqi occupiers from Kuwait undertook a military intervention in Northern Iraq to establish safe-havens to protect the Kurds from repression by Saddam Hussein's government. This episode marked the birth of humanitarian intervention in the normative vocabulary of international society. President Bush, in justifying the action, said: "I want to underscore that all we are doing is motivated by humanitarian concerns" (quoted in Wheeler, 2000: 151). States were apparently shamed into accepting this justification, probably in part because of a new normative dispensation prevailing in international society. The fact that Western action was greeted largely by silence, rather than enthusiastic approval, however, makes the safe-havens operation limited as evidence of a solid new norm, or as customary international law. Additionally, since it was not directly authorized by the United Nations Security Council, it cannot be advanced as evidence of the practice of that body either.

Throughout the 1990s, however, a number of further situations arose in which events occurring primarily within States created calls for action by the international community. The Security Council, on a number of occasions, was far less reserved in interpreting these incidents as threats to international peace and security, contributing to the expansion of the meaning of that term and the sense that a new Security Council practice of humanitarian intervention was developing. Somalia, Bosnia, Rwanda, Haiti and a number of other conflicts were recognised as legitimating international action, though it was manifested in operations of varying value. Regularly, despite the predominantly domestic characteristics of the conflicts, it was their limited cross-border effects, whether from refugee flows, or the destabilisation of neighbours and regions, that provided the objective situation to justify Security Council determination of a threat to international peace and security.

This decade of interventions culminated in a North Atlantic Treaty Organization (NATO) mission to forestall the attempted ethnic cleansing of the Serb province of Kosovo in 1999. Although the Security Council had determined the situation to be a threat to international peace and security, NATO did not seek further authorization for fear of attracting Russian and Chinese vetoes. That fact,
indeed, reinforces the sense that States believe they need authorization to undertake humanitarian interventions legally. The bombing and subsequent ground campaigns, therefore, took place outside of the framework of the United Nations and international law. Many scholars and statesmen have, since, debated the legality of the operation and whether unilateral humanitarian intervention constitutes a new normatively defensible practice in international society, perhaps with the potential to harden into a customary legal exception to the Charter's prohibition on the use of force without Security Council authorization (see Kosovo Commission, 20000; Franck, 1999; Falk, 1999; Simma, 1999; Guicherd, 1999; and, generally, Holzgreve and Keohane, 2003).

For Wheeler the Kosovo campaign marked "a watershed in the society of states" (2000: 297). And, for another scholar, there is the potential that support for humanitarian intervention will "evolve further in the years to come. It is, after all, a characteristic of international law that precedent is important; the law evolves as practices become acceptable to most states in the international community" (Guicherd, 1999: 23-24). Secretary General Kofi Annan was in agreement at the 54th Session of the United Nations General Assembly: there he spoke of a "developing international norm in favour of intervention to protect civilians from wholesale slaughter" (UN Doc. A/54/PV.3: 4). Indeed, a draft resolution condemning the Kosovo intervention was defeated by negative votes from twelve widely varying members of the Security Council and there was widespread support expressed outside of that body. For some that is evidence of a new legitimacy for humanitarian intervention and a new consensus in international society. It is, however, important not to attribute too much to a single case.

Wheeler himself concedes that "acquiescence should certainly not be read as constituting the emergence of a new norm" (2000: 291). And Byers and Chesterman (2003) are far less sanguine about the international legitimacy of the Kosovo operation, and, consequently, its status as evidence of emerging customary law. Using a traditional approach to the interpretation and application of international rules, they suggest that the "Kosovo intervention was clearly illegal, and regarded as such by enough states that it could not possibly have contributed to a change in the law" (Byers and Chesterman, 2003: 178). Having taken place without Security Council authorization and engendered
considerable opposition globally, unilateral intervention cannot have been considered to have achieved the status of a peremptory norm of international relations, which is what would be required to overcome the Charter prohibition on the use of force without authorization. Russia, China, India, Namibia, Belarus, Ukraine, Iran, Thailand, Indonesia and South Africa all spoke out against the intervention, and the 133 members of the G77 adopted two declarations affirming the illegality of unilateral humanitarian intervention (Byers and Chesterman, 2003: 184).

So, the Kosovo intervention was much more contentious than the perspectives of the optimists who point to an emerging norm would suggest. Indeed, the action precipitated a wide-ranging debate on humanitarian intervention, which took place at the 54th session of the United Nations General Assembly. Deliberations culminated a full five years later in the 2005 World Summit at which the General Assembly adopted an outcome document that was read by many people as recognising the doctrine of humanitarian intervention, which had since become known as the responsibility to protect. The Canadian government had, in 2000, set up the International Commission on Intervention and State Sovereignty (ICISS) in an attempt to advance the debate on the circumstances under which the international community may engage in intervention.

The Commission presented their findings to the Secretary-General of the United Nations in 2002. The central principle of the report was that: “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 halt or avert it, the principle of non-intervention yields to the international responsibility to protect” (ICISS, 2001: XI). The conditions under which such action could take place were largely in line with traditional customary international law: a just cause was provided by a threshold where there was evidence of either actual or apprehended large scale loss of life or ‘ethnic cleansing’. It was deemed that humanitarian motivations should be primary, though not necessarily exclusive, that proportional means should be employed, with reasonable chances of success and as a last resort (ICISS, 2001: XII).

Of central importance was the issue of appropriate authority. The Commission judged the Security Council to be the best and most appropriate body to authorize military intervention for human protection purposes. It called on its members to do so promptly, and for the permanent members to
agree not to apply their veto power in cases where their vital interests are not involved and in which there is majority support within the rest of the membership. In cases where the Security Council was deadlocked, the Commission suggested it would be appropriate for the General Assembly to consider the issue in an emergency session under the 'uniting for peace' procedure, or for a regional organization to take action and subsequently seek authorization from the Security Council. Consequently, the ICISS did not advance an argument for the further development of a right to unilateral humanitarian intervention.

Indeed, as noted, much attention has already been paid to that issue by scholars and officials alike. No doubt due to the superficial legality of the practice, far less analysis has focused on the phenomenon of UN Security Council-authorized interventions, the frequency of which have far outweighed those of unilateral interventions. Legal they may be, but the legality and legitimacy of a practice can be separated. It is well known that the strongest laws are underpinned by a normative consensus and the degree of that consensus in the case of authorized intervention is not clear. Nevertheless, given the ambiguous international reaction to NATO’s Kosovo campaign, it does seem that the norm of humanitarian intervention, to the degree that there is one, is inextricably bound up with norms relating to right authority for the use of force in international relations. The reasons for this relationship have not been clearly understood. Thus, the lack of focus on the interrelationship between the apparent norm of humanitarian intervention, and its interaction with other procedures in the international legal system and norm complex is a major short-coming, which limits the ability of scholars to consider the issue of unilateral humanitarian intervention. We cannot understand why states may respond negatively to non-authorized intervention unless we understand why they do or do not support authorized interventions. The issue of humanitarian intervention under the auspices of the Security Council is, moreover, especially important given the most recent developments in the evolution of the international community’s responsibility to protect.

### iii. Contemporary Developments in the Law of Humanitarian Intervention

As we have already noted, the debate on the responsibility to protect came to a - probably temporary -
conclusion at the 2005 World Summit to mark the sixtieth anniversary of the United Nations. There, after much further deliberation, the delegates adopted an outcome document which contained a section on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It stated:

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

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out (UN Doc. A/RES/60/1: 30).

For the first time, therefore, the universal membership of the United Nations explicitly recognised a right for it to become engaged, for purely humanitarian purposes, in the internal affairs of States. Central is the fact that the Security Council is empowered to do so without even determining a threat to international peace and security as had been the case before. But the text does not contain a right for States to intervene unilaterally. In other words, purely internal matters are a legitimate international concern that could lead to collective military action, but only in accordance with United Nations organizational procedures.

Subsequently, as instructed, the Security Council recently endorsed the provisions of the outcome document on the 28th of April 2006 in resolution 1674 on Civilians in armed conflict. After "reaffirming its commitment to the Purposes of the Charter of the United Nations as set out in Article
1 (1-4) of the Charter, and to the Principles of the Charter as set out in Article 2 (1-7) of the Charter, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States” (S/RES/1674, 2006: 1) that body “reaffirm[ed] the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” (ibid: 2). As such, the Security Council explicitly - and, incidentally, unanimously - acknowledged an already existing body of its own practice. The text of the outcome document, however, is a considerably watered-down version of the doctrine of the responsibility to protect, but many authors have, nevertheless, hailed it as a break-through in the rules of humanitarian intervention.

States held an open debate in the Security Council some two months after the adoption of Resolution 1674, however, in order to better plan how they were to operationalise the responsibility to protect. What is striking is that no delegation’s statement explicitly referred to humanitarian intervention (see UN Doc. S/PV/5476). Many spoke of peacekeeping operations, but the character of the debate suggests that States have not taken the outcome document as being primarily about a new right to bypass the authorities of a target State to conduct them. Indeed, most States were keen to emphasise the role of national authorities to protect their own populations, conceivably so as not to encourage irresponsible behaviour and China took its traditional stance of reaffirming sovereignty as sacrosanct. In other words, from its reception by delegations in the Security Council, it is probably important not to overplay the significance of Resolution 1674. Most important is that, as Mr Egeland, the Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordination for the United Nations, said: “it [the resolution] still fails to ensure a predictable response to the massive suffering of vulnerable civilians” (UN Doc. S/PV/5476: 2).

Indeed, although some authors have touted it as an agreement that the international community “bears a responsibility to help protect populations from genocide and other atrocities” (emphasis added, Bannon, 2006: 1157), and the section within the outcome document is indeed titled as such, the international community cannot have a responsibility to engage in humanitarian intervention, because
not every case will merit it and no State would wish for such an obligation to exist. Indeed, it may be more accurate to suggest that the international community does indeed have a responsibility to use “appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter.” On the other hand, the summit only actually expressed that the United Nations is “prepared” to take forceful action.

Indeed, of central importance is the fact that the summit only committed to take forceful action “on a case-by-case basis,” which leaves current practice relatively unchanged. Without an increase in determinacy by providing objective criteria for when forceful intervention should occur, the codification may achieve little in further clarifying the norm, which would ordinarily contribute to its continual development and, possibly, its acceptance by providing actors with greater opportunity for censure of those opposing it or by reassuring States which are concerned that it may be abused (see Finnemore and Sikkink, 1998: 9000). As the situation remains that it is left up to the Security Council to determine when a situation merits military intervention, it is easy to imagine the continuation of the usual political wrangling over when a state is proven to be engaging in genocide, etc. or when peaceful measures have been exhausted. It is, consequently, easy to imagine the United Nations avoiding its responsibility - perhaps legitimately as it is, apart from in the worst cases, difficult to know ex ante whether a situation merits intervention.

The declaration, however, cannot be seen as providing a carte blanche to the Security Council as it “stress[ed] the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law.” We may, therefore, look forward to that body further clarifying when the Security Council is required to act. For Bannon, however, the World Summit ignored a critical issue: “What can and should be done by individual states if the United Nations fails to fulfil its pledge?” (2006: 1157). In answer, she suggests that the declaration is not only significant for the guidelines it explicitly sets out, but for the path it may have set international society on in the future.

She suggests that the resolution provides potential interveners with new legal arguments to fall
back on. Primarily, she claims that the agreement enables would-be unilateral actors to point to a failure of the United Nations to fulfil a duty to intervene (Bannon, 2006: 1158). Given, as we have already noted, the considerable indeterminacy over precisely when this duty arises, it may not be quite so easy for unilateral actors to pinpoint precisely when that failure has occurred - especially if they wish to prevent human rights abuses, rather than simply react to them. On the other hand, a lack of specificity in the agreement could in fact strengthen the position of a unilateral actor, providing it with a certain amount of flexibility in interpreting the agreement’s terms. But the fact that it is unequivocally stated that action should take place through the Security Council and under Chapter VII certainly could be said to weaken the case for unilateralism.

For Bannon, however, the recognition of a failure by the target of intervention and the United Nations, coupled with an avoidance of the issue of whether the Security Council is the only or merely the preferred appropriate authorizing body strengthens the case for the unilateral actor. It is, though, hard to understand how an avoidance of that question should allow a unilateral actor to decide for itself. There is no suggestion that it is only the Security Council’s “primary” role, as in the Charter’s delegation of responsibility for the maintenance of peace and security, thus, legitimating the perceived secondary responsibility of the General Assembly. The only suggestion of another body having some kind of role is, indeed, the General Assembly, which is to “continue consideration of the responsibility to protect populations from genocide…” As such, there may indeed be a role for the General Assembly if the Security Council fails, or is widely perceived, to fail to fulfil its duty, but probably not for a unilateral actor.

Nevertheless, it is difficult to disagree with the conclusion that unilateral action may be a third option in the event of a real humanitarian emergency, given the possible failings of the two main bodies of the Organization and the time-consuming nature of United Nations decision-making. As Bannon notes, the argument that sovereignty entails responsibilities means that failure to fulfil them removes a state’s legitimate claim to the protection afforded by sovereignty. Again, we should be cautious as a state may still claim that it had not failed in its responsibilities, as the Sudanese authorities have done cleverly over Darfur (see Slim, 2004 and Williams and Bellamy, 2005), thereby
leaving its sovereign rights intact and rendering an intervention completely illegal. It is, therefore, hard to see unilateral action becoming admissible in any circumstances other than those in which widespread killing has already begun or there is an overwhelming burden of proof that it will. The agreement, therefore, may ultimately legitimate unilateral action in extreme circumstances, but probably does not make it much easier to justify, and perhaps rather harder given the relatively clear language relating to right authority. Much, however, will depend on why it is that States wish the practice to remain under the competency of the Security Council.

Indeed, many States can legitimately be concerned by the unchecked resort to military action. The unilateral use of force potentially creates opportunities for more, rather than less, violence in international relations and a dilution of the protective state-centric rules of international society. For Oberleitner (2005), humanitarian intervention is but a part of a larger trend towards the latter, underpinned by the concept of human security. Bannon notes, however, that the circumstances in which force may be employed are distinctly limited, and would not have legitimated action such as that which took place in the Second Gulf War (2006: 1163). First of all, extreme violations of human rights must be taking place and force can only be employed after other measures have failed. More important is that states do not forfeit all of their sovereign rights, and the force employed must be proportional and with the aim of preventing human rights violations, rather than pursuing other objectives, such as territorial aggrandizement or perhaps regime-change when it would not be necessary to end a crisis. The opportunities for using the responsibility to protect as a pretext to further other geo-strategic aims therefore appear to be reduced.

The agreement itself, therefore, provides only a limited and fragile exception to existing rules relating to sovereignty and non-interference. What may be of greater concern to some states, though, is the so-called ‘slippery slope’ of intervention. Semb (2000: 470) comments that “[o]ne reason for resisting a softening of the principles of non-intervention is that once one allows for interventions for some normatively defensible purposes, it will be difficult to establish barriers against a further softening of this principle, which eventually will have intolerable consequences.” Particularly important is the argument that, if the humanitarian intervention principle hardens into an internalised
norm, unilateral intervention may be easier to undertake (470-471). It seems sensible to conclude, however, that a fully established norm will be accompanied by less reticence on the part of the Security Council to authorize humanitarian interventions in appropriate circumstances, thus rendering unilateralism unnecessary.

The greater concern is that “if the Security Council authorizes interventions to terminate gross and systematic human rights violations, there is a high probability that it will authorize interventions to terminate less severe situations as well” (Semb, 2000: 479-480). This situation arises because any cut-off point in, say, numbers of casualties necessary to invoke a right or duty of humanitarian intervention, is essentially arbitrary. A downward revision in the scale of situation required to legitimate intervention would inevitably increase the danger that the humanitarian intervention norm could be exploited to further other geo-strategic aims, and is conceivably especially pernicious if such action is taken unilaterally and without UN approval.

Indeed, the continual dilution of the non-intervention norm will be particularly troubling to the defenders of pluralism and also, potentially, to developing countries. Some States simply lack the capacity to protect human rights perfectly and attempts have been made to defend governments that have to make hard choices between the protection of human beings and longer-term objectives, such as development. Other countries, particularly in Asia, have defended alternative views of human rights that are reportedly culturally specific and may conflict with Western notions of the centrality of the individual (see Zakaria, 1994 and, for an opposing view, see Sen, 1997). For Watts (2000: 13), “the world is multicultural, and one region’s standards are not necessarily better than another’s.” For him and others, humanitarian intervention could become a coercive, imperialistic practice, rather than the ethically motivated ideal that it is meant to embody, if it is permitted to completely undermine the existing system of international law. The stakes are high, therefore, if humanitarian intervention is allowed to spiral out of control and become captive to particularistic interests. Moreover, there is, indeed, some evidence for the slippery slope argument, as humanitarian interventions were authorized in the post-Cold War era for such diverse reasons as famine relief, peace enforcement, preventing ethnic cleansing and restoring democracy.
Concerns about the uncontrolled dilution of sovereignty, therefore, relate to the conventional understanding of international law as a tool to protect the weak from the powerful. Though States are equal in a juridical sense, the reality is that they possess markedly divergent material capabilities. Realists suggest, on that basis, that international law has little impact on the behaviour of states anyway. Other theorists, however, are convinced that it provides at least some constraints on behaviour. Henkin (1979; see also Koh, 1997 and D’Amato, 1985) has noted that most states obey most international law most of the time. Legal and constructivist scholars have, similarly, asserted that international rules exert a compliance pull (Franck, 1990) or are underpinned by internalised norms of appropriate behaviour and will engender social disapproval if violated (on the importance of international law and norms see Kratochwil, 2000).

Perhaps most important, however, is that small and medium States consistently put their faith in international law as their final defence against the powerful (Ayoob, 2002: 82). Small states, could, therefore, see the dilution of sovereignty as providing stronger states with much greater opportunity to coerce the weak. But unilateralism is an expensive policy, both politically and materially, and so international legitimacy is an important element in most States’ policies (see Ikenberry, 2001 and Byers, 2005: 11). Whether sovereignty continues to be diluted and unilateral action legitimated will, therefore, depend, in part at least, on the international reception of the evolving practice and laws of humanitarian intervention.

In short, it is impossible to gauge whether the latest legal developments, embodied in the 2005 World Summit outcome document and Resolution 1674, will lead to a new legitimacy for unilateral humanitarian intervention without first assessing both the strength of the norm itself, and its relationship with other elements of the international legal system. There may indeed be more unilateral interventions in the future, but whether the codification of the responsibility to protect will add to their legitimacy depends on how States perceive the practice. A full understanding of the probable future course of humanitarian intervention will depend, therefore, on what ingredients States deem necessary for the legitimate employment of force to forestall human rights abuses, and, critically, why. Understanding the complexities of the relationship between humanitarian intervention
and the Security Council is, therefore, an important task, which will inform the debate on unilateral intervention.
II. THEORIES OF INTERNATIONAL LEGAL AND NORMATIVE CHANGE AND A FRAMEWORK OF ANALYSIS

i. Theoretical Background: The Complementary Projects of Constructivist and Legal Scholars

The task of this analysis is complex: we are attempting to understand the status of the norm of humanitarian intervention in isolation, as well as how it may interrelate with other rules in the global legal system and related norms in the international norm complex. Indeed, it is important to, more explicitly, clarify the difference between a law and a norm. Norms are standards of appropriate behaviour that constrain and enable certain types of action. For the purposes of this analysis, they will be understood to exist in relationship to other associated standards in a norm complex. Those individual norms are, in turn, legitimated in relationship to a background normative context.

To illustrate: the value of the individual provides a normative context for specific human rights—such as the entitlement not to be tortured—that exist in a norm complex of other standards of behaviour that may modify the right, either in the abstract, or in relation to a specific case. For example, breaching the norm against torture to extract information from a terrorist may be persuasively justified in circumstances where that breach leads to the prevention of harm to a larger number of innocent people. Government authorities breaching the norm not to harm those accused of crimes may, therefore, legitimate their policies by an appeal to an alternative standard of behaviour—the responsibility to protect their citizens from harm. Both norms are legitimated in relationship to the same normative context—the protection of individual rights—but the one outweighs the other in this case, and, practical difficulties aside, can possibly be considered to do so in general.

Laws, on the other hand, are a specific type of norm with legal status and, themselves, exist in a legal system. Often norms will harden into customary law over time as States greet breaches of it with statements affirming their opinion that such behaviour is illegal. Academic lawyers, therefore, have been interested in States’ legal opinions and perspectives alone, and less concerned by from where they received them, while constructivist scholars, being interested in the mechanisms through which states obtain their identities and, subsequently, their sense of appropriate conduct, may look at the
processes through which they develop their commitment to norms.

As we have already noted, customary international law arises from a combination of supporting State practice and *opinio juris*. States will, therefore, be aware of the legal ramifications of their behaviour and statements, so it is important to have sensitivity to and an understanding of some principles of customary law formation. Primarily, however, we are interested in the legitimacy of humanitarian intervention and its relationship to other standards of behaviour, so we will be alert to the normative arguments States make, whether they are of a legal character or not. New norms in international relations have been theorised by constructivist scholars to emerge and grow through a complex process of persuasion and diffusion throughout the international community. Indeed, some customary law and international norms are occasionally in flux and the laws of force are regarded as the most visible and contested. Since customary law and norms regularly arise at the expense of old rules and standards it can be difficult to judge if and when the new rule has replaced the old one. Understanding how norms and customary law come about is, therefore, useful in determining the likely future legal status of a practice.

In the process of customary law formation, precedent provides a key element in the growth of new laws. The *opinio juris* accompanying a practice is a crucial element in classifying behaviour as law. States will, therefore, be especially mindful of the statements they do or do not make in relationship to a new practice, especially one as important as humanitarian intervention, and certain statements may be provided with additional importance by their legal character. Indeed, an important related issue is that, when a State becomes aware that customary law is evolving and chooses not to verbally or actively oppose that change, its inaction is taken as acquiescence and regarded as support for the new rule (Byers, 1999: 143; MacGibbon, 1957). Silence may not be overly significant for constructivists, therefore, but it is to legal scholars and may enliven our analysis of States' perspectives on the laws of force. Equally, governments will be aware of the principle of persistent objection, which allows a State that consistently actively or verbally opposes a new law to effectively opt-out and not be bound by it. Without knowledge of legal principles such as these, therefore, our analysis of States' positions would be missing a central element.
At base, however, establishing the existence of a new customary law, and to some degree that of a norm, is a question of numbers. Byers (1999: 158) states: “the development, maintenance or change of a particular customary rule... involves an implicit weighing of supporting, ambivalent and opposing State practice. Such a weighing process would seem to begin when behaviour which could support a particular rule, or modified rule, first appears.” In most cases, therefore, there will not necessarily be a uniform consensus in international society and some practice and statements will conform to the old rule, while other practice and statements will affirm the validity of the new one. Indeed, opposition to a new rule may take place in many forms, each with their own implications for both the old and new standards of behaviour: some States may engage in conditional support for a rule, offer an alternative, or protest in a number of different ways and with varying degrees of intensity at its development. We will, as a consequence, be perceptive as to what legal aims States hope to achieve by behaving as they do.

Qualitative judgement as well as establishing quantitative indicators is, therefore, necessary to discern the status of a new law. Acts will always outweigh statements in the formation of customary international law because they impose greater costs on the States which carry them out. D’Amato (1971: 37) concludes that practice is more important than belief - a statesman may not believe in the validity of the rule, but international society may make him follow it. Indeed, some scholars have, on that basis, been reluctant to treat statements as a kind of act at all, instead preferring to utilise them as evidence of opinio juris only. But, establishing the existence of a new customary law can be particularly difficult because of inherent problems with the concept of opinio juris and the fact that it may not be immediately apparent (see Byers, 1999: 142). As such, an understanding of the mechanisms through which States begin to view new practices as obligatory, or legitimate, is central to developing a clear sense of when it has reached the status of a norm of appropriate behaviour. Norms, as we have noted, often then harden into rules of customary law as States manifest their opinio juris in response to breaches.

As roughly detailed above, constructivists have established that many norms go through a development process involving three stages: norm emergence; norm cascade and, finally,
internalisation. States exist in a social world of shared understandings based on their identities as States, or, more often, as particular kinds of States and they may subscribe to different standards of behaviour (see Finnemore and Sikkink, 1998; Katzenstein, 1996 and Wendt, 1999). New norms must contend with existing shared understandings of appropriate action, therefore. As Finnemore and Sikkink (1998: 897) put it: “new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest.” As such, the progress of a new norm can take a number of different courses and there are no guarantees that a new norm will achieve the status of widespread acceptance. Instead, it may decline completely, be held only among a certain category of actors, or be reinterpreted and modified during the process of its growth.

Persuading actors to adopt new norms can take place at a number of levels: some authors have emphasised the importance of so-called epistemic communities (Haas, 1992), while others have focused on the importance of international organizations (Finnemore, 1996) or non-governmental organizations (Price, 1998; Wapner, 1995 and Raustiala, 1997 and for an overview see Price, 2003). However, States themselves can be important norm leaders, as is Canada on the issue of humanitarian intervention. Not every State, however, will be predisposed to success in persuading others of the morality of its cause. In other words, not every State is equal in its normative weight: it is hard to imagine, for example, many States being susceptible to the normative overtures of a pariah State on an issue over which it is isolated internationally and because it will likely not be considered a legitimate actor on many additional levels. Moreover, those governments whose positions are so at odds with the mainstream, majority opinion will likely find that their arguments do not resonate and cannot be persuasive on that basis. Indeed, understanding how some arguments may achieve success, while others do not, can contribute to our understanding of the formation of customary law as well as norms. To be sure, it seems persuasive arguments and alternative norms must be consistent with an overall background normative context to be successful. Radical views, on the other hand, may be easier to discard if they do not conform to the mainstream interpretation of that normative context.

Equally, moreover, it may also be legitimate to not be as concerned by the opposition of such
States as they are not usually as susceptible to social pressure and will be content to exist outside of
the normative consensus of international society anyway. Indeed, in the context of persuasion by civil
society actors, Keck and Sikkink (1998: 29) note that “countries themselves vary in their susceptibility
to network pressure, and it is only those that aspire to belong to a normative community of nations
who will be responsive.” The opposition of some States may, therefore, not undermine the legitimacy
of a new norm as much as that of others – an issue to which we will be alert in considering States’
views on humanitarian intervention. Equally, the support of some States can be key, either for
practical reasons or because of their moral weight. Price (1998) has advanced the example of Nelson
Mandela’s South Africa being central to the adoption of a land mine treaty, especially in Africa,
because of the influence of that particular individual arising from the respect he was accorded by
African politicians.

Furthermore, as with the development of customary international law, quantities are important in
the emergence of a new norm. The number of norm-supporting States is important in a different way,
however, as a new norm can be significantly advanced when those who subscribe to it reach a critical
mass - a tipping point, or threshold, in Finnemore and Sikkink’s (1998) terms. Scholars have provided
quantitative evidence for the existence of such a transitional moment and, although there can be no
certainty as to when it will occur, because of the varying importance for norm diffusion of different
States, it has been suggested that the tipping point is rarely prior to the adoption of the norm by at least
one third of the States in the system (Finnemore and Sikkink, 1998: 901). Determining how
widespread expressions of support for, or opposition to, a new practice such as humanitarian
intervention, as well as the character of those views, is, therefore, essential for gauging the future
development of a norm and law.

After the tipping point, a cascade often occurs where States no longer necessarily adopt the norm
through the persuasion of domestic actors. Rather they tend to adopt the norm far more rapidly, and
largely due to external influences in a regional contagion effect. It has been argued that the process is
an active one, in which norm-following governments actively attempt to induce norm breakers, or
resisters, to adopt the new rule. Other agents, such as NGOs, may provide accompanying pressure at
this stage also. Sometimes only enough social pressure is manifested to redefine appropriate behaviour for some categories of States - for example democracies - but on other occasions social pressure is sufficient to redefine it for the widest category - that of States of all types. But a question still remains about external socialisation processes: if a State is socialised through outside pressure, does it hold the norm as strongly as those States with powerful domestic constituencies, or internal cultures, which support it? In other words, how can we know when a norm has been *fully* internalised?

It is precisely this issue which may have the greatest impact on the strength of the support for a new norm among some States. For, though it may become so later, it will not necessarily be immediately clear that a State socialised externally is truly committed to the norm or genuinely considers it to be in its interest. Statesmen may, instead, adapt superficially to the demands of powerful international actors who favour the practice, or profess normative commitment to an ideal in order to pursue ulterior motives. A Government that merely validates a new practice out of adaptation to avoid censure may be trapped by its own rhetoric to a degree, but can conceivably exert moderating pressure on States which promote a new norm, to encourage its redefinition, still within a context of appropriate behaviour. Indeed, much analysis has simply focused on norms in isolation, without considering how they inter-relate with other standards of behaviour to the detriment of our ability to understand how norms take on the final character they ultimately do.

For example, governments may support humanitarian intervention either out of genuine belief or because they realise it is deemed appropriate within a new normative context, but consider that it is potentially pernicious to international order and their individual interests for some of the reasons outlined earlier. They may, then, seek the modification of the norm to, for example, make it only valid when operationalised within an institutional setting that provides some checks on the practice. They may be able to achieve that aim by appealing to their modification as normatively defensible, given other understandings of appropriate conduct within the associated norm complex. Therefore, they can safely pursue their principled foreign policy objectives, or, if they have no deep attachment to the norm of humanitarian intervention, they can similarly modify it to gain safeguards that align with their own interests, without the risk of the international censure that would come of opposing the norm.
outright. As such, it is crucial to understand how new norms inter-react within a complex of related standards of legitimate behaviour to work out how they may have developed in a particular way and how they may continue to develop in the future.

The central question for this analysis, then, is whether most States support humanitarian intervention in its unqualified guise. A secondary question is whether those that do, do so out of genuine belief, or merely to fit with a normative community dominated by a certain powerful few. Those States which do support it out of genuine belief may be willing to see more unilateralism. A further category of States may support the concept of humanitarianism, but have anxieties about its future course, leading them, for self-interested reasons, to attempt to modify the norm using other persuasive and normatively defensible arguments which they may or may not be committed to out of principle. Others may not be particularly attached to the new norm at all, and seek its modification through similar processes and for similar reasons, or they may oppose it entirely. Yet another category of States may be deeply committed to the norm of humanitarian intervention, but seek its development in a certain form because of an equally deep commitment to other norms in the complex of appropriate behaviour on a given issue. These differing positions will impact on the legitimacy of possible future unilateral interventions and deciphering them will enable us to gauge whether States will be willing to concede to the practice despite its potentially pernicious effects.

ii. A Framework of Analysis

As already mentioned, the following analysis will utilise primary evidence in the form of official statements made both during concrete cases and in abstract debates on the issue. The latter have taken place on a number of occasions within the General Assembly of the United Nations. The first wide-ranging debate was held during the 54th session of that body in 1999 and was catalysed by the Kosovo campaign by NATO of the same year. The debate provides some of the most comprehensive data available as a very large number of States outlined their views on the issue there. In the run-up to and at the World Summit of 2005, or Millennium plus-five summit, States once again debated the issue and it was at that meeting that the outcome document we examined earlier was adopted.
In looking at States’ abstract statements on the issue of humanitarianism, it will be necessary to classify them on whether or not, and the degree to which, they support the norm, and, for those that do, whether they do so without reservation, or whether they express a desire for it to be modified in some way. Indeed, it will be a further central task to categorise States’ policies on the role of the Security Council in authorizing the use of force. Of course, an assessment of the numbers and types of States in each category will be useful in determining the implications of support or opposition. The most wide-ranging data available – that provided during the 54th Session of the General Assembly – will be used for this purpose. Further, the statements made later, at and during the run-up to the 2005 World Summit, will be examined to ascertain whether any States changed their positions, indicating that the norm has either progressed or been stymied, and perhaps some of the mechanisms underlying those processes. However, that statements made in the abstract may not reflect the reality of how States behave in concrete instances of humanitarian intervention necessitates that we look at a broad range of cases, varying in character and location of the intervention, to test whether the positions States have outlined in the abstract are consistent with their behaviour in practice.

On that basis, we will be able to consider some of the potential reasons why some States may wish to see the practice of humanitarian intervention remain under the authority of the Security Council. We will consider explanations relating to both more self-interested motivations and those which may be the product of other new standards of appropriate behaviour in international society. Understanding the relationship of the use of force to other rules in the international legal system (and norm complex), as well as how they are justified in relationship to a normative context, will provide us with an understanding of how States are able to modify norms to suit their preferences, whether they are informed by principled beliefs, or strategic self-interest. As a consequence, we should be well placed to consider the real ramifications of recent developments in the law of humanitarian intervention and, particularly, whether States will likely be more open to unilateral humanitarian interventions in the future, or whether the norm is likely to continue to develop solely as one of Security Council practice, albeit with occasional exceptions.

Indeed, the evidence seems to suggest that most States will be unwilling to legitimate unilateral
humanitarian intervention across the board because of security concerns and/or a desire to preserve the legitimacy of the United Nations, which may be underlined by an ideal of global democratic decision-making or its efficacy in protecting legitimate pluralism in international society. As such, States have employed arguments that draw on standards of appropriate behaviour in the norm complex to further their aims, whether their motivations for doing so are strategic or principled. Indeed, separating out those who subscribe to norms out of principled belief and those that merely adapt superficially to them because of social pressure is a difficult task. As such, it will be crucial for future research to further engage with the question of how norms arise and what processes lead actors to begin to truly believe in the appropriateness of a new norm. It seems that the question of where the norm is located may be central to understanding how and why States may or may not feel a sense of obligation to obey international law and norms. It may be, for example, that the norm is located within a broad mass of the population of a State, creating a certain culture, and that principled beliefs can be pursued when other sensitivities, such as security concerns, have declined. But that project is beyond the scope of the current work, so, instead, we turn to the evidence we have.
III. STATES' PERSPECTIVES ON HUMANITARIAN INTERVENTION DURING GENERAL ASSEMBLY DEBATES AND SUMMITS

i. The 54th Session of the General Assembly and the Millennium Summit

The 54th Session of the General Assembly, held in 1999 after the Kosovo campaign, witnessed a wide-ranging debate on the topic of humanitarian intervention, especially what should be done about widespread human suffering in the event that the Security Council is deadlocked. Secretary-General Kofi Annan said that

The sovereign state, in its most basic sense, is being redefined by the forces of globalization and international cooperation. The state is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty - and by this I mean the human rights and fundamental freedoms of each and every individual, as enshrined in our Charter - has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny. (UN Doc. A/54/PV.3: 1-2)

He went on to frame a challenge to the international community:

To those for whom the Kosovo action heralded a new era when States and groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke those precedents and in what circumstances?... They knew the terror of conflict, but knew equally that there are times when the use of force may be legitimate in pursuit of peace. That is why the Charter's own words declare that 'armed force shall not be used, save in the common interest'. But what is the common interest? Who shall define it? Who will defend it - under whose authority and with what means of intervention? (ibid. 2-3)

On that basis, an unprecedented number of countries made statements in the plenary meetings of the assembly detailing their positions on the legitimacy of diluting State sovereignty, the appropriate authorities for deciding when to do so and under what circumstances (see UN. Docs A/54/PV.3 - A/54/PV.22).

On those topics, countries can be classified according to the degree to which they support the unmodified form of humanitarian intervention (see fig. 1). Within categories there are, inevitably, different degrees and motivations for States' positions, so it is worth examining some of them in detail to illustrate some common themes. A number of countries, for example, overtly opposed the concept,
railing against the policy, as did the representative from North Korea, who stated:

We have recently seen grave situations whereby the internal affairs of sovereign States are interfered in by force. Today international society must choose one of the two following options: whether the twenty-first century will be a century of independence, equality and peace, or whether it will be a century of high-handedness and arbitrariness. If we choose the latter, all countries with weak national defence capabilities will be vulnerable to bombing, as was the case in Yugoslavia (UN Doc. A/54/PV.14 : 6).

He went on to reveal the source of North Korean anxiety: “In the Balkan region,” he said, “a humanitarian crisis served as a pretext for war, whereas on the Korean peninsula, the so-called missile issue is likely to be used instead” (ibid: 7). Other States were considerably more reserved in their opposition, choosing to fall back on their continuing belief in the validity of the old rules, rather than explicitly rejecting the new. Fiji’s Ambassador said:

I urge all Member States to work together to encourage the resolution of disputes and conflicts through dialogue and the pursuit of consensus. And we must do this always with recognition and respect for national sovereignty and independence (UN Doc. A/54/PV.5: 29).

Nevertheless, despite their differing arguments and positions in the world, both types of States equally protested the doctrine of humanitarian intervention, and so have been placed in the category of ‘no support for humanitarian intervention.’

A further group of delegations were still generally unable to fully support the practice, but exhibited considerably greater willingness for its development, or showed signs that they may become supporters at some point in the future. Tunisia, for example, suggested that further debate was necessary, but that it should take place within the General Assembly, rather than the Security Council (UN Doc. A/54/PV.17: 16). The Lebanese position was similar:

Some States believe that the establishment of a new world order is a result of decisive, historic developments in vision and concept. Others, however, feel that it is no more than a mere desire on the part of some to impose ideas commensurate with the drastic change that has taken place in the balance of power on the international scene. In our opinion, this issue requires further deliberations and discussions [sic.] (UN Doc. A/54/PV.11: 9).

Other countries, categorised similarly, expressed satisfaction over, for example, the Kosovo or East Timor peacekeeping operations, without going so far as to suggest that they support the principle of
humanitarian intervention generally. Mozambique is one example, and the position outlined by the
Ambassador from Qatar another. He stated: "I cannot but express satisfaction at the results of the
North Atlantic Treaty Organization (NATO) operation in the Balkans" (UN Doc. A/54/PV.18: 6). But
he qualified that support, perhaps exhibiting reservations about the way it was conducted, by saying:
"we find it necessary to recall here that we would have preferred that such international endeavours
had taken place in a pre-emptive context..."

Bhutan's Ambassador, on the other hand, set the bar extremely high for the legitimate use of
force for humanitarian intervention: "The use of force to resolve conflict," he stated, "must be
considered with extreme caution: it must be fully within the context of international law and must
enjoy the support of all the members of the international community." (UN Doc. A/54/PV.16: 25).
Brazil's position was, conceivably, even more reserved. Its representative stated: "Democracy has
made it possible for the countries of Latin America to provide mutual assistance - without undue and
unsolicited foreign interference and in a spirit of collaboration - whenever there is a jointly perceived
threat to the institutional stability of one of them" (UN Doc. A/54/PV.3: 6). These countries, therefore,
did not support the doctrine of humanitarian intervention, but cannot realistically be categorized with
those States that completely rejected the practice either.

A third group of States fully supported the principle of humanitarian intervention, but qualified it
in some way. Many, for example, were keen that such operations should only, or preferably, take
place within the United Nations framework and be authorised by the Security Council. Romania's
position was typical of this perspective:

This way of thinking has lately brought up the issue of humanitarian intervention, human rights
and reform of the system of international law. This is a sensitive issue and one full of pitfalls.
There are those who say that we should not tolerate legal injustice under the pretext of
humanitarian intervention. That is true. Similarly, some say that we should tolerate neither social
injustice nor crime under the pretext of non-interference in domestic affairs. Undoubtedly
respect for human rights is primarily the responsibility of national Governments and State
institutions. However, if they do not fulfil this task, there should be an instrument capable of
enforcing respect for international standards and there is no better instrument for doing so than

Other States were similarly cautious that some kind of check should be put on the practice of
humanitarian intervention, but were not necessarily concerned that it should take place only within the
United Nations. For example, Nigeria's position was that "[w]hile the maintenance of international
peace and security remains the primary responsibility of the Security Council, the Charter provision
for the complementary role of regional and subregional groups has also proved to be critical to the
maintenance of peace at the regional and global levels" (UN Doc. A/54/PV.10: 11).

Some countries in this category were more forthright in expressing the motivations for their
position. Chile's Ambassador, after regretting that action had taken place outside of the framework of
the United Nations in Kosovo, blaming the veto for it, said:

Violations of the basic rights of individuals can no longer be considered an exclusively domestic
problem of a country. Protection of these rights is the inescapable task of the international
community.... It should also be noted that this regime is being applied within the context of a
certain international reality characterized by important differences in the relative power of
countries and by selective and sometimes paternalistic practices (UN Doc. A/54/PV.14: 22).

Even powerful countries have been included in this category. Germany's Ambassador noted a
different, but related, basis for his concerns, as well as why the Kosovo action was an acceptable
exception:

A practice of humanitarian intervention could evolve outside the United Nations system. This
would be a very problematic development. The intervention in Kosovo, which took place in a
situation where the Security Council had tied its own hands after all efforts to find a peaceful
solution had failed, was intended to provide emergency assistance and, ultimately, to protect the
displaced Kosovo Albanians. The unity of the European States and the Western Alliance, as well
as various Security Council resolutions, were of crucial significance here. However, this step,
which is only justified in this special situation, must not set a precedent for weakening the
United Nations Security Council's monopoly on authorizing the use of legal international force.
Nor must it become a licence to use external force under the pretext of humanitarian assistance.
This would open the door to the arbitrary use of power and anarchy and throw the world back to
the nineteenth century (UN Doc. A/54/PV.8: 12).

Georgia's position of not wishing to encourage separatism also played on its own sensitivities, so
there were a number of differing reasons for States qualifying their cautious approach to, but strong
support for, the concept of humanitarian intervention.

A few countries also made statements suggesting their probable support, or future support, for
humanitarian intervention, but without explicitly addressing the issue. Japan's statement, for example,
Japan has been stressing the importance of addressing the various issues I have just mentioned by focusing efforts on human security, that is, the protection of the dignity and life of every person against the many threats posed, for example, by poverty; the outflow of refugees; environmental issues; infectious diseases, such as AIDS; human rights violations; international organized crime, including human and drug trafficking; conflicts; anti-personnel landmines and small arms; and terrorism (UN Doc. A/54/PV.12: 16).

Its Ambassador, moreover, mentioned the expanded role of the Security Council in the post-Cold War world, without exhibiting reservations about it.

Our final category of States, which expressed a position on humanitarian intervention, did so in a relatively unreserved way. Most expressed the opinion that Security Council deadlock in a situation where gross violations of human rights are taking place should not block action. Denmark’s representative was typical in making a strong endorsement of the concept of humanitarian intervention, speaking of a duty, rather than simply a right: “The international community has a responsibility,” he said, “to act in the face of a humanitarian tragedy such as the one we witnessed in Kosovo and the one we are witnessing in East Timor” (UN Doc. A/54/PV.9: 37). He went on to say: “Unfortunately, the Council was not able to live up to its responsibilities concerning the ethnic cleansing in Kosovo. Should the paralysis of the Council lead to blind acceptance? No; the international community could not stand idly by and watch, while the principle of State sovereignty was misused in Kosovo to violate international humanitarian law.”

Other countries included in the category, though expressing a desire for them to be improved, had major reservations about the shortcomings of the current procedures to authorise the use of force within the UN. The implication of such views is that operations could take place outside of the UN framework as it stands. For example, the Jordanian representative explained: “we must look into finding mechanisms that ensure the enhancement of the United Nations and its ability to be the framework that expresses the determination of the international community to prevent such crimes, and to be the umbrella for the coordination and organization of collective international action to achieve that goal. (UN Doc. A/54/PV.4: 33).
States’ Positions on Humanitarian Intervention.

<table>
<thead>
<tr>
<th>No support for humanitarian intervention (28):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria, Colombia, Cambodia, Fiji, Zimbabwe, Russia, United Arab Emirates, Paraguay, China, India, Cuba, Iraq, Myanmar, North Korea, Vietnam, Malaysia, Syria, Libya, Yemen, Sudan, Laos, Madagascar, Azerbaijan, Afghanistan, Moldova, Cameroon, Equatorial Guinea, Indonesia.</td>
</tr>
</tbody>
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<table>
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<tr>
<th>Some support for humanitarian intervention (17):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil, Tunisia, Oman, Armenia, Qatar, Ecuador, Bhutan, Mozambique, Niger, Sierra Leone, Bahamas, Mauritania, Angola, Lebanon, Mexico, Turkey, Cyprus.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strong but qualified support for humanitarian intervention (49):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia, Guatemala, Ivory Coast, Ghana, Ukraine, Morocco, Sweden, Slovakia, Austria, Germany, Italy, Djibouti, Costa Rica, Zambia, St Kitts and Nevis, Pakistan, Greece, Czech Republic, Singapore, Gambia, Papua New Guinea, Liechtenstein, Belarus, Burkina Faso, Belgium, Chile, Malta, Cape Verde, Kenya, Ireland, Uganda, Australia, Bahrain, Chad, Jamaica, Poland, Antigua and Barbuda, Mauritius, Barbados, St Lucia, Philippines, Trinidad and Tobago, Finland (for EU), Lesotho, Uruguay, Romania, Nigeria, Egypt, Honduras.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unqualified or nearly unqualified support for humanitarian intervention (19):</th>
</tr>
</thead>
<tbody>
<tr>
<td>France, Jordan, Andorra, United Kingdom, United States, Denmark, Slovenia, Hungary, Iceland, Bulgaria, Croatia, Benin, New Zealand, St Vincent and the Grenadines, Belize, Luxembourg, Albania, Monaco, Canada.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>No direct or indirect comment on humanitarian intervention (67):</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Made strong solidarist statements but no direct comment on intervention (8):</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa, Tanzania, Portugal, Norway, Japan, Thailand, Mongolia, South Korea.</td>
</tr>
</tbody>
</table>

**Table 1: States’ positions on humanitarian intervention at the 54th session of the General Assembly of the United Nations.**

In short, the number of States during the 54th General Assembly of the United Nations which completely rejected humanitarian intervention were relatively few in number. More important, from a
constructivist perspective, is that a number of those States could, in 1999, easily be considered international pariahs. Countries such as Iraq, North Korea and Libya could hardly be considered to speak with a great deal of moral authority on issues of human rights. Moreover, it is clear that most of the countries who protested did so for narrow self-interest, either because of their own questionable human rights practices, the widely perceived illegitimacy of their regime, or their territorial insecurities. As such, even large, relatively important countries such as China and Russia were unable to argue persuasively for the norm of sovereignty to remain absolute because to do so would be to go against the current of international opinion, which places value on human rights as well as state sovereignty. It is more likely that some of the countries manifesting opposition to humanitarian intervention did so as an attempt - albeit conceivably a futile one - to play the part of persistent objector, rather than in an attempt to actually prevent the norm from coming into force at all.

Perhaps more interesting is the number of countries that made no direct statement on the issue of humanitarian intervention. As we noted earlier, silence can often be taken as a sign of consent to legal developments. It is, therefore, conceivable, that many of the countries who expressed no opinion either way would be happy for the rules relating to sovereignty and non-interference to evolve. Many of them are, indeed, small countries who would be unable to pursue humanitarian intervention actively themselves, and, therefore, have no need to justify their position internationally. It seems more likely that, if they fervently opposed the dilution of sovereignty, they would say so, than it would if they supported or were indifferent to humanitarian intervention. However, it is probably a sensible path to be cautious in attributing a view to these States either way - it is safe to assume that they are neither especially committed to humanitarian intervention, nor completely opposed. They may, therefore, be susceptible to persuasive normative arguments.

Equally central is the fact that those countries who appear to have almost unreserved support for humanitarian intervention are relatively few in quantity. Indeed, their number is similar to those at the opposite extreme, who oppose it outright. Indeed, they are also similarly marked by their relative homogeneity as a group. Unlike those categorically opposing humanitarian intervention, those who fully support it are overwhelmingly western, or westernised, with few, or no, internal or external
security concerns and may be important norm leaders on the issue. As such, they can be expected not to have a desire to limit humanitarian intervention at the top of their agenda, because they probably would not have to fear infringements on their own sovereignty. The alternative explanation is that such States, particularly those with the capability to project power, such as the United Kingdom, France and the United States, would wish to expand the possibilities for their being able to do so for political, rather than humanitarian ends. However, as Wheeler (2000) and others have noted, the use of force for purposes other than humanitarian ones would take on a different character and probably draw a hostile international reception. Ulterior motives, as an explanation for unreserved support for humanitarian intervention, does not appear satisfactory. Moreover, that there are a number of very small States with similar policies suggests that there is something greater than self-interest involved.

The motivation of the much larger group of supporters is, however, less clear. A considerable number of States manifested very strong support for humanitarian intervention, but were, largely, unwilling to support the development of the practice outside of the Security Council or without other checks on it. Thus, that States which had reservations about humanitarian intervention far outweigh those who were content to see it develop with few checks, suggests that there is not a strong norm of unilateral humanitarian intervention. It may be that the States who support a qualified right of intervention are not particularly attached to humanitarian intervention out of principle, or that they are, but have interests in preventing unilateralism or the norm from developing too far. It is impossible to tell which States, or how many, fall into either category. But, that there are so many States which exhibited reservations about humanitarian intervention suggests that unilateral intervention will not become the norm at any point in the near future. What may be more likely is that States will continue to prefer the Security Council to be at the forefront of decisions relating to the use of force in international relations for reasons we will discuss later.

Indeed, table 2 outlines the positions of the States at the 54th Session of the General Assembly on the United Nations Security Council. A similar categorisation process reveals that States vary greatly on their policies regarding the need for Security Council authorisation for the use of force in international society. Again, positions vary in degree, from those who, while perhaps considering it
desirable, do not see Security Council endorsement as necessary in cases of humanitarian intervention. Other States consider control by the Council as a pre-requisite for the use of force, while another group would very much like the Council to exert control, but see considerable flaws in it. As such, they exhibit a greater commitment to the Council than the first set of countries, but not as great as those who consider its role non-negotiable. A final group which expressed an opinion considered the Security Council so flawed as to not merit support, but would also be most unwilling to see greater unilateralism. As with the issue of humanitarian intervention, a number of States simply expressed no opinion either way.

Those countries which did exhibit complete or almost complete disregard for the Security Council did so because they considered the body illegitimate. Most stuck to the positivist concept of law-making that focuses on States giving their explicit consent to alterations in international rules. The Security Council, for them, was unrepresentative and dominated by a powerful few. For example, the Algerian Ambassador said, “we remain extremely sensitive to any undermining of our sovereignty not only because sovereignty is our final defence against the rules of an unjust world, but because we have no active part in the decision-making process in the Security Council nor in monitoring the implementation of decisions” (UN Doc. A/54/PV.3: 14). Libya’s Ambassador manifested similar concerns, and suggested that “the Security Council’s rules of procedures must be issued by the General Assembly, which represents the international community” (UN Doc. A/54/PV.19: 17). Iran’s position was, similarly, that the General Assembly was the only democratic body in the United Nations.

Another set of countries reject the Council, but not so comprehensively. A number considered, or implied, that its flaws legitimated bypassing it in very exceptional circumstances, when significant humanitarian conditions warrant it. We have already noted the strong position of Denmark on the issue. New Zealand’s Ambassador stated a similar policy: “In New Zealand’s view, collective action to try to put a stop to a humanitarian disaster involving genocide and the most serious crimes against humanity should never be held hostage to the veto” (UN Doc. A/54/PV.17: 11). He also suggested that the opinions of the rest of the international community were important, thereby limiting recourse to
intervention without authorization. The statement of the United States also implied as much:

Even in Kosovo, NATO's actions followed a clear consensus, expressed in several Security Council resolutions, that the atrocities committed by Serb forces were unacceptable and that the international community had a compelling interest in seeing them end. Had we chosen to do nothing in the face of this brutality, I do not believe we would have strengthened the United Nations. Instead we would have risked discrediting everything it stands for (UN Doc. A/54/PV.6: 5).

Kenya effectively suggested that international consensus could substitute for Security Council endorsement, and Iceland's Ambassador endorsed the position of the Secretary-General, implicitly suggesting that its government would be comfortable with action taking place outside of the framework of the United Nations if conditions warranted it (UN Doc. A/54/PV.13: 32).

A much larger group of countries, however, simply endorsed the Security Council as the only, or primary, decision-maker on issues of the use of force in international society. The Kazakh representative was affirmative in his government's perspective that "[o]nly the United Nations has the right to address fundamental issues of peace and security" (UN Doc. A/54/PV.12: 21). He continued "[w]e are becoming increasingly convinced of the need to enhance the responsibility of the Security Council for the maintenance of international peace and security and to make authorization of certain actions its exclusive prerogative." Brazil's representative quoted his President as saying: "If we are to see a truly new world order emerge, one of its cornerstones must be the acceptance that multilateral institutions - not least the Security Council - are the source of legality and legitimacy for those actions that guarantee peace and the peaceful resolution of disputes" (UN Doc. A/54/PV.3: 7).

A different set of States were similarly supportive of the Security Council, but were also very conscious of its flaws. In general, they did not wish to foresee further unilateral action for humanitarian purposes, and so did not legitimate it in their statements. For example, Sweden's Ambassador stated that: "As the Secretary-General said yesterday, we must ensure that the Security Council is able to rise to the challenge. It must negotiate in earnest, with creativity and without the threat of veto..." (UN Doc. A/54/PV.7: 32). The German representative said that the Kosovo operation should in no way have constituted a precedent and that "[t]he only solution to this dilemma, therefore,
is to further develop the existing United Nations system in such a way that in the future it is able to intervene in good time in cases of very grave human rights violations, but not until all means of settling conflicts peacefully have been exhausted and - this is a crucial point - within a strictly limited legal and controlled framework” (UN Doc. A/54/PV.8: 12). As on the issue of humanitarian intervention itself, a number of States simply did not make statements confirming their perspective on the role of the Security Council.

Again, it is probably not possible to attribute a position either way to such States, nor is it so clear that they are acquiescing to a development in international law which would see the Security Council bypassed, as very few countries advanced a desire for such a change. Put simply, many countries probably perceived that there was no developing custom of the use of force without Security Council authorization to oppose or support. Indeed, only a handful of countries supported humanitarian interventions taking place in the absence of explicit Resolutions authorizing them - hardly enough to support a new practice in international law. Again, at the other end of the scale, those who rejected the authority of the Security Council were in a real minority and, once again, tended to be international outsiders. What is more, their invoking democracy as an ideal, and reason for undermining the Security Council, can be counted as little more than rhetoric, as we will see later.

The most common position that was stated by far was that the Security Council is a central institution for the authorization of the use of force in international society. As we have already noted, some States considered the Security Council as flawed and, therefore, in need of reform. Those States tended to exhibit very real concerns about, for example, the possibility that the UN-system might be undermined and, therefore, refused to legitimate action for humanitarian purposes in the absence of Security Council authorization. Their perspectives, however, might suggest that they would be willing to countenance such an eventuality as a real exception in the future. Other States seemed to hold the Security Council even more strongly as the central body for authorizing enforcement action and were even more unwilling to see it undermined. These States made up a majority, by far, of those who outlined a position on the appropriate authority to authorize the use of force.
<table>
<thead>
<tr>
<th>States’ Positions on Proper Authority for the Use of Force.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Security Council authorization as very desirable, but not necessary (10):</strong></td>
</tr>
<tr>
<td>Georgia, Jordan, United States, Slovakia, Denmark, Czech Republic, Iceland, Kenya, New Zealand, Saudi Arabia.</td>
</tr>
<tr>
<td><strong>Security Council or UN as only legitimate or primary decision-maker (40):</strong></td>
</tr>
<tr>
<td>Zimbabwe, Brazil, Colombia, Cambodia, Guatemala, Paraguay, China, Cuba, Kazakhstan, Gambia, Guyana, Finland (EU), Liechtenstein, Belarus, Burkina Faso, Chile, Cape Verde, Vietnam, Jamaica, Poland, Armenia, Mauritius, Syria, Barbados, St Lucia, Sudan, Tajikistan, Togo, Laos, Azerbaijan, Afghanistan, Moldova, Maldives, Austria, Ukraine, Croatia, Gabon, Kuwait, Nigeria, France.</td>
</tr>
<tr>
<td><strong>Not willing to legitimate unilateralism but aware of Security Council flaws (22):</strong></td>
</tr>
<tr>
<td>Sweden, Ivory Coast, Spain, Costa Rica, Estonia, Philippines, Ghana, Morocco, Germany, Italy, Greece, Papua New Guinea, Argentina, Belgium, Malta, Chad, Lesotho, Luxembourg, Uruguay, Macedonia, Canada, Egypt.</td>
</tr>
<tr>
<td><strong>Lack of support for Security Council because of flaws (7):</strong></td>
</tr>
<tr>
<td>Algeria, Iran, North Korea, Bhutan, Libya, Ethiopia, Indonesia.</td>
</tr>
<tr>
<td><strong>No comment on position of Security Council/UN (108):</strong></td>
</tr>
<tr>
<td>Albania, Andorra, Angola, Antigua and Barbuda, Australia, Bahamas, Bahrain, Bangladesh, Belize, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Brunei, Bulgaria, Myanmar, Burundi, Cameroon, Central African Republic, Comoros, Democratic Republic of the Congo, Republic of Congo, Cyprus, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Fiji, Grenada, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Iraq, Ireland, Israel, Japan, Kiribati, Kyrgyzstan, Latvia, Lebanon, Liberia, Lithuania, Madagascar, Malawi, Malaysia, Mali, Marshall Is, Mauritania, Mexico, Micronesia, Monaco, Mongolia, Mozambique, Namibia, Nauru, Nepal, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Palau, Panama, Peru, Portugal, Qatar, Romania, Russia, Rwanda, St Kitts and Nevis, St Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovenia, Solomon Is, Somalia, South Africa, South Korea, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, United Kingdom, Uzbekistan, Vanuatu, Venezuela, Yemen, Zambia.</td>
</tr>
</tbody>
</table>

Table 2. States’ positions on proper authority for the use of force in international society, at the 54th Session of the General Assembly of the United Nations.

In sum, then, the 54th Session of the United Nations General Assembly suggests that there is a relatively strong norm in favour of humanitarian intervention in international society. Those who
opposed it entirely were in a real minority and were generally, at that time, considered to be outside the normative consensus in international society on many subjects. Moreover, their arguments for the maintenance of exclusive sovereignty conflicted with the majority opinion that individuals have rights, which should trump sovereignty in some circumstances. A number of other States were hesitant to legitimate it entirely, but could be susceptible to social pressure. A distinct majority expressed a desire for a qualified right of humanitarian intervention, most often supporting the practice only taking place within the framework of the United Nations and, therefore, having Security Council authorization. How and why they have been able to do so will be examined later. Of course, what States say in the abstract and do in practice may be two different things, so we will need to examine the behaviour of States during concrete cases to gain a clearer picture of their policies.

But, before we do that, it will be useful to examine the positions of States in the 59th Session of the General Assembly, which took place a year before the World Summit of 2005, as well as at the summit itself. In so doing there is little point in going over the ground we have already established. Instead, we will be looking for signs of the evolution of the norm - in other words, whether more countries express strong support for humanitarian intervention. We will look especially closely at those which expressed some support for it in 1999. Equally, we will look for evidence of whether the norm has been in some way retarded by events between 1999 and 2005, or whether, when faced with the essential codification of a right of humanitarian intervention, States exhibit greater restraint in their commitments, which would lead us to question their earlier expressed dedication to the norm.

ii. The 59th Session of the General Assembly and the World Summit of 2005

As we have already noted, the adoption of the outcome document of the World Summit held to mark the sixtieth anniversary of the United Nations in 2005 was for many a landmark in the law of humanitarian intervention. As such, many States made their final positions on the issue clear - again, either exhibiting strong support, major opposition, or silence (see 2005 World Summit Country Statements and State-by-State Positions, 2005). Additionally, some States also made their positions clear at the 59th Session of the General Assembly, which preceded the 2005 World Summit. These
statements have also been drawn on in the event that they can supplement for missing data (See UN Docs. A/59/PV.3 - A/59/PV.17).

Most of those who made statements on the issue in 2005 that change the picture presented in table 1 had not changed their perspective, but simply had not expressed it in 1999. The majority of States that we had no data on before and which made their position clear in 2005 were supportive. For example, the Swiss representative said that there is a “need for us to better assume, individually as collectively, our responsibility to protect, and to make every effort to define, together, the criteria for its implementation” (President Samuel Schmid, 15 September 2005). Indeed, Switzerland, Rwanda, Peru, Mexico, Panama, Botswana and Norway all made no direct comment on humanitarian intervention in 1999, but exhibited strong support in 2005. It is, however, impossible to know whether they had become more supportive, or always had been. Four more cases of States revealing their support, where they had not done so were Estonia, Lithuania, Bosnia and Armenia. More interestingly, they were perhaps especially keen to prove their credentials as European, especially given that two had recently acceded to the European Union.

Even more striking are the cases of Cyprus, Afghanistan and Indonesia - the latter two having been completely against humanitarian intervention in 1999. Cyprus only showed some signs of supporting the doctrine of humanitarian intervention five years earlier, but at the World Summit, its representative spoke of an “obligation and a responsibility to protect innocent populations against awful violation of human rights, such as genocide, crimes against humanity, war crimes and ethnic cleansing” (President Tassos Papadopoulos, 15 September 2005). Afghanistan fully supported the summit’s outcome document, and Indonesia spoke of the need for a consensus on the responsibility to protect. These cases, once again, are indicative that countries who are eager to join a normative community of States, in this case European, for Cyprus, and democratic for Afghanistan and Indonesia, may alter their positions to conform to their peers.

In all, only two countries, Bhutan and Belarus, altered their positions in the opposite direction by manifesting significant opposition where they had not done so before. It is perhaps for the opposite reason, growing insecurity and isolation from the international community, that they did so. The
Belarusian president, for example, railed against the United States, saying:

But it is obvious that this very choice of my people [on how to rule their country] is not to everyone's pleasure. It doesn't please those who strive to rule the unipolar world. Wonder how? If there are no conflicts - they are invented. If there are no pretexts for intervention - imaginary ones are created. To this end a very convenient banner was chosen - democracy and human rights. And not in their original sense of the rule of people and personal dignity, but solely and exclusively in the interpretation of the US leadership (President Alyaksandr Lukashenka, 15 September 2005).

There were no other States who dramatically reversed their positions, however, suggesting that the codification of the doctrine of the responsibility to protect did not make a difference to the stated commitment of the majority of delegations in 1999.

In all, therefore, these cases indeed appear to be instructive of the mechanisms at work determining States' receptivity to humanitarian intervention, though it is still impossible to separate out whether those that became more supportive did so out of genuine belief or not. However, it would be true to say that, for the most part, the normative status of the practice remained unchanged between 1999 and 2005. Although it is worth noting that it was striking how many of the statements used the term responsibility or duty to protect, suggesting a firm evolution of the norm among supportive countries from a right of humanitarian intervention, to a responsibility. But assessing that potential development is beyond the scope of this analysis.

* * * * * * *

The General Assembly debates and summits show a large proportion of States to be very supportive, or silent, on the issue of humanitarian intervention. So many States outlining strong and persuasive stances in favour of halting gross violations of human rights suggests that the norm is gathering pace in international society. Even more telling is that few countries wished to challenge it directly. Despite such an apparently widespread basis of approval for humanitarian intervention, however, most States still wished to see the Security Council remain the primary organ for determining when the doctrine should be put into practice. As we have already suggested, that they did so could be to moderate the norm in line with their other interests or normative commitments.
In reality, however, it is impossible to tell whether States are genuinely supportive of humanitarian intervention for principled reasons, or whether they have merely been socialized by outside pressure and are adapting their behaviour for strategic purposes. A closer look at State practice in relationship to concrete cases of humanitarian intervention should help to clarify which States are genuinely attached to the norm, and which ones may have other concerns that limit their support for it. On the basis of that investigation, we should be better placed to establish some explanations for why States may be eager for the norm of humanitarian intervention to remain within the ambit of Security Council authority and, as a consequence, to ascertain how likely it is that unilateral interventions will be legitimized in the future. That said, we will now closely examine the positions of States on five post-Cold War interventions, which were widely divergent in character, location and the reception they received from international society at the time.
IV. STATES’ PERSPECTIVES ON HUMANITARIAN INTERVENTION DURING CONCRETE CASES

i. Securing Aid and Engaging in Unsuccessful State-Building in Africa: Somalia

After the removal of President Mohammed Siad Barre in 1991, Somalia descended into clan-based civil war. Various peace efforts failed and several hundred thousand Somalis fled to neighbouring Kenya, with many more left trapped in camps around Mogadishu and close to starvation. Resolution 746 (S/RES/746, 1992) recognized the situation in Somalia as a threat to international peace and security and there followed the deployment, with the consent of the warring factions, of a traditional peacekeeping operation: the United Nations Operation in Somalia (UNOSOM). The situation continued to worsen and UNOSOM’s mandate was insufficient to enable it to ensure the delivery of humanitarian aid to the estimated 4.5 million people threatened with severe malnutrition and disease. Resolution 794 (S/RES/794, 1992) was adopted in the Security Council and authorized the use of “all necessary means” by a United States-led campaign to establish a secure environment for the humanitarian relief operation in Somalia. Operation Restore Hope, conducted by the Unified Task Force (UNITAF), was undertaken in pursuit of the mandate. Upon its completion, the United States handed over to the second phase of the UNOSOM operation (for more information see United Nations, 1996).

During the Security Council deliberations on the adoption of that Resolution 794 (see, UN Doc. S/PV.3145), every delegation expressed deepening concern over the plight of the victims of the Somali civil war. The Zimbabwean representative referred to the “horrendous humanitarian dimension” (ibid: 6) to the conflict. On that basis, and despite its potentially precedent-setting implications, a number of countries exhibited little in the way of reservation in their statements on the adoption of the resolution. From outside of the west, the representative of the Zimbabwean government spoke of it as “an important precedent for future operations under equally unique circumstances” (ibid: 8-10) and Ecuador’s ambassador recognized the situation as exceptional - but not as an exception - stating that “[s]olidarity and interdependence - principles that underly [sic] our
international order - do not permit us to remain impassive” (ibid: 11) thereby implicitly suggesting a continued basis for such operations in the future.

Similarly, the French ambassador spoke of a “right to emergency humanitarian assistance” (ibid: 29) as well as of his country’s commitment to participate in the operation. The Austrian representative called for a similar approach to be taken in relation to the humanitarian emergency unfolding in Bosnia and Herzegovina (ibid: 32) and, although Sir David Hannay of the United Kingdom, spoke of the “unique set of circumstances” which demanded special measures (ibid: 35), he seemed to do so to ease Somali concerns, rather than out of concern for precedent. The American ambassador, further, mentioned the operation as “an important step in developing a strategy for dealing with the potential disorder and conflicts of the post-cold-war world” (ibid: 36) and Hungary’s representative hoped that the UNITAF operation “might provide inspiration and guidelines to be followed in the future, as well” (ibid: 48) and was similarly enthusiastic about the UNOSOM II operation. Indeed, New Zealand’s representative, too, spoke of Resolution 814 as “defining a new era in international peace-keeping operations” (UN Doc. S/PV.3188: 41).

A further group of countries on the Council greeted the operation with enthusiasm but mentioned neither concern nor enthusiasm for its potential to set a precedent. The representative of the Cape Verdean Government stated that his “Government consider[ed] this humanitarian action very valuable” (UN Doc. S/PV.3145: 22), while Brazil talked of a “further important step” in the deliberations on Resolution 814 (UN Doc. S/PV.3188: 28) and Djibouti of its gratitude to the participants in Operation Restore Hope. The Japanese and Belgian ambassadors spoke of their countries’ concern, and their contribution to the effort, and the Russian representative affirmed that his delegation considered the use of force to be necessary. The Venezuelan and Moroccan statements on the adoption of Resolution 794 both described the situation as “extraordinary” or “exceptional” but did not go so far as to directly assert that it should not set a precedent. Spain’s position was similar in relationship to Resolution 814, later.

The Chinese position, however, was unequivocal. Mr Li Daoyu expressed his delegation’s “deep sympathy” for the Somali people, but referred to the measures adopted as “exceptional” because of the
“unique situation” in Somalia (UN Doc. S/PV.3145: 17). In the deliberations relating to Resolution 814, he was even more forthright, saying that “[i]t is our understanding that this authorization is based on the needs of the unique situation in Somalia and should not constitute a precedent for United Nations peace-keeping operations” UN. Doc. S/PV.3188: (22). On Resolution 794, the Indian Ambassador, similarly, said that “[t]he present action should not, however, set a precedent for the future” (UN Doc. S/PV.3145, 1992: 51).

A further set of countries, with varying opinions about the precedent-setting nature of the operations in Somalia exhibited other concerns, primarily in relationship to the political control of UNITAF. The representative from Zimbabwe said on Resolution 794 that, “[a]n effort can be construed as international only if the United Nations is at its centre” (ibid: 7) and stressed the need for the Secretary-General and the UN to control the operation - its mandate, implementation, and termination. The Belgian Ambassador stated his country’s preference that the operation be a purely United Nations one, but said that it could “go along” with an operation undertaken by a group of Member States duly authorized by the Security Council, but only because the operation would be under the political control of the UN. Those elements of the Resolution, he said, were “key” (ibid: 24). The Cape Verdean Ambassador, more ambiguously, spoke of the necessary central role of the Security Council in the maintenance of international peace and security and Russia made similar allusions. China and India noted that the final Resolution bowed to their concerns relating to strengthening UN control over the operation, but China expressed much deeper reservations relating to the practice of authorizing certain countries to take military actions on behalf of the United Nations (ibid: 17).

Therefore, the members of the Security Council during the debates on Resolutions 794, authorizing UNITAF, and 814, authorizing UNOSOM II, can be categorized by their varying levels of enthusiasm for the operations, and their varying levels of concern (or lack thereof) relating to its precedent-setting potential. Those demonstrating overt enthusiasm for the precedent set and, therefore, the strongest support for the development of a norm of humanitarian intervention, were Austria, Ecuador, France, Hungary, the United States and Zimbabwe. Other countries which can possibly be
similarly categorised are the United Kingdom, Russia, Belgium, Japan, Djibouti, Cape Verdi and New Zealand as they did not express any concerns over the precedent that was being set. Venezuela and Morocco, on the other hand, spoke very firmly of the unique, exceptional and extraordinary nature of the Somali situation and so are more ambiguous on that count. China and India, however, were unambiguous in their opposition to the development of a new practice of humanitarian intervention in international society. The norm of humanitarian intervention can, on the basis of the Somali case, be concluded to have existed to varying degrees among the States on the Security Council at that time.

Our secondary interest, however, is in how that norm, or lack thereof, interrelates for States with the issue of UN authorization and control of the use of force in international society. As we have noted, two countries who can be judged enthusiastic supporters of the norm of humanitarian intervention on the basis of the Somalia case - Belgium and Zimbabwe - as well as two possible supporters at that time - Cape Verde and Russia - exhibited a strong desire for the UN to maintain control of the operation. Two further States - India and China - who were resistant to the norm of humanitarian intervention voiced similar concerns. The different stances on the issue of humanitarian intervention in isolation raises the question of whether there may be different motivations for countries to support the central role of the Security Council in authorizing military action to halt human rights abuses – an issue that will be discussed at length later. In sum, however, the Somalia case shows a surprising level of consensus within the Security Council that intervention should be undertaken. On the basis of the abstract positions of States, it is notable that both Russia and Zimbabwe have become more resistant to humanitarian intervention over the course of the post-Cold War era, and Morocco has possibly become more supportive. These changes lend weight to the idea that a number of countries, despite making strongly supportive statements for the need to act to halt suffering, may not be deeply attached to the norm of humanitarian intervention.

ii. Intervention to Oust an Illegal Regime in the Americas: Haiti

Jean-Bertrand Aristide was elected president of Haiti in 1990. His policies drew opposition from the elite, however, and he was removed by coup d’etat on 30 September 1991. Widespread international
disapproval followed and the Organization of American States (OAS) and the UN General Assembly strongly condemned the overthrow. It was recommended that sanctions be put in place by the OAS and a mandatory economic embargo was imposed by the Security Council some years later, after the failure of diplomatic efforts to restore Aristide. An estimated 60,000-100,000 refugees sought safety in the Dominican Republic and the USA between 1991 and 1994 and a similar number went into hiding within Haiti itself.

The military junta accepted the Governor's Island Agreement and sanctions were lifted on 27 August 1993 but the agreement collapsed and repression resumed. Sanctions were, once again, imposed. On 29 July 1994, the Aristide government-in-exile requested military intervention and the Security Council passed Resolution 940 (S/RES/940, 1994) two days later authorizing it. An invasion was, however, avoided by the brokering of an agreement for the withdrawal of the illegal regime and the return to power of president Aristide. A peaceful international mission followed, and Aristide returned to office on 15 October 1994 (for more information see United Nations, 1996a). Though it was strictly requested by the de jure government of Haiti, and that it ultimately became unnecessary, does not make the discussions surrounding the authorization of an intervention force any less useful. For the Haiti operation was somewhat different to other cases as it was intended to restore democracy, rather than intervene in a conflict. Moreover, there was significant opposition from some members of the international community, and six countries requested to participate in Security Council deliberations on the issue. Their statements can further enlighten our analysis of the strength of the norm of humanitarian intervention.

The adoption of Resolution 940, which authorized the use of all necessary means to restore the legal government of Haiti, saw a debate in which all countries, again, registered their concern over the plight of Haitian people. Mexico and Brazil affirmed that they had always spoken out against the coup and Cuba registered its understanding of the "profound suffering of [its] Haitian brothers" (UN Doc. S/PV.3413: 4-5, 8). The Chinese delegation expressed its understanding of international concerns (ibid: 10) and the representative of a co-sponsor of the Resolution - Canada - said: "Because living conditions in Haiti continue to decline seriously and brutal repression continues, we cannot allow the
status quo to persist” (ibid: 7). All the other countries on the Council made similar references.

From that basis, however, the speakers in the Security Council deliberations had widely diverging views on the legality and legitimacy of an intervention to restore democracy. Ambassador Albright of the USA hailed the resolution as an historic one, reflecting a choice in favour of “democracy, law, dignity and relief from suffering” (ibid: 12). The intervention for the American delegation, was not about violating sovereignty, but restoring it to those who rightfully possessed it - the Haitian people. Ambassador Albright cited the preamble of the Charter in defence of her position on this count and appealed to the precedents of Kuwait and Rwanda.

The representative from France described Haiti as a dictatorship, “a country where human rights are massively violated on a daily basis” (ibid: 14). Appealing to the Council’s previous decisions, the Ambassador further explained that “Recourse to Chapter VII of the Charter as the basis for multinational military action is no insignificant decision... it demonstrates a determination to complete successfully... the task the Council has set itself” (ibid.). A supportive UK Ambassador referred to the illegality of the Haitian regime as legitimating an intervention and the New Zealand delegation referred to the rights of Haitians, as well as the illegality of the military dictatorship. Mr Keating also stated his hope that “when the call next goes out for international assistance to restore democracy or to protect people in a humanitarian disaster in some other small and distant country, the United Nations and all the members of the Council will not be found wanting” (ibid: 22). The representatives from Djibouti and Nigeria exhibited a similar desire for the international community to render such assistance to other countries in the future and the Czech Ambassador hailed the Resolution as unique, explaining that its clarity had been “at the forefront of our attention” (ibid: 24) and that he had been pleased by the support from Aristide - though presumably it had not been judged essential to his delegation’s support for the Resolution.

Other States were more qualified in their support. The Argentine Ambassador vividly illustrated the lengthy process the international community had pursued to resolve the situation, exhausting all peaceful measures. He also, similarly, cited the Haitian people as the true depositary of its country’s sovereignty and stated that the operation, being undertaken, as it was, at the request of a legal
government, would fall within the framework of the Charter (ibid: 14-17). Finally, he referred to the situation as “unique and exceptional,” signaling a certain ambivalence about its value as precedent. Perhaps aware of the sensitivities of the Latin American States, the Spanish representative was similarly reticent, stating that:

Spain, which attaches great importance to the principle of non-intervention, especially on the American continent, supported resolution 940 (1994) because of the singular and exceptional circumstances of this case, because of the clear position taken by the legitimate authorities of Haiti and because the action to be initiated will not be carried out unilaterally but, rather, under the authority and control of the United Nations. Had it been otherwise, we should not have been able to support such an action (ibid: 20).

Mr Vorontsov, of Russia, noted that “[i]n voting for this Security Council resolution, the Russian Federation took into account the fact that it enjoyed the support of President Jean-Bertrand Aristide” (ibid: 23) and the representative from Oman stated that it should not be taken as a precedent for other cases (ibid: 25). All of the above States supported the Resolution. Other States, both within and outside of the Council, however, were unable to support the action.

Within the Council, China’s delegation, which abstained in the voting, stated that it was “of the view that resolving problems such as that of Haiti through military means does not conform with the principles enshrined in the United Nations Charter and lacks sufficient and convincing grounds” (ibid: 10). Somewhat different, Brazil, which also registered its disapproval by abstaining in the voting, impressed upon the Council that it had supported all the resolutions condemning the illegal regime. Rather than using the case to oppose all intervention, the Brazilian delegation opposed the Haiti intervention only, stating that the situation in the country was “unique and exceptional” and that “[w]e have been able to live in peace and cooperation in the region because we strictly observe the principles of the peaceful settlement of disputes and non-intervention” (ibid: 8-9). He further cited the Charter of the OAS and its purpose of promoting democracy with respect for the principle of non-intervention. Brazil’s position was, moreover, informed by its self-proclaimed need to represent the Latin American and Caribbean region, whose members, he said, had “no consensus among them as to the action proposed” (ibid: 9). Other Latin American countries which had requested to take part in the debate,
but who did not have voting rights, echoed the Brazilian position.

The Mexican representative similarly limited his comments to concerns about intervention within the region, rather than intervention in general. "We must not forget," he said, "that history - from which we still have much to learn - has shown that military intervention in our hemisphere has invariably been traumatic" (ibid: 4). He went on to say that there was no precedent for the proposed operation and that the situation in Haiti was not a threat to international peace and security. Uruguay's Ambassador justified his opposition in similar terms: although he did not restrict his opposition to the Latin American region, his protest did not categorically reject humanitarian intervention. He spoke of a restrictive view of the application of enforcement measures in circumstances where there was a threat to international peace and security only (ibid: 7).

The Cuban and Venezuelan Ambassadors, however, departed from other governments in the region. The Cuban representative expressed his "grave concern" about the resolution to be adopted (ibid: 5-6). He said that there had been no precedent for the proposed action and that "decisions of this nature go beyond the mandate of the Security Council" because the Haitian situation did not threaten international peace and security. He, too, invoked the history of the region, but was "resolutely opposed to military intervention as a means of solving internal conflicts" anywhere. For the Cuban delegation, it was humanitarian intervention itself that endangers international peace and security. Venezuela's Ambassador stated, similarly, that "[t]he Government of Venezuela... cannot support unilateral or multilateral military actions in any nation of the hemisphere, nor can it interfere with the sovereign will of any country" (ibid: 8). As such, Cuba and Venezuela's positions were closer to that of China in this instance, as in the abstract.

As in the case of the Somalia operations, some countries qualified their support, not on grounds of concern for the growing tendency to interfere in the internal affairs of States and, therefore, not diluting their support for humanitarian intervention, but, rather, out of concern for the place of the United Nations in such operations. Two unequivocal supporters of the concept of humanitarian intervention - New Zealand and Djibouti - both exhibited concern regarding the delegation of responsibility to individual, or groups, of States for military intervention. Mr Keating of New Zealand
said: “I need to record that New Zealand’s preference has always been and will always be for collective security to be undertaken by the United Nations itself. That provides the reassurance that small countries seek from the United Nations when Chapter VII is being invoked. This is not to say that we have reservations about the use of Chapter VII, either in this case or other specific cases where it is appropriate” (ibid: 21). The delegation from Djibouti exhibited a similar desire to see UN forces undertake such missions, but for the purpose of the organization retaining its credibility (ibid: 23). As in Somalia, China’s Ambassador, who was, in the case of Haiti, a similar opponent to the concept of humanitarian intervention, also expressed his concerns on the topic.

The Haitian case is highly instructive. Again, there was a group of countries which exhibited little concern for limiting the scope of humanitarian intervention: the USA, France, New Zealand, the United Kingdom, Djibouti, Nigeria and the Czech Republic can likely all be categorized as such. More qualified in their support were Argentina, Spain, Russia and Oman. Three States were concerned that the UN should remain central to enforcement action: they were New Zealand, Djibouti and China. China also registered its complete opposition to humanitarian intervention, as did Cuba and Venezuela and three others conceivably limited their opposition to interference in the Latin American region: Brazil, Mexico and Uruguay.

Indeed, the positions of Latin American countries who expressed opposition are the most instructive in this case. Even though Haiti was not technically a case of intervention, they evidently felt a great deal of concern for the broadening of the concept of the United Nations becoming involved in the internal affairs of a country in the Western hemisphere. This outcome could lead to one of two conclusions: either the Haiti case demonstrates that Latin American countries, which expressed considerable support for the responsibility to protect in 2005, are only superficially adapting to the norm and actually only weakly attached to it, or that, when it occurs within their own region, other concerns trump their attachment to that norm, but they are still strongly committed to it in principle. This difficulty raises the important question of what allows States to fully support humanitarian intervention in the event that they are indeed attached the norm. Undoubtedly relations with and perceptions of the powerful supporters of humanitarian intervention seem to be a key element that
requires further research in the future.

iii. Failure to Halt Genocide: Rwanda

In the small central African republic of Rwanda, there had, since independence, been tension between the Tutsi population, which had been favoured by Belgian colonizers, and the Hutus, who were treated as inferior. The Rwandan Patriotic Front (RPF) formed with the aim of overthrowing the Hutu-led government in Kigali, and invaded Rwanda in 1990, leading to civil war. A peace agreement had been signed by the government and Tutsi rebels of the Rwandan Patriotic Front, but it was derailed by the death of the Rwandan president and the killing of the Prime Minister. Over the following three months, government-trained Hutu extremists massacred up to one million Tutsi and moderate Hutus.

The reaction of the international community lives in infamy. The United Nations Mission in Rwanda (UNAMIR) was a peacekeeping force that had been deployed to police the cease-fire established at Arusha. The Hutu extremists had known all-too-well how the international community had reacted in Somalia and judged that, by targeting members of the peacekeeping mission, foreign forces would be withdrawn. They were right. Fearful of crossing the Mogadishu Line, the UN presence was scaled back from around two-and-a-half thousand to under two-hundred personnel with the resumption of hostilities in Rwanda and the deaths of ten Belgian peace-keepers (see UN Doc. S/PV.3368). The genocide unfolded in the face of an impotent reaction by the international community. The case illustrates starkly, the limits of the norm of humanitarian intervention when countries do not judge it to be in their interests to intervene. Even the strongest supporters of military action to halt gross violations of human rights shied away from decisive engagement, apart from the lonely voice of the government of New Zealand.

The failures of the international community and the reasons for them have been well-analysed, and so it does not seem necessary to re-examine the evidence here (see Jones, 1995 and Feil, 1998). It will, however, be useful to investigate the international reaction to the belated French offer to lead an intervention force, which it named Operation Turquoise, after much of the killing had already subsided and the RPF was on the verge of achieving victory over Hutu forces. The proposed operation
was controversial due to the widely perceived ulterior political motives of the French government, which, it was claimed, was trying to prop up a failing ally in the form of the Hutu-led Rwandan government and maintain its sphere of influence in Francophone Africa. The deliberations in the Security Council which led to the adoption of Resolution 929 (S/RES/ 929, 1994) only just led to a sufficient number of positive votes to authorize the French campaign.

As with all the cases so far, every country represented on the Council expressed its shock and anger at the scale of the human tragedy unfolding in Rwanda. There were, as before, unqualified supporters of the French proposal. France’s delegation, itself, emphasized the purely humanitarian objectives of its proposal and the intention to conduct the operation in an impartial manner (UN Doc. S/PV.3392: 6). Ambassador Merimee also mentioned that a number of western European countries had decided to actively back the action. The United States pledged, due to “the enormity of the tragedy... to welcome the bold French initiative” (ibid.). Instead of showing concern for ulterior motives herself, Ambassador Albright was more concerned to allay the fears of others by encouraging the force to demonstrate its impartiality. She ended by stating that “if we are to respond effectively to the variety of conflicts we see in the world today we must be flexible enough to accept imperfect solutions when no perfect solutions are available to us” (ibid: 7) signalling the comfort with which the American delegation continued to receive the development of precedent in dealing with internal conflicts.

Djibouti’s Ambassador rather less enthusiastically endorsed the initiative “as the only viable alternative during the interim period while we await UNAMIR and civilians continue to suffer” (ibid: 3). In something of a reversal of its earlier policies on intervention, Spain unreservedly welcomed the French proposal despite the fact that it was under national control, although it did, once again, refer to the action as “exceptional” and register its approval of the Resolution’s careful terms (ibid: 7). The United Kingdom also endorsed the French proposal with Ambassador Hannay only encouraging the force to remain neutral so as not to endanger UNAMIR personnel. The Czech Ambassador stated that it was his delegation’s view “that the immediate overriding concern of the international community in respect to Rwanda must be to move fast and decisively to save innocent lives” (ibid: 9).
Argentina's Ambassador supported the action on the basis that it was impartial and exceptional and Russia's position was similar: its representative on the Council spoke of the need for "urgent measures," but considered it of utmost importance that the Resolution was explicit on the operation having the "purely humanitarian goal of contributing to the security and protection of the civilian population" and also emphasizing that it was to do so "impartially and neutrally" (ibid: 2). The Russian Ambassador, further, cited it as essential that the Secretary-General report to the Council on the implementation of the operation as detailed in the Resolution.

Brazil, on the other hand, opposed the draft Resolution, for political reasons relating to the difficulty of maintaining two operations at once, instead preferring the swift expansion of UNAMIR. As such, Brazil did not necessarily oppose the action in the belief of the illegitimacy of humanitarian intervention in general. New Zealand had almost identical motivations for abstaining in the voting on the Resolution and, given that it had consistently called for expanded international action in Rwanda, its support for humanitarian intervention, in principle, cannot be in doubt. Nigeria, on the other hand, opposed the operation - and so abstained - stating: "The current situation in Rwanda constitutes a threat to international peace and security. Under these circumstances, the United Nations, through the Security Council, retains a primary responsibility. Therefore, any effort - be it unilateral, bilateral or multilateral - is best subsumed within it" (ibid: 10). China's Ambassador outlined a similar position on behalf of his Government to that which it held in relation to the Haiti case: "We have always believed in respecting the opinions of the countries concerned" he said "and in securing the cooperation of all parties... the action the draft resolution would authorize cannot guarantee the cooperation of the parties to the conflict" (ibid: 4). Once again, therefore, China's position was one of opposition to any concept of humanitarian intervention. It should also be noted that Pakistan abstained in the voting on the Resolution, but chose not to make a statement in the Council. Finally, in a major reversal of its policy on Haiti the government of Oman expressed no reservations about the French proposal, although he did refer to the situation as "unique" (ibid: 11).

The Rwandan case, despite concerns over French motivations for launching Operation Turquoise, therefore, saw a high degree of support from the members of the Council. This case is,
therefore, instructive in that it shows the lengths that some countries will go to in supporting action that protects populations from genocide. Undoubtedly, Rwanda was something of a unique case given the manifest failures of the international community earlier in the conflict and some of the States may not have been willing to support the French action had viable alternatives been available. Indeed, the reservations expressed by some delegations illustrate the discomfort with which they received the mandating of an operation led by a country with perceived ulterior motives. In a wider sense, however, the failure of the international community to halt the genocide in Rwanda highlights starkly, and tragically, that humanitarian intervention during the 1990s was viewed as a right, rather than a responsibility and that, despite the compelling reasons to act, States can often find reasons not to. Again, it is important to note that norms exist in a complex of reasons that may be used to validate arguments to either modify them, or, in certain cases, not to follow them at all. Norms, therefore, often merely legitimate action — they do not necessarily compel it.

iv. The Civil War with an International Dimension in Europe: Bosnia

Economic difficulties within post-Cold War Yugoslavia led to the rise of nationalism in its constituent provinces (for more background see Ramet, 1996). Four of the six republics declared independence from mid- to late-1991. Croatia saw efforts by its Serbian minority to create a majority in Krajina, and Croats elsewhere attempted to displace the Serbs in the rest of the republic. Bosnia formally declared its independence after a referendum on 3 March 1992 and was admitted to the membership of the United Nations. Only forty-five per cent of its population being Muslim, with the majority of the rest being Croat or Serb, ensured that Bosnia was torn apart by conflict over the next three years, until decisive action came from the international community.

Indeed, international action over the conflict in Bosnia involved many different steps. Progressively tightened sanctions were imposed in 1992 on Serbia and Montenegro. A traditional peacekeeping operation - the United Nations Protection Force (UNPROFOR) - was deployed with the consent of the belligerents and its mandate, too, was progressively broadened. It was, later, intended to oversee the demilitarization of the UN protected areas and safeguard aid workers. Five Bosnian towns
and Sarajevo were established as “safe areas” in Resolutions 819 and 824 (S/RES/819, S/RES/824, 1993), and UNPROFOR was later provided with a mandate to protect them in Resolution 836 (S/RES/836, 1993), but several attacks took place, including the marketplace massacres in Sarajevo in 1994 and 1995. One such “safe area” - Srebrenica - was overrun, with its male population massacred, in 1995, demonstrating the gap between Security Council mandates and the necessities of the situation on the ground. It was, finally, left up to members of the North Atlantic Treaty Organization to take forceful action in the form of air strikes, which eventually succeeded in coercing the belligerents to negotiate at Dayton, thereby ending the conflict and leading to the deployment of a multinational force in Bosnia.

The earliest expansion of the United Nations mission in Bosnia, as we have noted, involved providing UNPROFOR with a mandate to use force to ensure the provision of humanitarian assistance in Resolution 770 (S/RES/770: 1992). In the discussions on the Security Council several countries, again, welcomed efforts to ensure the delivery of humanitarian assistance (see UN Doc. S/PV.3106). Among them were the United Kingdom, France, the United States, Hungary, Russia, Japan, Cape Verde and Ecuador, which all supported Resolution 770 and Resolution 771 (S/RES/771, 1992), which was adopted at the same meeting and demanded that the parties to the conflict in Bosnia conform to their obligations under International Humanitarian Law. Venezuela also supported both Resolutions, but exhibited some concern over the authorized use of force (ibid: 43). Austria was similarly supportive of the Resolutions, but lamented the fact that they did not go further. Its Ambassador regretted that the Resolution maintained impartiality, recalling that “[p]olicies of appeasement have never worked” (ibid: 26).

Zimbabwe expressed its typical position of concern over the tendency to authorize unspecified member states, acting in their own national capacity, to undertake the work of enforcement for the United Nations (ibid: 17). The Ambassador cited the practical concern that it may appear to the parties that the outside forces were intervening to pursue their own objectives against one or the other belligerent. As such, it did not support Resolution 770. India also opposed the Resolution, but voted for Resolution 771, its Ambassador noting that his delegation had “reservations about bringing
compliance with international humanitarian law within the competence of the Security Council, and even more so about making it the subject of Chapter VII action" (ibid: 14-15). China also abstained on the voting for Resolution 770, suggesting the use of force might make the situation on the ground worse. Its Ambassador supported Resolution 771, but wished to put on record his delegation's reservations about it invoking Chapter VII of the Charter in a situation which he believed did not threaten international peace and security. As such, China's representative stated that the move should not be taken as a precedent.

During the discussions on the adoption of Resolution 836, which mandated the protection of the “safe areas,” France, New Zealand, Russia, the United States, Japan, Spain and the United Kingdom were all supportive of the text and expressed a willingness to employ force (See UN Doc. S/PV.3228). Djibouti, Hungary and Cape Verde were concerned that the Resolution did not go far enough and should have made provision to reverse Serb aggression, but they nevertheless supported it. Turkey, which, as an observer in the Council’s deliberations, had no voting rights, opposed the Resolution, advocating the use of force to stop Serb aggression (ibid: 11). Pakistan, abstained in the voting on the same basis but, in so doing, both it, and Turkey, justified their positions by emphasising that Bosnia was a sovereign State, which was the victim of external aggression. As such, they were not necessarily advocating intervention for humanitarian purposes.

Venezuela also abstained for identical reasons. Its Ambassador was concerned that the “safe areas” policy would lead to a prolonged United Nations presence in the country and that a genuine effort at collective security should be undertaken (ibid: 22). The Venezuelan Ambassador also noted that “[t]he Government of Bosnia and Herzegovina has communicated officially to the Council its rejection of the particular modality of ‘safe areas’ as contained in this draft resolution” (ibid: 25). Brazil was hesitant about the use of force but supported the Resolution. China’s representative expressed a similar position, but was unable to support the Resolution in the voting and so abstained. Its Ambassador formally expressed his reservations about the Resolution having been adopted under Chapter VII of the Charter and authorizing the use of force. However, despite the authorization, over which China was concerned, the Serbs still launched a destructive attack on the Markale Marketplace
in Sarajevo.

The massacre which took place there on 5 February 1994 drew strong condemnation within the Security Council, which held a meeting at which fifty-seven countries made statements, largely to comment on an ultimatum provided by NATO that it would use force against Serb positions if they did not withdraw their artillery (see UN Doc. S/PV.3336 and Resumption 1, 2 and 3). The debate saw almost universal support for NATO’s move. A large proportion of the speakers were from Muslim countries, wishing to express their solidarity with Bosnia and call on the Security Council to take firmer action against the Serbs, who they considered to be the aggressors. Many Muslim delegations also called for the arms embargo on Bosnia to be lifted, to enable it to defend itself. Most of them justified their positions by emphasizing that Bosnia was a sovereign State and so therefore did not have to see their words of support as advocating humanitarian intervention. Other delegations taking part in the debate - mostly NATO member-states - were less concerned by the sovereignty issue and emphasised their humanitarian motivations, but asserted that the use of force was crucial to finding a solution to the crisis. Ukraine and Greece exhibited major reservations about the use of force, the former probably because of its ties to Serbia and the latter because of its geographical proximity to the conflict. Only China and Brazil strongly opposed the use of force.

When NATO air strikes finally began in earnest after a second attack on Sarajevo, some States pressed their positions (see UN Doc. S/PV.3575). The Russian delegation complained that the NATO action went beyond that mandated by the Security Council, which had not been consulted, as it should have been. Its Ambassador highlighted further practical concerns that the alliance had become a party to the conflict, rather than a neutral interjector (ibid: 3). China, as it had done in most of the cases, asserted that it considered Bosnia’s territorial integrity, sovereignty and political independence should be respected by the international community (ibid: 8). That, despite the fact that Bosnia, itself, welcomed the NATO action.

The United Kingdom, on the other hand, was clear that NATO action was in line with Security Council Resolutions. France’s Ambassador explained that he believed military action to be central to the success of the diplomatic efforts to find peace and the German Representative spoke of the
measures as enforcement action. The United States echoed all of those positions. The Czech Ambassador commended the NATO alliance for its efforts to “prevent further shelling of the civilian population of Bosnia and Herzegovina...” (ibid: 7) and the Indonesian representative welcomed the protection of the safe areas. The Argentine delegation also welcomed the action, as did those of Egypt, Turkey, Pakistan and Italy, the Ambassador of which stated: “The memory of the recent massacre in Sarajevo, in which 32 innocent civilians lost their lives, is still painfully clear to the mind and heart of Italian public opinion” perhaps, interestingly, revealing the source of Italy’s support for humanitarian intervention (ibid: 10).

Nigeria was somewhat less enthusiastic, as its delegation complained of the “tendency on the part of the major Powers to pick favourites and to let off the other side easily [which] has not helped to advance our collective search for peace” (ibid: 7). Ambassador Ayewah did, however, commend the NATO action as “appropriate and measured” (ibid: 8). The Ukraine was also not overtly critical of the NATO bombing, but did appeal for it to end, along with the sanctions against Serbia, given the progress made in peace talks.

The case of Bosnia was, therefore, fairly typical of all the others. There was a group of countries that strongly supported forceful action to halt the violence which was wreaking so much death and destruction, particularly on the civilian population of the country. Bosnia provides an interesting contrast to Haiti, however, as European countries did not react with any of the concerns of Latin American countries about intervention within their own region. Although it was undoubtedly in their strategic interests to act to prevent the destabilisation of the Balkans, it could equally be conceived in their interests to prevent the legitimisation of the hegemon interfering in its internal affairs. Europe, however, expressed no security concerns and committed itself to finding a solution to the Bosnia crisis for a combination of strategic and humanitarian reasons, and with US help.

The motivations of a further group of countries - Islamic States - are also an interesting topic of speculation. It is, indeed, instructive that they felt the need to so forcefully support the Security Council and call on it to go further to support a fellow Muslim population. This episode goes some way to confirming the proposition that the support of Islamic States for intervention to prevent human
rights abuses depends more on their identity as Muslim, rather than as humanitarians. Their commitment to the norm of genuinely humanitarian intervention to prevent human rights violations wherever they occur, therefore, can be questioned on this basis. The situation in Rwanda or Haiti, for example, did not draw nearly the same support and, indeed, Islamic States on the Council were considerably more reticent, thus suggesting that their desire to keep humanitarian intervention a, for the most part, UN-authorized practice is for strategic reasons. However, when action to aid fellow Muslims has been taken, they have been willing to go to almost any lengths to support it, as the case of Kosovo illustrates.

v. Unilateral Intervention to Halt Ethnic Cleansing: Kosovo

The case of Kosovo provides a real test for the arguments being advanced in this analysis. Until now, the contention that some States hold the norm of humanitarian intervention so strongly that they are not concerned by its development - perhaps even outside of the Security Council - could be countered by the argument that all the cases have had Security Council authorization and so do not properly test the claim. States, indeed, would have had no need to voice their desire for humanitarian intervention to remain under the competency of the Council, because, at that point, there seemed to be no questioning the practice. Kosovo was different.

The formerly autonomous province of Serbia was placed under the direct rule of Belgrade by Slobodan Milosevic, heightening ethnic tensions between the Albanian majority and the Serb minority. Violence eventually erupted in early 1998 and became progressively worse as the Kosovo Albanian separatists of the Kosovo Liberation Army (KLA) launched attacks on Serbian targets, attracting government repression. The failure of peace talks and the increasing violence led the Security Council to label the conflict a threat to international peace and security in Resolution 1199 (S/RES/1199, 1999) (for more on the conflict and NATO campaign see Ignatief, 2000 and Lambeth, 2001).

Later in 1998, the continuing intransigence of the Milosevic regime led the NATO powers to consider forceful intervention. The deployment of a verification mission, however, delayed the
necessity for such action, until it was withdrawn as violence intensified once more. On 24 March 1999, NATO commenced bombing of targets throughout Serbia to compel the Milosevic regime to halt its ethnic cleansing of Kosovo and to come to an agreement to allow outside forces to take control of the province. Russia, with its strong ties to Serbia and the Milosevic regime, and China had, however, all along, threatened to veto any further resolution to authorize the use of force. Although we have no need to enter into a lengthy legal exposition here, some NATO States tenuously claimed that such authorization was not legally necessary. The Kosovo intervention, however, became intensely controversial due to the fact of a lack of authorization by the Council. Russia and Namibia submitted a draft Resolution condemning the bombing as illegal and it was roundly defeated. The States on the Council, however, had widely divergent perspectives on the air campaign in Kosovo.

Ambassador Burleigh of the United States expressed his concern over the plight of the Kosovo Albanians, persecuted by Belgrade. Confirming the United States' perspective that the rights of individuals trump state sovereignty, he said that Serbia was in breach of its obligations under the Helsinki Final Act and human rights laws. As such "Belgrade's actions in Kosovo cannot be dismissed as an internal matter" he said (UN Doc. S/PV.3988: 4). Canada similarly emphasised the humanitarian tragedy unfolding in Kosovo and stressed that the Serbian regime was in breach of its obligations, destabilizing an entire region. Previous Council Resolutions were appealed to as justification for the action. Mr Fowler concluded by saying "humanitarian concerns underpin our action. We cannot simply stand by while innocents are murdered..." (ibid: 6). France also placed the blame for the action squarely on the failure of the Milosevic regime to comply with its obligations, and cited previous resolutions as legal authority for the action.

Sir Jeremy Greenstock of the United Kingdom's delegation censured the international community and blamed Milosevic for not pursuing a political solution to the crisis in good faith. "Instead," he said "he has chosen to use brute aggression against a peaceful population. Where is the outrage at that?" (ibid: 11). He further said that the action taken was legal and "justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe" (ibid: 12). The German Government, which was acting as president of the European Union at the time, had its representative
read a statement on behalf of the Union. It spoke of the need to act as a “moral responsibility,” a "duty" and explained that “[o]n the threshold of the 21st century, Europe cannot tolerate a humanitarian catastrophe in its midst” (ibid: 17), which revealed the identity component to Europe’s perception of its interests in preventing humanitarian catastrophes. Albania, unsurprisingly, also backed the action, as did Bosnia and Herzegovina, both of whose delegations requested to take part in the debate.

Two further delegations were more qualified in their support for the action. The representative from the Netherlands stated that a Security Council Resolution would have been preferable. He continued: “[i]f, however, due to one or two permanent members’ rigid interpretation of the concept of domestic jurisdiction, such a resolution is not attainable, we cannot sit back and simply let the humanitarian catastrophe occur. In such a situation we will act on the legal basis we have available, and what we have available in this case is more than adequate” (ibid: 8). Slovenia’s position was similar. Its representative mentioned previous resolutions as evidence of the will of the “international community to assist in devising a solution” to the Kosovo issue (ibid: 6). “We regret,” said Ambassador Türk, “the fact that not all permanent members were willing to act in accordance with their special responsibility for the maintenance of international peace and security” (ibid: 6-7). “It is our expectation and belief that the action which is being undertaken will be carried out strictly within the substantive parameters established by the relevant Security Council resolutions” (ibid: 7).

The Gambian representative was more guarded, as he stated that it is the Security Council which “has the primary responsibility for the maintenance of international peace and security, as clearly stated in the Charter of the United Nations” and that it was the “exigencies of a situation” like Kosovo that demanded action (ibid: 7). Malaysia’s Ambassador stated: “If the use of force is at all necessary, it should be a recourse of last resort, to be sanctioned by the Security Council, which has been vested with primary responsibility for the maintenance of international peace and security.” He continued, however, “that the international community cannot afford to stand idly by” (ibid: 10). The Ambassador blamed and regretted a lack of consensus among permanent members but did not go so far as to directly suggest that it should legitimate future identical action. Finally, of the countries not
exhibiting a great deal of concern over the action, Bahrain merely expressed its hope that Belgrade would fall into line with relevant Security Council resolutions.

Argentina’s Ambassador, on the other hand, said that the NATO campaign was a source of “great concern for Argentina” but did not condemn the bombing (ibid: 10). Brazil’s delegation did not strongly condemn the NATO campaign either. Instead, its Ambassador expressed his government’s concern about the humanitarian crisis in Kosovo and stated that: “In conformity with its unflinching commitment to the pacific settlement of disputes, the Brazilian Government regrets that the escalation of tensions has resulted in recourse to military action” (ibid: 8). Namibia did not condemn the bombing from a legal perspective, but registered its preference that the solution to the crisis should be a peaceful one, for fear that military action would have wider implications for the region (ibid: 10). As such, the Namibian representative appealed for the immediate cessation of the campaign and a return to peaceful measures to resolve the conflict. Gabon’s Ambassador echoed Namibian concerns, stating only that his “Government is in principle opposed to the use of force to settle local or international disputes,” (ibid.) but he did not go so far as to call for an end to the campaign.

Russia, however, condemned the bombing as an act of open aggression. Its Ambassador on the Security Council said: “It would be unthinkable for a national court in a civilized democratic country to uphold illegal methods to combat crime” (ibid: 3) He explained that, from Russia’s perspective, not only was the action illegal due to its lack of appropriate authorization, but because humanitarian concerns are not contained within the United Nations Charter. He referred to the campaign as creating a “dangerous precedent” and suggested that “if we do not put an end to this very dangerous trend, the virus of illegal unilateral approaches could spread not merely to other geographical regions but to spheres of international relations other than questions of peace and security” (ibid: 3). In a statement, quoted in the Council, President Yeltsin said that “the whole of the international rule of law has been threatened” (ibid.).

China’s Ambassador stated in the Council that “[t]his act amounts to a blatant violation of the United Nations Charter and of the accepted norms of international law. The Chinese Government strongly opposes this act” (ibid: 12). He reiterated the Chinese position, held all along, that the
Kosovo situation was an internal matter of the Federal Republic of Yugoslavia (FRY). "We oppose," he said in stronger terms than any other case, "interference in the internal affairs of other States, under whatever pretext or in whatever form" (ibid: 12). Further, he stated that "it is only the Security Council that can determine whether a given situation threatens international peace and security and can take appropriate action" (ibid: 13). In closing, Ambassador Qin called for an end to the NATO action.

The Belarusian delegation, which had requested to take part in the debate, also strongly denounced the NATO campaign. Its Ambassador stated that, without the authorization of the Security Council - as the only competent international body - and the consent of the Yugoslav Government, NATO action was an act of aggression. A statement from the Ministry of External Affairs of India, quoted in the Council by the Indian Ambassador similarly asserted that the United Nations Charter "clearly stipulates that no enforcement actions shall be undertaken under regional arrangements without the authorization of the Security Council" (ibid: 15). Unilateral action of the character of the NATO operation, said Mr Sharma, "would be a return to anarchy, where might is right" and he invoked Article 2(7) of the Charter (ibid: 16). Peacekeeping operations, for India, can only take place at the request of a sovereign government and so Ambassador Sharma called for an immediate cessation of the NATO bombing.

The Kosovo case, therefore, illustrates that States which exhibited strong commitment to the norm of intervention even did so when the Security Council was unable to authorize NATO’s action. The positions of some countries suggest that they are indeed deeply committed to the responsibility to protect, on that basis. Other countries that had previously shown strong support were slightly more cautious in the event that the action took place without a Council mandate, but nevertheless supported the action. Indeed, all in all, the cases demonstrate that a number of countries were remarkably consistent in their policies on humanitarian intervention.

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In sum, the case studies we have examined reveal a striking level of uniformity in the policies of those
countries that unequivocally support humanitarian intervention as well as among those who stridently oppose it. For example, China and India have been almost unwavering in their refusal to concede any ground in their support for the traditional definition of exclusive sovereignty. A number of other countries—notably Russia—had been supportive of humanitarian intervention early in the 1990s, but have become hostile to it lately. Either their commitment to the norm was not strong in the first place, or there are other outside reasons for their change in policies. Establishing what those motivations might be is crucial to our understanding of the mechanisms which underlie States’ ability to support or oppose humanitarian intervention to varying degrees. But to do so here is beyond the scope of the current analysis.

Among those who manifested support for the responsibility to protect in the abstract, there were a considerable number who consistently supported action in concrete cases as well. On that basis, therefore, a substantial group of Western States, for example, appears to be genuinely attached to the norm out of genuine principled belief. That we can be most certain of the beliefs of Western States is an issue to which we will return, but many other States are more ambiguous. It is difficult to prove without a shadow of a doubt, but the consistency of a number of African countries also suggests a genuine attachment to the responsibility to protect from them, as does that of Argentina. However, other Latin American countries have demonstrated considerable inconsistency in their policies, which may lead us to conclude that they are either not committed to the responsibility to protect out of principled belief, or that their policies had simply undergone an evolution by 2005, or, indeed, that other concerns simply trump their desire to end human rights violations in some cases. Many Islamic States, on the other hand, appear to only manifest vigorous support for intervention when it is to prevent the suffering of fellow Muslims, which suggests they are not deeply committed to the norm of intervention to protect human-beings whoever they may be. This, crucially, undermines any sense that they may be principled supporters of the responsibility to protect.

With States having so many different reasons for supporting a qualified right or responsibility to intervene militarily when a State is unable or unwilling to protect its population, it seems sensible to conclude that there may be more than one reason for their wishing to keep the Security Council at the
centre of authorizing the use of such force. While many may see it as in their narrow self-interest to place checks on unilateralism and have been able to defend that position within an existing normative framework, other States which lack such security concerns may have different motivations for their policies and justify them within a related normative context. It is to those two alternative explanations that we now turn.
i. Strategic Self-Interest and Existing Norms

Why would countries wish the practice of humanitarian intervention to remain within the framework of the United Nations, by making a key element of its legitimacy dependent on authorization by the Security Council? The typical realist answer might be that it is in States' immediate interests to do so: the Security Council is composed of a sufficient number of States to keep a check on the practice and prevent intervention to forestall human rights violations being used as a pretext by powerful States who wish to interfere in the internal affairs of States primarily for other, self-serving, reasons. Undoubtedly, the interpretation of when humanitarian emergencies demand action being left solely up to an intervening State opens up greater potential for definitions to be abused and no formal mechanism for the rest of the international community to exert a moderating influence. The widely-held legitimacy of the Security Council and the multilateral aspect of UN-authorization, therefore, may serve as a useful check to prevent the slippery slope, mentioned earlier, of an uncontrolled dilution of sovereignty.

Indeed, as we have already noted, there are a minority of States who are categorically opposed to humanitarian intervention. Many of them are small and remain outside the normative community of nations and would likely feel insecure and certainly ambivalent about their relations with the powerful supporters of humanitarianism in international society. As a consequence they may be especially concerned to ensure checks are placed on the practice of intervention. Indeed, as mentioned earlier, this line of thinking is corroborated by the fact that many of those same countries are even hostile to the Security Council having the authority to make decisions about limiting sovereignty. They regularly expressed a desire to return to the positivist method of rule-making which demands the explicit consent, or acquiescence, of states to legal change. On that, as well as on the issue of humanitarian intervention generally, however, most such States were outside of the normative consensus of international society.
Their numbers and arguments are, it seems, not sufficient to reverse the norm of humanitarian intervention. Their appeals for intervention to cease and the Security Council to be undermined were, therefore, sidelined, or censured, by other States. Normative persuasion, it seems, cannot be successful if it does not resonate at all with the majority of other members of international society and the normative context of legitimate behaviour they subscribe to. That context is partly informed by conceptions of the rights of individuals, which makes the defence of exclusive sovereignty hard to sustain. However, the normative context is also composed of a desire to protect legitimate pluralism – a standard which is also, conceivably, rooted in the rights of individuals. This further component of the normative context allows other countries to draw on norms in the complex that could also prevent the unchecked dilution of sovereignty, whether they do so out of genuine belief in pluralism or not. Indeed, many States may simply employ the rhetoric of pluralism to justify policies that promote their self-interest.

Countries that oppose humanitarian intervention, but are not such outsiders in the normative community of nations - for example, India, Russia and China - may have exactly those motivations. Being more powerful, however, they are able to pursue positions in conflict with the normative context subscribed to by the mainstream and, thus, even to risk international censure. Indeed, during the Kosovo crisis, the Indian representative revealed a great deal when he stated his bafflement that three permanent members of the Council were flouting the law when it should be their “principal interest... to enhance rather than undermine the paramountcy of the Security Council...” (UN Doc. S/PV.3988: 16).

Indeed, China and Russia eventually supported Resolution 1674 which incorporated the language of the World Summit Outcome Document into Security Council practice. Again, two explanations for their behaviour are plausible: firstly, they may continue to interpret the provisions within the document as not relating to humanitarian intervention at all. They will, however, be aware that they are not likely to be able to reverse the norm entirely, though China may continue to try to play the role of persistent objector, but perhaps not by blocking intervention altogether with its veto. More likely is the possibility that, for self-interested reasons of wishing to primarily maintain the non-intervention
rule, they hope to be able to exert continuing control over the evolution of the norm. For example, they may wish to prevent some categories of situations - such as democratic breakdown - legitimating humanitarian intervention. Aware that Security Council authorization is an important ingredient for legitimacy, they have, holding veto-rights, considerable bargaining power with which to limit, though maybe not block altogether, the designs of the powerful supporters of the practice.

A further group of countries who were, rhetorically at least, supportive of humanitarian intervention, but unwilling to legitimate its becoming a unilateral practice could, equally, wish the responsibility to protect to remain within the Security Council’s discretion because of the checks that such a move would place on it. Relatively weak African or Latin American States, for example, may be unwilling to allow unilateral humanitarian intervention under any circumstances, especially if it involved interference by global powers, possibly with ulterior motives. The Ambassador from Barbados summed up this perspective neatly at the 54th Session of the UN General Assembly when he said: “As a small, defenceless State, we are uncomfortable with the notion that intervention can take place without the prior authorization of the United Nations Security Council” (UN Doc. A/54/PV.18: 28). Indeed, Africa, too, in recent years, has preferred to retain control of humanitarian action that interferes in the internal affairs of States in the region, through regional organizations. Both the African and Latin American regions, plagued with historical memories of colonialism, occasionally territorial insecurity and weak States, have had ambivalent relations with the powerful supporters of the humanitarian intervention and may be concerned to keep the practice within the Security Council to limit its development or abuse.

It is, therefore, conceivable that these States have little normative attachment to humanitarian intervention at all. Their behaviour could be interpreted as instrumental adaptation: knowing how important the practice is to many western States – and relying on them for aid and other forms of support – smaller, less powerful, States may wish to rhetorically support humanitarian intervention for political, rather than normative reasons. There is, indeed, some evidence to support this. Many Latin American and African States, for example, hardly possess a pedigree for supporting humanitarianism, so their recent enthusiasm may be suspected on that basis. However, it is difficult to see how it could
be more in their interests now, rather than in the mid-1990s to go along with western preferences. A normative evolution, and accompanying alteration in their identity, appears more likely to be at the root of the policies of at least some.

During the Somali crisis, for example, the Ecuadorian representative to the United Nations spoke of the impact of the situation on "the civilized conscience of mankind" (UN Doc. S/PV.3145: 11). Such views may have diffused throughout the Latin American region in the past few years as there were many supporters of humanitarian intervention there by the time of the World Summit in 2005. Even before that, at the 54th Session of the General Assembly, the Brazilian president said "Latin America, long viewed as a land of backwardness and dictatorships, has fashioned a new international image for itself through the transformations it has undergone" (UN Doc. A/54/PV.3: 5). If an assertion of identity, and a desire to belong to the normative community of democracies is at the root of Latin American support for humanitarian intervention, it is still possible to question the degree to which they hold that norm, which, in turn, will certainly impact on their willingness to tolerate unilateralism. Lingering insecurities probably mean that Latin American and African States must play a delicate balancing act if they believe strongly in the international community's responsibility to protect, not to allow it to take place in such a way that would be detrimental to their long-term interests. The Security Council, therefore, provides important restraint. The reason for their holding authorization by the Council higher in their normative hierarchy than humanitarian intervention itself is, likely, therefore, strategic.

Other States made identity claims at various points, but in a very different way. For example, the Moroccan Ambassador made the following comment in relationship to the conflict in Somalia: "we feel it is our duty, as Arabs, Africans and Muslims, to participate in the international effort to find an effective solution to the crisis of our brother country Somalia (UN Doc. S/PV.3188: 18). Indeed, many Islamic States have been strong supporters of humanitarian intervention, but largely in relationship to specific cases, rather than in the abstract. As noted, most of those cases have, moreover, been ones in which fellow Muslims have been the victims of human rights violations. It is very likely, therefore, that their humanitarianism does not in fact demand great concern for the whole of humanity, but,
rather, that their support for intervention is predicated on political considerations and empathy for their fellow Muslims. On that basis, we can certainly question the attachment of some Islamic States to the objective norm of humanitarian intervention to prevent gross violations of human rights wherever they may occur. Their reasons for wishing the practice to remain within the Security Council, as a consequence, are also likely to be highly strategic. But, whereas Latin American and African countries may be somewhat open to unilateralism in the most extreme circumstances, Middle Eastern countries may be more likely to oppose it, unless it is to rescue Muslims.

The fact that the strength of the normative attachment to humanitarian intervention of some States outside of the Atlantic alliance can be questioned leads us to favour the possibility for a strategic reason for their wishing the Council to remain in control of authorizations to engage in humanitarian intervention. Undoubtedly, a secondary reason many States may hold is that they simply do not wish to see the United Nations system undermined by growing resort to unilateralism. But, the motivations underlying that perspective are likely to be the same: the United Nations is seen, rightly or wrongly, as a protector of the sovereignty of small and weak States in an otherwise hostile world. These States may be shamed into accepting a unilateral intervention in extreme circumstances, therefore, but they will likely be unwilling to validate unilateralism across the board and can persuasively defend their position by referring to the norm of protecting legitimate pluralism.

These States, therefore, may or may not actually be deeply attached to humanitarian intervention, nor, incidentally, to pluralism. Those that are not may wish not to risk international isolation by opposing the norm outright. Those which have some attachment, on the other hand, will want to support the practice, but in a way that is consonant with their own interests. The policy-manifestation of both normative dispensations is a desire to keep the practice of humanitarian intervention under the control of the Security Council. These States successfully employ persuasion on the basis of a norm that is widely perceived as legitimate – that the Security Council is the central body to authorize the use of force in international society.

The principled argument – drawn from the norm complex – which underlies that legitimacy is the value and political pluralism of humanity which, though it cannot legitimate any behaviour, is
nevertheless perceived as morally valuable in itself. If it were not for this widely held background standard, their arguments would undoubtedly be as easy to ignore as those that called for the complete abandonment of humanitarian intervention. Indeed, if they were to oppose intervention entirely, they would risk censure and would probably not be successful in achieving their objective of limiting the recourse to intervention, for a desire to preserve pluralism can only legitimate so much given the current normative consensus. Arguments to set the boundaries of a new norm in a particular way, therefore, are reliant for their success on effectively appealing to other standards of legitimate behaviour in a norm complex. In this case, it is clear that principles of procedural justice and multilateralism underlie the legitimacy of the Security Council, because it can defend pluralism on that basis. States employ that rhetoric, whether out of principled belief or not, in order to achieve their policy-aims.

For another group of States, however, it is not clear that Security Council authorization is viewed in quite the same way. Western States, in particular, may represent the purest examples of States who view the Council differently. For they lack many of the incentives to act in such a strategic way and rather than seeing the Security Council simply as a mechanism for maintaining pluralism or providing checks on unilateralism, they may have a deep normative attachment to it for other reasons and, therefore, not simply employ the rhetoric of the centrality of the Security Council for self-interested purposes. These reasons provide a highly plausible alternative explanation for their desire to keep the United Nations and its Security Council at the forefront of changes in the rules pertaining to sovereignty and the use of force, which may not be absent from other countries’ calculations, but are likely to certainly provide additional, or central, explanations for the preferences of the Western supporters of humanitarian intervention in a way that they would not for those outside of the Western alliance.

**ii. New Norms of International Democracy**

A prominent feature of the 54th General Assembly Session, as well as the 59th was the debate over Security Council reform. States’ perspectives on that issue, as well as the role of the United Nations
generally, provide an important resource of information about some wider, normative reasons why they may be eager to see the practice of humanitarian intervention remain under the competency of the Security Council. Combining those positions with the wider context of State type and identity can provide us with a sense of the relationship between the norm of humanitarian intervention and other practices in the international legal and normative system, which are perceived to be appropriate.

Indeed, States exhibited a near universal preference for multilateralism in the General Assembly debates and, indeed, it goes without saying that no State openly advocated pure unilateralism. Practice, too, suggests the need for the employment of force in international society to be multilateral for it to be judged legitimate (unless in self-defence). That the Kosovo intervention took place within the framework of NATO, for example, undoubtedly provided it with some level of legitimacy even without Security Council authorization. Nevertheless, though multilateralism does indeed seem to be important, collective action outside of the UN cannot be seen as equal in legitimacy to action that takes place under the direction of the United Nations: Why? Multilateralism may, indeed, provide some checks and balances on the excessive self-interest of a single State, which may satisfy some States' strategic self-interests to prevent uncontrolled unilateralism, but it cannot necessarily satisfy all States. NATO, for example, although it is multilateral, is a Western alliance and is not necessarily seen as sensitive to the interests and perspectives of the rest of the world. Underlying the legitimacy of the Security Council, therefore, is a conception of, not just multilateralism, but effective multilateralism, and, for some, even an analogy to democracy. NATO, on the other hand, can provide checks and balances to some degree but may not do so in a genuinely representative fashion or to the same extent as the Security Council.

Indeed, it is for that reason that the fact many European and other Western States did not wish to see the Kosovo action as setting a precedent further counts against their support for humanitarian intervention being explained by adaptation: for they would surely unquestioningly support the United States if they were merely following its lead. That is unless they wished to place checks on the power of the US, but it also disproves this strategic reason for their wishing to see the practice remain under the authority of the Security Council. For, unquestionably, they would be able to exert control in the
case of NATO action, even in the absence of Security Council authorization to use force. If limiting the United States is what other countries in the Western alliance were seeking, then they should prefer NATO to be the primary actor for authorizing and conducting humanitarian intervention. There must, therefore, be a different explanation for why States in the Western alliance, and perhaps also outside of it, see Security Council authorization as a central requirement for the legitimate employment of violence to halt human rights violations.

Almost every State made some reference to Security Council reform at the 54th and 59th General Assembly debates, as well as the two summits. During those meetings, it was striking how many of them drew on the rhetoric of democracy to justify their appeals for greater participation on the Council. The vocabulary of democracy: representation, transparency, openness, was present in almost every statement on the subject. Burkina Faso's statement emphasised that the "United Nations must serve as a guide in the management of international affairs. If it is to play that role successfully and accomplish its task, it needs to be deeply democratized. In other words, it must listen to the majority of States and civil society organizations so as better to serve the common interest" (UN Doc. A/59/PV.4: 8). Thus, it seems the legitimacy of exercising power, particularly military coercive power, with the purpose of promoting purported community interests, depends on its basis in a real democratic consensus of the common interest. Even the representative from North Korea - a country hardly reputed for its democratic credentials - stated that "[t]he Organization should be democratized so that all international issues can be resolved in the common interests of the Member States" (UN Doc. A/59/PV.11: 30). Various interpretations of democracy, however, were employed.

African States were keen to stress the fact that a large proportion of the Security Council's work related to the continent. The statement of Gabon's representative was typical - he said: "It is indeed paradoxical that Africa is still not counted among the permanent members, even though the bulk of the Council's decisions involve Africa" (UN Doc. A/59/PV.3: 16). Other States emphasised the financial and political input of some countries to the United Nations. Switzerland's representative suggested that "greater account must be taken of the financial and material contributions of specific Member States" (UN Doc. A/59/PV.3: 17). As such, many countries advocated the inclusion of Germany and
Japan as permanent members of the Council. In the category of permanent members, States also preferred for large regional powers, such as Brazil, obtaining a seat, so as to enable more representation of marginalized regions. Indeed, Italy’s representative called for “a closer relationship...[to] be built between elected members and their regional groups. That would enhance the accountability of elected members and would make the Council more representative and its deliberations more legitimate” (UN Doc. A/59/PV.7: 27). Liechtenstein’s statement also spoke of the need for Security Council debates to be more inclusive (UN Doc. A/59/PV.10: 25).

States considered the basis of representation in several different ways: from regional conceptions, to cultural and other forms of geographically-based participation. Indeed, Middle Eastern countries were especially keen to have civilizational representation. Egypt’s statement unequivocally appealed to the “legitimate right of more than 1 billion Muslims and more than 300 million Arabs to be represented on the Council on an equal footing with those who represent other cultures and civilizations” (UN Doc. A/59/PV.10: 21). Eastern European countries tended to appeal for new countries to have a place on the Council, based on regional groupings and, as we have noted, many States called for developing country - particularly African - membership. Most common, however, was a combination of these positions on representation as many States advocated the enlargement of the Security Council to include more developing country and regional representation, along with those who contribute most to the organization in changed international circumstances. A further common theme was the advocacy of a greater role for the General Assembly, in the words of the Costa Rican Ambassador, as it “represents and expresses the common will of all mankind” (UN Doc. A/59/PV.3: 25) or for greater coordination between it and the Security Council (see Luxembourg’s statement, UN Doc. A/59/PV.10: 17).

Further developing the idea of legitimate, particularly democratic, representation, Bangladesh’s representative said:

Bangladesh believes that any increase in the membership of the Council should be based on certain criteria, including respect for the principle of equitable geographical distribution and the aspirant’s contribution to international peace and security, its proven track-record in democracy, its compliance with United Nations resolutions, its avowed commitment to nuclear
disarmament, its profile as a major partner in development and its contribution as a voice of economically disadvantaged countries (UN Doc. A/59/PV.7: 33).

Tuvalu's representative was similarly disposed that only responsible powers should be given new seats on the Council. Indeed, it is important to note here that the Council, as it stands, is far from perfectly democratic, being composed partly of undemocratic States for a start. The implications of that will be discussed later, but it is interesting to note the aspirations of many States. Indeed, on that basis, it is particularly interesting to note the Ukrainian statement made at the 54th General Assembly debate.

In it, the Ukrainian representative made what was essentially a campaign statement for his delegation's election to the Council:

If elected, Ukraine would base its position in the Security Council on the following fundamental principles: paying adequate attention to conflicts and tense situations in different parts of the world, judging them by the real requirements of each particular case; using all political and diplomatic means available to the Security Council to prevent or manage conflicts; increasing the importance of the humanitarian dimension among the Council's priorities; and enhancing the ability of non-members of the Security Council to influence the decision-making process in that body (UN Doc. A/54/PV.7: 24).

Accompanying the perceived need for democratization of the Council, therefore, are apparent developing norms of legitimate behaviour - or at least pressure for them to be adopted, perhaps most importantly, by the established members of the Council. Those, perhaps new, or incipient, norms are partially informed by conceptions of democracy and serving the community interest. Indeed, as well as calling for increased membership of the Council, a number of States were also keen to see the limitation, or full abolition, of the veto, seeing the practice as undemocratic and contrary to the concept of the sovereign equality of States. San Marino's position, for example, was that "the increase of the number of permanent seats and the extension of the right of veto would entail, in our view, a greater injustice through the perpetuation of privileges [and] the consolidation of discrimination within United Nations Member States..." (UN Doc. A/59/PV.14: 5). Moldova called for the veto only to be cast on "issues of substance" (ibid: 12).

The issue of Security Council reform, and by extension, United Nations reform, is, then, heavily
informed by the ideal of democracy. Indeed, Franck has already outlined an emerging right to democratic governance. He said: “Increasingly, governments recognize that their legitimacy depends on meeting a normative expectation of the community of states” and that “democracy is beginning to be seen as the sine qua non for validating governance” (Franck, 1992: 46). That a norm such as the entitlement to democracy - a norm which can by its nature underpin notions of valid behaviour at all levels of human organization - should begin to encroach on governance at the global level should not be surprising. Indeed, it has already begun to diffuse at the sub-state level, too: the United Nations and the Specialized Agencies have five criteria for working with NGOs: they are that the association must be internationally representative, sufficiently democratic, concerned with human interests, capable of reflecting world perspectives and have the potential for a certain permanence (Galtung, 2004: 1074) and there are growing pressures for NGOs to be democratic to be legitimate. The United Nations, it seems, cannot sustainably insist upon standards of behaviour it is not willing to uphold itself.

That democratization of international decision-making seems to be a norm is established, but, again, are countries deeply attached to it through belief, or for strategic purposes? It seems logical to conclude that States, such as North Korea, that employ rhetoric about democracy in the United Nations do not do so out of deep normative attachment to it. Only democratized countries themselves probably support the norm out of belief. Further, African countries, for example, advocated African representation on the Council to promote the specific interests of their continent - highlighting the potentially self-interested nature of their policies. To be sure, they often pushed for greater inclusion of other regions or powers, but it could be said they did so to support their claim to be entitled to representation themselves. In other words, the rhetoric of democracy could have been employed by some States to make the pursuit of their more narrow self-interests more palatable. In reality, it is impossible to distinguish between normative and strategic motivations for supporting the democratization of the Security Council: to be sure, it may be that States beyond the Western alliance are attached to the normative value of democratizing global governance, but, that those States within it are is perhaps easier to prove.

Indeed, most Western States promoted the expansion of the Security Council, even though they
already have considerable representation in the form of three permanent members. Further, it may, as a consequence, actually be against their immediate interests to dilute their influence over the Council members. Indeed, the strongest evidence of commitment to a norm is when States advocate it even if it is not entirely in their interests to do so. Of course, Western States may just assume that the long-term legitimacy of the United Nations depends on its democratization and therefore they support it out of a sense of long-range self-interest, but this explanation seems far fetched. If, indeed, Western States, and perhaps many more, see the Security Council as the only legitimate body to authorize the use of force out of a deep attachment to norms of democracy, what implications would it have for their likely support for unilateral intervention? If the Security Council is seen as a democratic body by States deeply attached to democracy, surely they would be especially unwilling to see action outside of its ambit?

Not necessarily. For it is precisely the fact that, under current arrangements, the Security Council is not by any stretch of the imagination fully democratic that States attached to the norm of UN democracy will be able to support unilateral intervention, but only under limited circumstances. Indeed, the most undemocratic feature of the Security Council is, conceivably, the veto power invested in its five permanent members, as it runs counter to a central idea of democracy: equality. The circumstances under which States of the Western alliance will legitimate unilateral intervention to prevent gross violations of human rights are, therefore, that there is a threat to cast a veto which runs against the majority interpretation of the international community that something must be done or in the face of overwhelming human rights violations or evidence that they will take place. For the United Nations Security Council is not yet democratic, in its procedures, the politics of its members, or composition.

Its legitimacy, instead, may be drawn from a sense that, although it is certainly not fully democratic, it is perhaps the most democratic body in existence in international society today. The General Assembly may be considered more so, but it would undoubtedly be considered to suffer from an effectiveness shortfall in dealing with issues of peace and security, as well as a considerable democratic deficit in itself because of the internal political systems of some of its members. The
Security Council is still likely to be considered the most appropriate body for determining threats to international peace and Security, therefore, by States committed to democracy. For the Security Council's character can be considered analogous to democracy: it is somewhat transparent, more representative than other organizations and, most important, it attempts to restrain the exercise of arbitrary power through the promotion of the rule of law. Rather than a democratic organ, therefore, it can perhaps be more accurately termed a constitutionally empowered executive, with some representative features.

Other explanations for the central place that States without the Security concerns of those who wish to maintain the authority of the Council for strategic reasons are, however, plausible. Most important is, perhaps, the idea that such States support it out of inertia, or the sense that there is no better alternative. But this description cannot so neatly explain why they have been willing to undermine its authority in cases where the Council is perceived to be acting inappropriately. Only a sense that Council action is increasingly being viewed as legitimate to the degree that it is impartial and democratic can provide us with a satisfying account of why States may bypass it on issues with high ethical content, such as humanitarian interventions. Although Thompson (2006) has advanced an argument that powerful States employ the Security Council out of self-interest to signal their intentions to other governments and legitimate their action, his hypothesis does not go far enough. Contrary to Thompson's assertion, there is plenty of evidence to suggest that States view the Security Council as a legitimate body, so long as it maintains the standards of behaviour we have noted.

It is, on that basis, possible to understand the value of the Security Council as a body that can signal intentions because of its 'democratic' character. Only because action subsumed within it is moderated and subject to the views of States of varying character does it provide the mechanism to legitimate the actions of powerful States. To be sure, once again, the fundamental argument drawn from the normative complex which ultimately justifies the importance of democratic global decision-making is the pluralism of international society. So, when States are pursuing a practice, such as humanitarian intervention, that could quite easily undermine the pluralism of international society, to justify it, even by weakly democratic means, is crucial. As such, the background value of legitimate
pluralism can lead to two standards of appropriate action which States wish to see the Security Council promote – the protection of sovereignty from uncontrolled dilution, and the representation of legitimate interests. Those two principles make up part of a norm complex that States may draw on to defend their policies, whether they follow them for principled, or strategic, reasons.
VI. CONCLUSIONS AND AN AGENDA FOR FUTURE RESEARCH

It is clear from this study that there is a universally-held norm of humanitarianism in international society: no government was able to express complete disregard for the fate of innocent people suffering at the hands of human rights abusers. There is, however, considerably more disagreement about what action is legitimate in pursuit of that humanitarian impulse. Particularly contentious has been the issue of using military force to end human rights abuses and the norm of humanitarian intervention has been contested and modified by States employing arguments that conform to understandings of appropriate behaviour within a normative complex. By doing so, they have been able to modify the norm of humanitarian intervention so that it fits with their interests, whether they be related to security, or other normative commitments.

Indeed, the recent developments in the rules relating to the responsibility to protect mark a turning point in the status of humanitarian intervention. For the first time, international society, acting through the UN General Assembly, has codified a right to intervene in the internal affairs of sovereign States without there even being a direct threat to international peace and security. However, it seems sensible not to over-exaggerate the implications of the changes involved. The responsibility to protect is weakened by not making the conditions under which military intervention will be necessary explicit. As such, the changed law cannot be interpreted as a responsibility to engage in humanitarian intervention and, judging by the reaction of States in the Security Council, it certainly has not primarily been received as such. Moreover, existing practice has changed little in so far as the Security Council retains the position of the only legitimate body to authorize when interventions may take place. Although some claims can be made that there are new legal arguments for unilateral intervention, whether it will become a legitimate practice depends on its reception in international society and, to gauge that, we must understand why it is that States support the Security Council as the right authority for determining when force should be used for humanitarian purposes.

By investigating States' positions on intervention in the abstract, this study has shown that, indeed, only a minority of States are so unconcerned by the implications of it that they are willing to
legitimate unilateral action to halt human rights violations. A further group of countries were fully in opposition to the legitimization of any form of intervention, but they remain in a minority comprised of States that mostly exist outside the normative consensus of international society on many additional issues. Their opposition, therefore, does not represent a great problem for the progress of the norm of humanitarian intervention and is rejected by mainstream international opinion because it is inconsistent with the normative context to which they subscribe. An overwhelming majority of States expressed strong support for the responsibility to protect, however, and did so with reservations that revealed a level of insecurity about its potential development. Indeed, many such States wished the Security Council to remain the exclusive or primary authority for mandating when force can be employed to halt gross violations of human rights. Only a small minority were content for action to take place outside of the legal framework of the United Nations.

Judging the policies of States by their rhetorical positions only, however, encounters the potential problem that States may be only adapting to the perceived preferences of the powerful supporters of humanitarian intervention, rather than subscribing to the practice out of genuine principled belief. As such, we examined a number of concrete cases of humanitarian intervention with the primary intention of testing the consistency of States’ policies. There was, indeed, a high level of consistency among some members of international society who strongly support intervention, implying that they do so out of principled belief. However, other States have tended to only support interventions outside of their region (e.g. Latin America), or those to protect their perceived own (e.g. Islamic States). We may, on that basis, question the commitment of some States to the norm of humanitarian intervention, or suggest that some may have other perceived interests that outweigh their desire to save strangers.

It is the possibility that some States may not be deeply attached to the norm of humanitarian intervention at all that leads us to our first explanation for their desire to keep the Security Council at the centre of authorizing the use of force. Some States may, simply, do so out of concern for the security implications of allowing unilateral interventions. The Security Council, though imperfect, supplies some checks and balances on the powerful. States that have similar security concerns but which are nevertheless committed to halting human rights violations may still favour the Security
Council being in control for the same reasons because, though they believe humanitarian intervention legitimate, they hold Security Council authorization higher in their hierarchy of interests or see it as an issue of procedural justice. It is, in reality, impossible to separate out these two categories of States without understanding the mechanisms that underlie States becoming more or less secure, which seems to be at the basis of their support or opposition to humanitarian intervention. That, however, would be beyond the scope of this investigation. Suffice to say, these States will, whatever their true normative dispensation, be reluctant to see unilateral intervention legitimised except in extreme circumstances, and certainly not on anything more than a case-by-case basis.

Nevertheless, it is much easier to discern the commitment of another category of States to the responsibility to protect. Those States within the Western alliance would seem to have few of the security concerns of those outside of it. Moreover, the desire of some of them to see the Security Council remain in control of humanitarian intervention cannot be for self-interested security reasons, since they would be able to exert more restraining influence on the genuine supporters of intervention if the practice remained within the ambit of the Western alliance. As such, it seems plausible to claim that there is another normative reason why the Security Council is held in such high esteem, certainly by States of the Western alliance, and perhaps some outside of it too.

In the debates on Security Council reform, it is clear that many States are eager to see the democratization of global governance, especially the United Nations. They advocate increased representation, transparency and openness. There is, therefore, an apparent extension of the norm of entitlement to democratic governance to bodies at the supranational level which leads some States to favour the Security Council because of its, admittedly imperfect, representative and procedural credentials, which make its character at least analogous to democracy. Again, we cannot be sure that States are genuinely committed to the norm of international democratization. Indeed, many States could be considered to be employing the rhetoric of democracy for the real motive of increasing their influence over the Security Council. It is, therefore, impossible to know whether many States hold the norm out of principled belief or not. However, again, it is the States of the Western Alliance that do not seem to, plausibly, have such motivations, as they already have representation on the Security Council.
Council and no self-interest in seeing that influence diluted. Nevertheless, they almost exclusively favour the expansion of the Council along democratic lines.

Both explanations lead to the same policy: the desire to keep the practice of humanitarian intervention within the competency of the UN Security Council. The motivations underlying that desire are, however, substantially different, which has implications for the potential future legitimacy of unilateral humanitarian intervention. States that are committed to the Security Council out of a genuine normative belief in democracy may, indeed, be willing to support unilateral action in certain circumstances precisely because the Council is only imperfectly democratic. As such, in cases where the veto is threatened, against the current of international opinion or in the face of massive violations of human rights, these States may be willing to support unilateral humanitarian intervention. States which favour the central role of the Security Council to defend sovereignty may also be willing to see exceptional unilateral interventions, depending on their level of commitment to humanitarianism.

The process of norm modification, therefore, takes place within a complex of understandings of appropriate behaviour. The positions of States that oppose humanitarian intervention outright simply are not tenable as they go against the current of the majority of international opinion. The norm of humanitarian intervention cannot, it seems, be reversed, but it has been modified to primarily only be legitimate when taking place with the approval of the Security Council. States have been able to achieve this modification because, although State sovereignty is being redefined by a growing subscription to the rights of individuals, the concept of legitimate pluralism necessitates that its dilution does not go too far. The Security Council provides a means of preventing that from happening. Meanwhile, other States have been able to insist on the centrality of the Council by relating the norm to democratic legitimacy – another important standard of behaviour in the contemporary international norm complex, which draws from the standard of legitimate pluralism that continues to partly comprise the current international normative context.

As we have noted throughout, however, the primary problem with any kind of assessment of the strength of norms is whether States hold them out of principled belief, or merely because they are adapting to external pressures. Though adaptation can still trap States into certain types of behaviour,
it may nevertheless impact on the types of action they are willing to legitimate, as we have seen. It is, therefore, crucial to understand the mechanisms that underlie States’ developing genuine principled attachment to norms to be able to understand fully the likely future of humanitarian intervention, and indeed any norm. We may suggest, therefore, that it is important to understand where norms are located – presumably those States and statesmen that are socialized through outside pressure may be less committed to the norm, whereas those individuals that gain power from within a culture that supports a given norm fully may be more likely to have a genuine principled belief in it. For example, it may be the case that some States are committed to international democratization, and a particular conception of legitimate action, because of internal pressures, as well as outside ones and deep personal conviction. Fully theorizing and testing the issues surrounding how norms become principled belief is central to future research on humanitarian intervention and norms in general.
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