
The United Nations Security Council and the Challenge of Political Neutrality

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by Samantha Roberts

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INTRODUCTION

2015 marks the 70th anniversary of the United Nations (UN), an institution that was established to operate as an apolitical, administrative body that would, above all other obligations, maintain international peace and security. This thesis will primarily focus on the United Nations Security Council (UNSC), which has been given the supreme power to “determine the existence of any threat to the peace, breach of the peace, or act of aggression”¹ and may also “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”² The permanent members of the UNSC, who individually each enjoy the power to veto decisions made by the Council, are: China, France, Russia, the United Kingdom and the United States (P5). There are also ten non-permanent members of the UNSC, who are elected for a rotational two-year term from the United Nations General Assembly (UNGA), which comprises all 193 member states of the UN.

Seventy years after the UN’s establishment, calls for reform of the system are more prevalent than ever; the Restrain the Veto campaign led by France and Mexico, for example, is “one of the most visible and fast-spreading social media campaigns in the UN’s history,”³ and is interestingly spearheaded by a P5 member. The publicity and traction of this campaign alone illustrates that Council reform is very much a live and topical issue. Yet, calls for reform are nothing new. Various proposals for change have been presented and deliberated ever since the UN first convened in 1946. Over the last 70 years, world leaders, academics, and political commentators have consistently decried the Council’s numerous disappointments. Perceived UNSC failings range from its inability to act during genocides in places such as Rwanda, Darfur, and Srebrenica; the child sex scandals of UN Peacekeepers; its inability to prevent nuclear proliferation; and inaction in contemporary cases of civil war, such as in Syria and Yemen. The Council’s inability to take action in the face of these failings is due, in part, to the deadlock made possible by the permanent members’ veto privilege. Furthermore, the ability of the powerful P5 members to override the Council and wage war under the guise of humanitarian intervention and the right to self defence has arguably undermined the perception of the Council as a neutral and impartial arbitrator, and thus its credibility in the international arena.

¹ United Nations, "Charter of the United Nations," October 24, 1945, 1 UNTS XVI, <http://www.un.org/en/sections/un-charter/un-charter-full-text/index.html> [accessed 14 May 2016].

² Ibid.

³ Aidan Hehir, “The Campaign to Restrain the UN Security Council’s Veto Is Wrongheaded and Pointless,” *The Conversation*, <http://theconversation.com/the-campaign-to-restrain-the-un-security-councils-veto-is-wrongheaded-and-pointless-38875> [accessed 28 November 2015].

Interestingly, the term 'veto' is mentioned nowhere in the UN Charter. Instead, it is disguised in Article 27(3) where it is stated that on all non-procedural matters the Council must secure an "affirmative vote of nine members including the concurring votes of the permanent members."⁴ However, it does not stipulate the requirement of affirmative votes of all permanent states. A permanent member may choose to abstain, and when it does, it does not equate to a negative vote, therefore not all permanent members need to strictly vote on a decision. No explanation is required should a permanent member chose to exercise the veto, although statements are often made at meetings regarding the debated resolution. These non-permanent members do not receive the power to veto decisions made by the UNSC. From the outset of the UN Charter negotiations in 1945, many UN founding member states voiced their vehement opposition to the gifting of the power of the veto to the P5 members. Some of the founding members, including New Zealand, forewarned of the risks involved. New Zealand Prime Minister at the time, Peter Fraser, argued that the veto could end up acting as a "cloak of protection" for the P5 and their allies.⁵

States that call for the reform of the UNSC, and in particular the removal of the veto privilege, often use the annual gathering of the world leaders at the United Nations General Assembly General Debate to voice their positions. In his 2013 UNGA address, New Zealand Prime Minister John Key declared that "the UN has too often failed to provide solutions to the problems the world expects it to resolve. The gap between aspiration and delivery is all too apparent, as the situation in Syria has again so brutally reminded us."⁶ Again, in his 2015 UNGA address, Key stated that "The conflicts and human suffering in Syria, Yemen, South Sudan and a long list of other countries, show how far we are from achieving the aspirations of our founders and of today's members."⁷

It is the aspirations of the founders, in particular, the goal of political neutrality, which this thesis seeks to explore. It will argue that current expectations of the Council are in need of reconsideration and that the limitations of political neutrality need to be addressed and

⁴ Ibid.

⁵ John-Martin Battersby, "The United Nations and New Zealand Security Policy, 1945-1960" (Doctor of Philosophy in History, Massey University, 1994), 28, http://mro.massey.ac.nz/bitstream/handle/10179/2953/02_whole.pdf?sequence=1 [accessed 26 December 2015].

⁶ John Key, "Statement by the Rt Hon John Key Prime Minister of New Zealand at the 68th Session of the United Nations General Assembly 26 September 2013," *United Nations*, <http://gadebate.un.org/68/new-zealand> [accessed May 14, 2016].

⁷ John Key, "Statement by the Rt Hon John Key Prime Minister of New Zealand at the 70th Session of the United Nations General Assembly 1 October 2015," *United Nations*, <http://gadebate.un.org/70/new-zealand> [accessed May 14, 2016].

acknowledged in order for the institution to hold any credibility. This thesis will question whether political neutrality in the UNSC is a desirable outcome, and secondly whether it is even possible.

The concept of a politically neutral UN is manifested clearly within Article 40 of the UN Charter where it states:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.⁸

However, there is clear evidence of situations where the UN has indeed applied provisional measures that do prejudice the rights, claim, or position of parties concerned, contrary to the provision of the Charter. On the surface, it is understandable that the UN would strive towards political neutrality. The perception of a neutral body is a necessary feature of any situation which requires fair and just mediation, let alone for an organisation that is charged with the responsibility of maintaining international peace and security. Yet, an in-depth analysis of the action of the UNSC reveals that for members outside of the P5, neutrality is nothing more than a vocalised desirable, but ultimately unattainable, ideal. For the P5 themselves, even the expressed desire to act impartially is questionable.

This thesis is based on a theoretical analysis and case study, which will examine the desirability and possibility of political neutrality and impartiality in the context of the UNSC. It will also closely examine the concept of the Responsibility to Protect (RtoP) which advocates claim is an emerging norm that shifts the traditional notion of Westphalian exclusive sovereignty, to one of sovereignty as responsibility. This means that if a sovereign fails to meet its responsibility of protecting its citizens from mass atrocity crimes, such as genocide or crimes against humanity, then the international community, with authorisation from the UNSC, has a duty to take collective action to ensure the safety of that population.

It will not examine what Jane Boulden describes as the ‘impartial UNSC mandates’ which consists of those “whose purpose is to authorize the monitoring of peace agreements or agreed

⁸ United Nations, “Charter of the United Nations.”

cease-fires. Such mandates are impartial, because all that they do is commit the UN to overseeing terms or arrangements already agreed by the parties.”⁹ In these situations, the UNSC has not engaged in the terms of the agreement or in any political decision-making about the conflict itself, and such situations are therefore beyond the scope of this thesis.

The first two chapters of this thesis will provide an overview of the history and theory of the problem of impartiality and neutrality at the UN. The third chapter will examine the case of Libya as a detailed example of the issues raised in the first two chapters. The fourth chapter will then provide an assessment of proposed ideas around Security Council reform, followed by a discussion on the limitations of those ideas.

Chapter One will begin by discussing the formation of the UN and its stated goal of functioning under political neutrality. In particular, it will look at how the organisation was created to operate as an impartial and neutral agency capable of transcending politics, while maintaining the capacity to mediate international conflict and advance liberal ideals such as human rights and democracy. This will include a discussion on early figures that influenced the development of the UN, such as Franklin and Eleanor Roosevelt, as well as former UN Secretary-General Dag Hammarskjöld. The disappointment of the Cold War, followed by the rejuvenation the UN experienced at the Cold War’s end will be analysed. In this vein, particular focus will be given to the implications the end of the Cold War had on the evolution of humanitarian intervention, and in particular the emergence of the RtoP.

Chapter Two will examine arguments positing the impossibility of political neutrality in the UN. It will draw on existing critiques of UN impartiality and neutrality derived particularly from the work of Professor Anne Orford, and will discuss the disappointments of Hammarskjöld, including an examination of why the problems of neutrality are still persistent today. Following this will be a realist critique of the anti-politics of liberalism and idealism, drawing on the ideas of theorists such as Hans Morgenthau and E.H. Carr. These realist critiques will then be applied to the contemporary environment that the Council faces today, particularly with regard to the current crisis in Libya.

Chapter Three will explore in depth the 2011 Libyan intervention. It will begin by providing a brief overview of the conflict and how the RtoP concept was employed during the intervention. Following this will be an analysis of the UN Security Council response, namely the adoption of Resolutions 1970 and 1973, which amongst other provisions, referred the case of Libya to the International Criminal Court (ICC) and sanctioned a no-fly zone. The dynamics and various political

⁹ Jane Boulden, “Mandates Matter: An Exploration of Impartiality in United Nations Operations,” *Global Governance* 11, no. 2 (2005): 151.

interests of the 'Western' P5 members (France, the United Kingdom, and the United States), also known as the P3, and the 'non-Western' P5 states (China and Russia), the P2, will also be explored. In addition to this, the problem of selectivity and Council bias will be examined. This chapter will conclude with a summary of the ways in which politics lay at the heart of decision making in Libya, and the resulting repercussions for any expectation that the UNSC can act as an impartial arbiter of when legitimate humanitarian intervention can occur.

Chapter Four will examine the possibility of UN reform and whether proposals for change will have the capacity to transcend the current politics of the Council. It will begin by providing a brief outline of current reform proposals, which include an increase in the number of permanent and non-permanent members of the Council, as well as the elimination or limiting of the veto power currently wielded. The next section will specifically focus on two similar initiatives that have gained considerable attention: the Accountability, Coherence and Transparency Group's (ACT) Code of Conduct, and the Restrain the Veto campaign.

This thesis will conclude by exploring the question of whether the proposed reforms can transcend the politics of the UNSC; it will ask whether impartiality is desirable or whether it is even possible.

CHAPTER 1: THE FORMATION OF THE UN AND THE GOAL OF POLITICAL NEUTRALITY

The United Nations was conceived on the premise that the institution would function as an independent, impartial and neutral body for the promotion of international cooperation and collective security. Immediately following the end of World War II, and the defeat of the Axis powers, the domestic liberal ideals of impartiality and neutrality were believed by the founders of the UN to be transferrable to the international realm and be able to serve as the principles upon which the UN would be established. However, efforts to operate as a politically neutral institution have been, and continue to be, hindered by several factors; the most obvious being its organisational structure, but also its failure to recognise the inherent dispositions of states.

This chapter will examine the formation of the UN and its proclaimed goal of political neutrality. Past experiences will be drawn upon to illustrate efforts of attaining such goals, as well as the implications these have had for the UNSC's effectiveness, or lack thereof. Particular focus will be placed on the ambitions of influential former UN Secretary-General Dag Hammarskjöld, who is largely attributed with shaping the organisation as it is known today. Hammarskjöld's vision for a politically neutral organisation, however, never fully manifested, and this was exemplified with his own discussions on the failings of the institution to respond to the emergence of the Cold War.

The end of the Cold War saw a short period of rejuvenation, however, which gave rise to the belief in some quarters that the Council could become more impartial and effective. During this period we see an increase in the number of humanitarian interventions carried out by member states, and subsequently the development of the RtoP doctrine. However, to many this veil of optimism was short lived, and the Council soon demonstrated, again, its inability to overcome inherent flaws in order to respond appropriately and in a timely manner to humanitarian crises. The current crises in both Syria and Libya are evidence of the Council's inability to achieve the grand promises outlined in the RtoP, namely those enshrined and agreed upon by the UN in the Outcome Document of the 2005 UN World Summit.

EARLY ASPIRATIONS FOR NEUTRALITY

A new era in international cooperation emerged at the end of World War II with the creation of the UN. The institution's aims were, firstly, to prohibit the unilateral use of force by states other than in self defence, and secondly, to centralise the legitimate use of force under the control of its

Security Council.¹ It was evident from the very beginning that the structure of the Security Council would prove problematic for the aspirations of an impartial and neutral organisation. Nonetheless, the requirement of such a body was made clear by powerful founding member states during the negotiations leading up to its establishment.

The first mention of the UN was in discussion over a wartime military alliance, not a plan for a post-war organisation.² War-time US President Franklin D. Roosevelt and British Prime Minister Winston Churchill drafted the 1941 Atlantic Charter that outlined the 'United Nations' goals of World War II which included: self determination of all peoples, respect for the current territorial borders, and abandonment of the use of force. The term 'United Nations' was further developed during the signing of the 'Declaration by United Nations' on January 1 1942, with signatories including Britain, the Soviet Union, China, and the US, along with 22 other countries. These states pledged to adhere to the principles outlined in the Atlantic Charter, and further promised to engage in a maximum war effort and vowed against making a separate peace plan.³ The inception of the 'United Nations' within the context of a wartime military alliance was founded upon a preconceived notion of what the parties believed would best serve their national interests at the time. This illustrates that as early as its embryonic stage, adherence to principles of impartiality and neutrality would be highly challenging.

Further events leading up to the institution's establishment included the 1943 Moscow and Tehran conferences, which resulted in the signing of a declaration calling for the early establishment of an international organisation to maintain international peace and security. In 1944, state representatives of China, the Soviet Union, the UK, and the US met at Dumbarton Oaks to negotiate a proposal for the structure of a world organisation, which was then presented to the United Nations governments. Four principal bodies were to make the body known as the United Nations, namely, the General Assembly (UNGA), composed of all UN members, an International Court of Justice (ICJ), a Secretariat, and a Security Council made up of eleven members, of which five would be permanent (known as the P5) and six to be chosen by the UNGA for a non-permanent and rotational term of two years.⁴ The blueprint of the new international organisation was reinforced at the February 1945 Yalta Conference, where then Soviet President Joseph Stalin agreed to join the United Nations and

¹ Vaughan Lowe, Adam Roberts, and Jennifer Welsh, *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945* (Oxford: Oxford University Press, 2008), 175.

² David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (Oxford; New York: Oxford University Press, 2009), 13.

³ "1942: Declaration of The United Nations," *United Nations*, <http://www.un.org/en/sections/history-united-nations-charter/1942-declaration-united-nations/index.html> [accessed May 14, 2016].

⁴ "1944-1945: Dumbarton Oaks and Yalta," *United Nations*, , <http://www.un.org/en/sections/history-united-nations-charter/1944-1945-dumbarton-oaks-and-yalta/index.html> [accessed May 14, 2016].

together with Roosevelt and Churchill committed to establishing “a general international organisation to maintain peace and security.”⁵

The 1945 San Francisco Conference facilitated the signing of the foundational UN Charter. A political compromise between the P5 and the other 45 founding member states resulted in the creation of a Security Council with five permanent seats, accompanied with the veto privilege. As New Zealand’s former Permanent Representative to the United Nations, Sir Jim McLay, reflected in a 2010 speech, that while criticisms of the veto from small states were illustrative of their sentiments, there was never any possibility of their realisation. Small states voted against the veto as they believed “it would hamstring the search for peace and security; but it had already been agreed, several months earlier, at Yalta, by the ‘Big Three’, so that position – while principled and spirited – was largely symbolic.”⁶ During the San Francisco conference it was evident that the United Nations would only come into existence if the P5 were granted their veto privilege. This precondition was made strikingly clear when US Senator Tom Connally responded to the critics by stating that, “You may go home from San Francisco if you wish and report that you have defeated the veto... Yes, you can say you defeated the veto, but you can also say, “We tore up the Charter!”⁷ Without the support of powerful states who possessed the greatest political and military might, the Council would lack the capacity and authority to carry out any decision made, thus smaller states were ultimately coerced into conceding to the P5 demands.

The victors of World War II now had an instrument with which they could pursue their interests, so long as they had the approval of all permanent Council members. This was made legally possible with the creation of the intentionally vague UN Charter. By failing to provide a definition of what constitutes the maintenance of international peace and security, the Council found itself in a position to respond to a theoretically unlimited range of possible threats at a time, and in a manner of its choosing. In fact, the Council does not have to wait until an actual breach of the peace has occurred before it can invoke the use of its own coercive measures. The UN Charter places no restriction on the Council’s right to make such a determination, other than in an anodyne reference in Article 24(2), which states that the Council shall act in accordance with the Purposes and Principles of the UN.⁸ This provision also allows for an obligation-free Council, as members need not

⁵ Ibid.

⁶ Jim McLay, “Tracing Our Footsteps; New Zealand and the UN Security Council” (Wellington, August 25, 2010), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10669052 [accessed 26 December 2015].

⁷ Bosco, *Five to Rule Them All*, 36.

⁸ Lowe, Roberts, and Welsh, *The United Nations Security Council and War*, 150.

act on security problems that do not fall within their own self-interest. Responsibilities of the Council, which dictated when action was required, were similarly left intentionally vague.⁹

Key individuals who shaped the UN in its development stages include Franklin and Eleanor Roosevelt, as well as French philosopher and political thinker Jacques Maritain and Swedish diplomat, Dag Hammarskjöld. Each of these liberal figures argued strongly in favour of an organisation that would be based upon universal concepts of human rights. They hoped that this foundation would allow the organisation to function impartially, as it would not serve a single state, or group of states, but instead would serve the interests of humanity. While this stated ambition of serving humanity would require an organisation that was capable of transcending the politics of the nation-state, its founders believed that the UN had the capacity to achieve such an ambitious goal.

Franklin Delano Roosevelt (FDR) was instrumental in the establishment of the UN and in enunciating the principles that it still claims to represent today. The idea of international institutionalised involvement in human rights emerged in FDR's 1941 State of the Union Address to Congress, later known as the Four Freedoms Speech. During the speech FDR proclaimed that, "In the future days, which we seek to make secure, we look forward to a world founded upon four essential freedoms."¹⁰ According to FDR these were the freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear. FDR's international outlook was a stark departure from the traditional American isolationist foreign policy of the time. Furthermore, the importance he placed on promotion of universal human rights was encapsulated in his speech when he proclaimed that, "Freedom means the supremacy of human rights everywhere."¹¹

After FDR's death, Eleanor Roosevelt, alongside Jacques Maritain, became influential in setting a principled agenda for the United Nations, particularly in matters concerning human rights. Eleanor Roosevelt represented the US at the United Nations from 1945 to 1952 and also served as the chair of the United Nations Commission on Human Rights (UNCHR) from its establishment until 1951. In 1948, Roosevelt wrote in *Foreign Affairs* that the real importance of the Human Rights Commission lay, "in the fact that throughout the world there are many people who do not enjoy the basic rights which have come to be accepted in many other parts of the world as inherent rights of all individuals, without which no one can live in dignity and freedom."¹² As Chairperson, she

⁹ Ibid., 142–143.

¹⁰ Franklin D Roosevelt, "1941 State of the Union Address ('The Four Freedoms') (6 January 1941)," *Voice of Democracy*, <http://voicesofdemocracy.umd.edu/fdr-the-four-freedoms-speech-text/> [accessed December 17, 2014].

¹¹ Ibid.

¹² Mrs Franklin D Roosevelt, "The Promise of Human Rights," *Foreign Affairs*, April 3, 1948, 70.

proposed that the first task of the Commission should be the writing of the Bill of Human Rights. She argued that “the lack of standards for human rights the world over was one of the greatest causes of friction among the nations, and that recognition of human rights might become one of the cornerstones on which peace could eventually be based.”¹³ Eleanor Roosevelt acknowledged that as the Commission was not a court, it was unable to actually solve its petitioner’s problems; all it could do was write and say that “once the Bill of Human Rights was written, they might find that their particular problems came under one of its provisions.”¹⁴ Despite a Universal Declaration of Human Rights and various organs of the UN dedicated to human rights, the notion of universal human rights remains a contested issue today. The difficulties in implementing these ideas “touch directly on the contested idea of the universal applicability of norms worldwide.”¹⁵ This point will be expanded upon in Chapter Two.

French philosopher Jacques Maritain worked alongside Roosevelt during the drafting of the Universal Declaration on Human Rights. Maritain described the Declaration as a “foundation for convictions universally shared by men however great the differences of their circumstances and their manner of formulating human rights.”¹⁶ He claimed that the “authority and goodwill of the United Nations will be exercised with ever increasing power to apply these means for the advancement of human happiness,” and further that the Declaration served as a type of statement of intent to all people and all governments of the “civilized world.”¹⁷ Maritain understood that the UN’s success was dependent on the realisation that “faith in freedom and democracy is founded on the faith in the inherent dignity of men and women.”¹⁸ Interestingly, he commented that the declaration depended “not only on the authority by which rights are safeguarded and advanced, but also on the common understanding which makes the proclamation feasible and the faith practicable.”¹⁹ Again, the idea of a ‘common understanding’ is contentious and will be expanded on in Chapter Two.

Despite the early aspirations of figures such as Roosevelt and Maritain, by the end of the 1940s, early Cold War politics were threatening the drafting of the Declaration. According to Allida Black, “American conservatives charged any human rights document crafted by the United Nations would bring socialism to America while delegates from the Soviet bloc argued that racial segregation

¹³ Ibid., 471.

¹⁴ Ibid., 472.

¹⁵ Norrie MacQueen, *Humanitarian Intervention and the United Nations* (Edinburgh: Edinburgh University Press, 2011), 18.

¹⁶ Micheline R. Ishay, *The Human Rights Reader*, Second Edition (New York: Routledge, 2007), 2.

¹⁷ Ibid.

¹⁸ Ibid., 4.

¹⁹ Ibid.

proved that the western democracies gave only lip service to civil and political rights.”²⁰ For Eleanor Roosevelt, the Declaration contained three Articles which were of vital importance: Article 15 which provides that “everyone has the right to nationality;”²¹ Article 16 which allows for individual freedom of thought and conscience, including the right to hold and change ones religious beliefs; and Article 21 which provides that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”²² Roosevelt stated that what was most important for her was to gain the acceptance of all member states because “they ought to support the standards toward which the nations must henceforward aim.”²³ But who is vested with the authority to decide why these are the standards towards which all nations must henceforward aim? And why are they apparently vested with that authority? Questions surrounding authority and responsibility inevitably have implications for neutrality, especially when there is an issue that concerns protection and enforcement. The idea that all states must support a declared set of standards is susceptible to criticisms of ethnocentrism and is difficult to reconcile with the principle of impartiality.

Another example of the challenging aspiration for UN neutrality came under the leadership of the second UN Secretary-General, Dag Hammarskjöld. Hammarskjöld was responsible for shaping the functions of the Secretariat and for creating what is now known as Peacekeeping Operations. He was described by US President John F. Kennedy, as “the greatest statesman of our century,”²⁴ and is also the only person who has been awarded a posthumous Nobel Peace Prize. Hammarskjöld believed that the relationship between the Holy Roman Empire and the princes who governed their individual territories was analogous to the relationship of the United Nations and the governments of nation states. As Anne Orford has explained, the former UN Secretary-General believed the UN’s role was to:

²⁰ Allida M. Black, “Eleanor Roosevelt and the Universal Declaration of Human Rights,” *OAH Magazine For History* 22, no. 2 (April 2008): 34.

²¹ UN General Assembly, “Universal Declaration of Human Rights,” December 10, 1948, 217 A (III), <http://www.un.org/en/universal-declaration-human-rights/index.html> [accessed 15 May 2016].

²² *Ibid.*

²³ Roosevelt, “The Promise of Human Rights,” 477.

²⁴ Stephanie Hegarty, “Dag Hammarskjöld: Was His Death a Crash of Conspiracy?,” *BBC News*, September 17, 2011, <http://www.bbc.co.uk/news/magazine-14913456> [accessed 15 May 2016].

Stand above international political, form an objective picture of the competing aims and interests of Members, anticipate conflicts that might arise between Members and make suggestions to governments aimed at preventing such conflict before they gave rise to public controversy.²⁵

Hammarskjöld developed the role of the Secretary-General (S-G) and its office, transforming it from solely as the chief administrative officer of the Organisation to one that “championed the expansion of dynamic executive action to fill the power vacuums created by the liquidation of the colonial system.”²⁶ Hammarskjöld’s closest account of reasons as to why the UN held the proper authority to rule the decolonised world was its desire to be independent, impartial and neutral.²⁷

The self determination of the newly created states was believed possible due to the UN’s “unique characteristics of universality and neutrality.”²⁸ Hammarskjöld was determined to prevent undue influences and abuses of the situation.²⁹

Early on in his post of Secretary-General, Hammarskjöld recognised that national loyalty of Secretariat staff would have difficult implications for the neutrality of the UN. He gave much attention to the role of the international civil servant and believed that Articles 97, 100, and 101 of the Charter were of “fundamental importance for the status of the Secretariat, as together they created for the Secretariat an administrative position of full political independence.”³⁰ During his last address to his staff on 8 September 1961, ten days before he was killed in a plane crash in the Congo, Hammarskjöld stated:

If the Secretariat is regarded as truly international, and its individual members as owing no allegiance to any national government, then the Secretariat may develop as an instrument for the preservation of peace and security of increasing significance and responsibilities.³¹

For Hammarskjöld, the idea that the international civil service was capable of truly acting on an international basis meant that he believed that tasks at the UN should be able to be carried out “without subservience to a particular national or ideological attitude.”³² Due to this belief, one of his first priorities as Secretary-General was to prevent external powers from interfering with processes

²⁵ Anne Orford, *International Authority and the Responsibility to Protect* (New York: Cambridge University Press, 2011), 174.

²⁶ *Ibid.*, 3.

²⁷ *Ibid.*, 47.

²⁸ *Ibid.*, 31.

²⁹ *Ibid.*, 30.

³⁰ *Ibid.*, 10–11.

³¹ *Ibid.*, 4.

³² *Ibid.*, 48.

regarding Secretariat staff recruitment and dismissal in order to accommodate for a more impartial UN.

Hammar skjöld was attempting to circumvent the interference of powerful states, such as in 1953, when the US President Dwight Eisenhower issued the Executive Order 10422, over concerns that the UN was heavily infiltrated by communists. The Executive Order prescribed “procedures for making available for the Secretary-General of the United Nations certain information concerning United States citizens employed or being considered for employment on the Secretariat of the United Nations.”³³ The order had effectively authorised the Federal Bureau of Investigation (FBI) to have access to the UN headquarters in New York to carry out staff investigations, which in turn raised questions regarding Secretariat staff loyalty. Furthermore, Hammar skjöld’s predecessor Trygve Lie had earlier dismissed secretariat staff as requested by the US government, on grounds of failing to answer questions posed by US authorities regarding their involvement in ‘subversive’ activities.³⁴ For Hammar skjöld, these actions highlighted the need to recall and clarify Article 100 of the UN Charter which prohibits the Secretary-General and the staff from seeking or receiving “instructions from any government or from any authority external to the Organisation.”³⁵ He believed that in order for the UN to operate impartially it must be made clear that the organisation would not be influenced by any national interest or ideologies. The Secretariat staff must not consider themselves to be “under two masters in respect to their official functions”³⁶ as doing so would undermine the “international character of the responsibilities of the Secretary-General and his staff.”³⁷ While governments may provide information concerning staff members, it was ultimately up to the Secretary-General to evaluate the information and decide upon UN employment.³⁸

The role of the Secretary-General has even further implications for the desirability of a politically neutral UN. Hammar skjöld believed that the legal basis upon which his authority was grounded was located in the constitutional responsibility for the general purposes set out in the Charter. At a meeting with the first Premier of the People’s Republic of China Chou En-Lai concerning a US pilot hostage situation, Hammar skjöld commented on the role of the Secretary-General:

³³ “Executive Order 10422 of January 9, 1953, Prescribing Procedures for Making Available to the Secretary General of the United Nations Certain Information Concerning United States Citizens Employed or Being Considered for Employment on the Secretariat of the United Nations,” *Code of Federal Regulations*, <http://www.archives.gov/federal-register/codification/executive-order/10422.html> [accessed 15 May 2016].

³⁴ Orford, *International Authority and the Responsibility to Protect*, 48.

³⁵ United Nations, “Charter of the United Nations.”

³⁶ Orford, *International Authority and the Responsibility to Protect*, 48.

³⁷ *Ibid.*, 49.

³⁸ *Ibid.*

When he acts for the purposes indicated, it is not and can never be permitted to be, on behalf of any nation, group of nations or even majority of Member nations as registered by a vote in the General Assembly. He acts under his constitutional responsibility for the general purposes set out in the Charter, which must be considered of common and equal significance to Members and Non-Members alike...Thus, sitting here at this conference table I do so as Secretary-General, not as a representative of an Assembly majority or of any national or individual interests.³⁹

The subsequent release of the hostages was argued to be an example of successful quiet diplomacy in action, and signified another step towards the idea of an executive authority capable of transcending the interests of states.⁴⁰

While Hammarskjöld believed that the role of S-G could be impartial, he did understand that there was some conflict between the different Articles of the Charter that outline the role of the S-G. Aside from managing the Secretariat and practicing quiet diplomacy, the Secretary-General, according to Article 99 of the Charter, also has the power to bring “to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”⁴¹ This transforms the role of Secretary-General “from a purely administrative official to one with an explicit political responsibility.”⁴² Hammarskjöld believed strongly that in spite of this new responsibility, it was still possible for the Secretary-General to act impartially:

The Secretary-General has the duty to maintain his usefulness by avoiding public stands on conflicts between Member nations unless and until such an action might help to resolve the conflict. However, the discretion and impartiality thus imposed on the Secretary-General by the character of his immediate task may not degenerate into a policy of expediency. He must also be a servant to the principles of the Charter, and its aims must ultimately determine what for him is right and wrong.⁴³

From this, it is clear that the role is full of complexity, to the extent that the possibility of acting truly impartially is questionable. On the one hand, it is purportedly a neutral role, with the task of managing the organisation in accordance with the principles of the Charter, and on the other, the role lends a hand to the “policy-making cycle and the development and conceptualisation of

³⁹ Ibid., 51–52.

⁴⁰ Ibid., 52.

⁴¹ United Nations, “Charter of the United Nations.”

⁴² Orford, *International Authority and the Responsibility to Protect*, 11.

⁴³ Elmore Jackson, “The Developing Role of the Secretary-General,” *International Organization* 11, no. 3 (July 1, 1957): 431.

ideas.”⁴⁴ Due to the perceived impossibilities of the Secretary-General’s role being truly neutral, Russian First Secretary to the UN, Nikita Khrushchev, proposed abolishing the Secretary-General post and replacing it with the establishment of a three person group as “there are not – nor can there be – neutral men.”⁴⁵

Despite criticism of the neutrality of the S-G role, Hammarskjöld believed that infringement of the commitment to neutrality could be avoided if “the S-G undertook his tasks on the basis of this exclusively international responsibility and not in the interests of any particular State or group of States.”⁴⁶ He considered that the extent of the S-G’s full political independence was “limited to administrative problems outside the sphere of political conflict of interest or ideology.”⁴⁷ Hammarskjöld claimed that Article 98, which maintained that the “S-G would carry out functions entrusted to him by the Security Council and the General Assembly,”⁴⁸ and Article 99, which authorised the S-G to “bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace of security,”⁴⁹ were problematic in ensuring a neutral and impartial Organisation. Charging the S-G with these political responsibilities pushed “the UN beyond the concept of a non-political civil service into an area where the official, in the exercise of his functions, may be forced to take stands of a politically controversial nature.”⁵⁰ This has obvious problematic implications for a supposed impartial organisation.

DISAPPOINTMENT OF THE COLD WAR

The onset of the Cold War quickly defeated hopes that the Soviet Union and the United States were united in support of a vision for an UN strong enough to enforce international peace. The ideological divide between the two superpowers would have serious implications for the organisation that was created with the belief that it could transcend politics. Between 1946 and 1949, the Soviet Union, as the ideological outcast at the time, exercised its veto privilege 26 times. By 1950, only five years after the signing of the Charter, it was becoming “clear that the treaty’s central tenet, the existence of a functional Security Council, was foundering.”⁵¹ That year, the Soviet

⁴⁴ Kirsten Haaemck, *The United Nations Democracy Agenda* (Manchester University Press, 2011), 5.

⁴⁵ A. M. James, “Neutral Men and Neutral Action,” *International Relations* 2, no. 4 (October 1, 1961): 234.

⁴⁶ Orford, *International Authority and the Responsibility to Protect*, 50.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ United Nations, “Charter of the United Nations.”

⁵⁰ Orford, *International Authority and the Responsibility to Protect*, 50.

⁵¹ Andrew J. Carswell, “Unblocking the UN Security Council: The Uniting for Peace Resolution,” *Journal of Conflict and Security Law* 18, no. 3 (December 1, 2013): 457, doi:10.1093/jcsl/krt016.

Union boycotted the Security Council in protest of the occupation of the permanent seat held by the Chinese government in Taiwan instead of the Chinese communist government on the mainland. Their absence allowed for the passing of Resolution 83, which recommended that “Member States of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.”⁵² Two days later the Soviet Government issued document S/1517 stating that due to its absence “it was quite clear that the said resolution of the Security Council on the Korean question has no legal force.”⁵³ However, because their absence was considered an abstention vote, and not an exercise of their power of veto, their protest was not able to undermine the UN’s enforcement of the resolution. Having realised their strategic mistake, the Soviets resumed their seat on the Council in August of that year and blocked any further Council efforts aimed at addressing the situation in Korea.

As a reaction to the stalemate experienced during the previous five years, the US Secretary of State Dean Acheson proposed a resolution where that “if the Security Council, because lack of unanimity of the permanent members, is unable to discharge its primary responsibility of the maintenance of peace and security...the Assembly should make provision for emergency special session to be convoked in twenty-four hours.”⁵⁴ Despite strong objection from the Soviet delegation, General Assembly resolution 377 A (V), ‘Uniting for Peace,’ was adopted by a vote of 52-5 on 3 November 1950. Since then, the UNGA has only convened 10 emergency special sessions under the resolution.

The eruption of the 1956 Suez Crisis resulted in the first emergency session being convened on 1 November 1956 which in turn led Hammarskjöld to spearhead the establishment of the very first UN peacekeeping force, the United Nations Emergency Force (UNEF I). UNEF I was primarily established in order “to secure and supervise the cessation of hostilities, including the withdrawal of the armed forces of Israel, France and the UK from Egyptian territory.”⁵⁵ The key principles of independence, impartiality, and host-state consent guided the establishment and operation of the force, which became significant in shaping the rationale of executive action for subsequent decades of UN action. Firstly, it was mandated that UNEF I was to have an international character, mirroring the principles reflected in the UN Charter, and that the officer in charge of force was to operate fully

⁵² UN Security Council, *Resolution 83 (1950) of 27 June 1950*, 27 June 1950, S/RES/83 (1950), <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/064/96/IMG/NR006496.pdf?OpenElement> [accessed 15 May 2016].

⁵³ UN Security Council, “Document S/1517” June 29, 1950.

⁵⁴ Carswell, “Unblocking the UN Security Council,” 458.

⁵⁵ “First United Nations Emergency Force,” *United Nations*, 2003, <http://www.un.org/en/peacekeeping/missions/past/unefi.htm>, [accessed 14 January, 2015].

independent of policies of any nation.⁵⁶ Secondly, the Force was required to act impartially. The General Assembly established the force, acting under the Uniting for Peace Resolution, on the terms that there was no intent to influence the military balance, and consequently the political balance, as they did not want to affect conflict resolution efforts.⁵⁷ Thirdly, host-state consent was derived from the principle of equality amongst Member States, as “decisions about the use of force by foreign troops within a territory went to the heart of political sovereignty.”⁵⁸

The newly created peacekeeping doctrine was, therefore, based on consent, neutrality and non-use of force. According to Mark Duffield early peacekeeping efforts worked so well because:

conflicts tended to have organisational cohesion, with well-structured groups of combatants operating along well-defined combat lines. This enabled the UN and its agencies to operate within and around the conflicts supporting displaced people outside the conflict zone and providing emergency aid.⁵⁹

However, Duffield also recognises the limitations of UN action during this time, as “whilst the UN would provide aid to those in need during the Cold War, the UN seldom intervened in ongoing conflicts, and when it did it was usually in the context of policing and agreed ceasefire.”⁶⁰ One of the significant effects of Peacekeeping Operations during this time was the difficulty the Council faced in responding to operations, particularly when permanent members were politically opposed and exercised their privileges in order to further their political views.⁶¹ Stephen Schlesinger notes that the UN did nothing to prevent the 1956 Soviet invasion of Hungary and “remained neutral in the face of the Russian occupations of Czechoslovakia in 1968.” Furthermore, the US managed to sideline the UN during the 1954 CIA-inspired coup in Guatemala as well as during its war in Vietnam, and “stymied UN resolutions critical to America’s 1965 intervention in the Dominican Republic, its 1983 invasion of Grenada, and its 1989 incursion of Panama.”⁶² While it is beyond the scope of this thesis to explore these cases in any depth, it is clear that the permanent members of the Council, and most commonly the United States and the Soviet Union, subdued UN action coercion and by exercising their veto privilege.

⁵⁶ Orford, *International Authority and the Responsibility to Protect*, 65.

⁵⁷ *Ibid.*, 52.

⁵⁸ *Ibid.*, 66.

⁵⁹ Kate Seaman, *Un-Tied Nations: The United Nations, Peacekeeping and Global Governance* (Surrey: Ashgate Publishing, 2014), 30.

⁶⁰ *Ibid.*

⁶¹ Samuel Totten, “The United Nations and Genocide,” *Society* 42, no. 4 (2005): 6, doi:10.1007/BF02687423.

⁶² Stephen Schlesinger, “The Warrior United Nations,” *American Foreign Policy Interests* 35, no. 4 (2013): 206, doi:10.1080/10803920.2013.817920.

During the 1960s, notions of sovereignty and non-intervention were reasserted and the UN's neutral role as a mediator and assistance provider, rather than an ideologically independent actor, was reinforced.⁶³ Hammarskjöld promoted a model of preventative diplomacy, which was aimed toward prevention of superpower intervention in political vacuums. His vision was to circumvent superpower intervention, such as what he had witnessed first-hand in the Congo, in the hopes of mitigating the tensions of the Cold War.⁶⁴ It was perhaps due to this reinforcement of the importance of state sovereignty that the legitimate use of force during this period was relatively limited.

Jennifer Welsh has identified only three main events which she views as most closely resembling humanitarian intervention during the Cold War period; India in East Pakistan (1971); Vietnam in Cambodia (1978); and Tanzania in Uganda (1979). She notes that “only the former two were discussed within the Council, and in both cases humanitarian rationales for military action were hotly contested.”⁶⁵ According to Nicholas Wheeler, the “behaviour and rhetoric of member states during these cases indicate that humanitarian claims were not accepted as a legitimate basis for the use of force in this period.”⁶⁶

With the untimely death of Hammarskjöld in 1961, a new S-G was elected, with the Burmese diplomat U Thant taking the post as the first non-European Secretary-General of the UN. Thant's approach to the role differed from Hammarskjöld's. He strongly supported, for example, the idea that Pakistan's internal repression “constituted a threat to international peace and security that the Council had a responsibility to address.”⁶⁷ The claim that an internal crisis is an international threat deviates away from Hammarskjöld's idea of a politically neutral UN. This change in attitude and approach between the Secretary-Generals echoes the sentiment shared earlier by the Russian First Secretary Khrushchev regarding the establishment of the troika to replace the Secretary-General; it demonstrates that an individual is inevitably going to bring their own perspective and own set of prejudices to shaping their role, which makes it supremely difficult for the role of the S-G, or indeed the UN itself, to be truly politically neutral.

⁶³ Haaimeck, *The United Nations Democracy Agenda*, 67.

⁶⁴ Orford, *International Authority and the Responsibility to Protect*, 91.

⁶⁵ Lowe, Roberts, and Welsh, *The United Nations Security Council and War*, 827.

⁶⁶ Ibid.

⁶⁷ Ibid., 827–828.

REJUVENATION AT THE END OF THE COLD WAR

The end of the Cold War gave hope to those who believed that the UN was capable of fulfilling its “promise to save succeeding generations from the scourge of war.”⁶⁸ The quagmire in the Council appeared to be resolved as a result of the fall of the Soviet Union. Due to the Soviets fall and the end of the Cold War, there was a marked increase in the number of UNSC resolutions. Russia had been quietened, and as a result of the new unipolar world order, the Council (primarily the Western ‘P3’ of the US, UK and France) became emboldened to commission military interventions, under the guise of humanitarian operations, in the name of a rejuvenated UN. Over time, the Council’s actions appeared to become more ambitious and frequent. International discourse on the concept of human security emerged, with the convergence of development and security. Symptomatic of this perceived era of rejuvenation of the liberal principles of the UN, David Chandler argued that this period saw a “shift away from security perceived as the protection of Self (national) interests to the needs (economic, health, environment, security etc) of the Other.”⁶⁹ This new paradigm attempted to erase the relations of power and interest and replace them with “‘freedom’ and ‘empowerment’ of the Other.”⁷⁰ Furthermore, according to Norrie MacQueen, the post-Cold War period witnessed the birth of a new type of peacekeeping which was increasingly post-Westphalian. According to MacQueen, “objectives of interventions are increasingly humanitarian and ‘political’ in the sense that they are focused primarily on improving conditions inside countries rather than on managing the (Westphalian) system of states which they form.”⁷¹

The new political climate and accompanying dominant discourse of the post-Cold War era meant that the principle of impartiality became increasingly problematic. The Charter’s inherent contradiction between the commitment to non-intervention and the promotion of human rights led to a stretching of the definitions of what could constitute threats to international peace and security, in order for the Council to be able to legally sanction military intervention. Welsh notes that Security Council Resolution 688, which condemned the “repression of the Iraqi civilian population in many parts of Iraq” and demanded that “as a contribution to removing the threat to international peace and security, immediately end this repression,”⁷² is often cited as an example of a significant shift in

⁶⁸ Seaman, *Un-Tied Nations*, 1.

⁶⁹ David Chandler, *Empire in Denial: The Politics of State-Building* (Ann Arbor, MI: Pluto, 2006), 80.,

⁷⁰ *Ibid.*, 81.

⁷¹ MacQueen, *Humanitarian Intervention and the United Nations*, 67.

⁷² UN Security Council *Resolution 688 (1991) Adopted by the Security Council at its 2982nd meeting on 5 April 1991*, 5 April 1991, S/RES/688, <http://www.refworld.org/docid/3b00f1598.html> [accessed 15 May, 2016].

what the Council regarded as constituting such a threat.⁷³ France, as a P5 member, claimed that “failure to protect the Kurds would damage the political and moral authority of the Council,” and Turkey, as a non-permanent member of the Council, argued that “the movement of so many civilians was affecting regional security.”⁷⁴ Here, threats to the maintenance of international peace and security extended to include the flow of refugees across international borders, rather than the actual repression of the Kurds,⁷⁵ a significant shift from the traditional approaches to understanding intra-state conflicts.

The crises in Somalia and Haiti resulted in further unprecedented UN action which was to have serious implications for the principle of impartiality. Between January 1992 and November 1994 the Council passed a staggering 17 resolutions regarding the crisis in Somalia. The US-led intervention in Somalia became the first intervention in which “the Council authorised military action under Chapter VII without the consent of the sovereign government and for solely humanitarian reasons.”⁷⁶ Security Council Resolution 794 authorised a US-led enforcement mission, which was mandated to “use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.”⁷⁷ In 1994, another American spearheaded intervention was authorised, this time in Haiti, under Security Council Resolution 940. The Security Council mandated intervention in Haiti was again justified under Chapter VII. A US-led multinational force was authorised to restore the legitimately elected President Jean-Bertrand Aristide, as well as the other members of the Haitian government.⁷⁸ Resolution 940 was a watershed moment in authorising the use of force to achieve regime change.

Despite an increase in purported humanitarian interventions in the 1990s, it was the inaction of the UN in the cases of Rwanda and Kosovo which caused significant outrage amongst the international community. The UNSC found itself facing harsh criticism, even from within the institution itself. The inability of the P5 members to reach consensus, even in the face of gross and systematic human rights abuses, reaching the levels of genocide, starkly exposed the Council’s inability to act impartially, and as a neutral organisation. The primacy of self-interest reared its face time and time again, and the ad hoc and selective approach to conducting humanitarian intervention

⁷³ Lowe, Roberts, and Welsh, *The United Nations Security Council and War*, 828.

⁷⁴ *Ibid.*, 829.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, 831.

⁷⁷ UN Security Council *Resolution 794 (1992) Adopted by the Security Council at Its 3145th Meeting, on 3 December 1992*, December 3, 1992, S/RES/794, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794(1992)) [accessed 14 December, 2014].

⁷⁸ Lowe, Roberts, and Welsh, *The United Nations Security Council and War*, 834.

was exposed as primarily a calculation of national interest. The eventual disclosure of the depth of human suffering in Rwanda (in particular) evoked impassioned pleas that ‘something must be done,’ and in a similar vein the phrase ‘never again’ widely circulated in world capitals and New York. By the late 1990s, UN Secretary-General at the time, Kofi Annan, had begun a concerted effort to stimulate the debate on the role of state sovereignty, humanitarian intervention and international responsibility. In his 2000 Millennium Report, Annan stated that “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”⁷⁹

In a widely cited article in the *Economist*, Annan outlined his strong belief that state sovereignty was increasingly being redefined, “When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.”⁸⁰ Following a direct request from Annan himself, in 2000 the Canadian government established an independent International Commission on Intervention and State Sovereignty (ICISS). The Commission’s general mandate was to build “a broader understanding of the problem of reconciling intervention for human protection and sovereignty.”⁸¹ By 2001, the Commission had released the report entitled “The Responsibility to Protect.” The Responsibility to Protect (RtoP) concept is an extension of an idea that originates from the social contract theories of the Enlightenment. Those theories were based on the premise that individuals must submit some of their freedoms to a sovereign authority in order to gain protection and greater freedom. The ICISS Report recommended a new way of conceptualising sovereignty: from sovereignty as a right, to sovereignty as a responsibility. It purports that the state has a responsibility to protect its citizens, the international community has a duty to assist states requiring aid, and if a state fails to protect its citizens, it is the duty of international community to intervene.⁸² The Commission clearly outlined their belief in this reconceptualisation of sovereignty and responsibility in the following:

The implication is plain. If by its actions and, indeed, crimes, a state destroys the lives and rights of its citizens, it forfeits temporarily its moral claim to be treated as legitimate. Its sovereignty, as well as its right to non-intervention, is suspended...In brief, the three traditional characteristics of a state in the

⁷⁹ Kofi A. Annan, “We the Peoples - The Role of the United Nations in the 21st Century” (United Nations, 2000), 48, http://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf [accessed 25 April, 2015].

⁸⁰ Kofi A. Annan, “Two Concepts of Sovereignty,” *The Economist*, September 16, 1999, <http://www.economist.com/node/324795> [accessed 15 January, 2016].

⁸¹ “The Responsibility to Protect” (Ottawa: International Commission on Intervention and State Sovereignty, December 2001), 2, <http://responsibilitytoprotect.org/ICISS%20Report.pdf> [accessed 15 January, 2016].

⁸² *Ibid.*

Westphalian system (territory, authority, and population) have been supplemented by a fourth, respect for human rights.⁸³

It is noteworthy that the ICISS report expressed some reservation about entrusting the UNSC to act as the “proper authority” for military action related to RtoP, given its frequent susceptibility to politicisation.⁸⁴ In an effort to overcome these reservations, the Commission outlined a range of different reform efforts targeted at the Council, which it believed were necessary to enable the UNSC to act legitimately on behalf of the international community. While the report argued that it was not attempting to find an alternative to the UNSC to act as a source of international authority, it did argue that the Council had to improve from its previous efforts.⁸⁵ The report also asserted that the use of veto privilege by a P5 member, or indeed simply the threat of its use, was mostly likely the principal obstacle to effective international action to protect populations during significant humanitarian crises.⁸⁶

The Commission’s recommendation to overcome this issue was that the UNSC should agree not use their veto to obstruct resolutions that authorised military intervention to protect populations where, “their vital state interests are not involved.”⁸⁷ The Commission argued that, “it is unconscionable that one veto can override the rest of humanity on matters of grave humanitarian concern.”⁸⁸ However, in the end, the Commission does not deviate from the current international status quo, and they recommended that the UNSC should be the source of authority for the RtoP doctrine. The report states, “there is no better or more appropriate body than the United Nations Security Council to authorise military intervention for human protection purposes,”⁸⁹ and furthermore that the UN was “unquestionably the principal institution for building, consolidating and using the authority of the international community.”⁹⁰

By 2005, the concept of RtoP was being hotly contested on the world stage, at the World Summit convened at the United Nations. Intense political wrangling and diplomatic negotiations resulted in a diluted form of ICISS’ RtoP being adopted in the Summit’s *Outcome Document*. Under

⁸³ “The Responsibility to Protect: Research, Bibliography, Background : Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty” (Ottawa: International Commission on Intervention and State Sovereignty, December 2001), 136.

⁸⁴ Jennifer Welsh, “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP,” *Ethics and International Affairs* 25, no. 3 (September 2011): 257.

⁸⁵ “The Responsibility to Protect,” December 2001, 49.

⁸⁶ *Ibid.*, 51.

⁸⁷ *Ibid.*, XIII.

⁸⁸ *Ibid.*, 51.

⁸⁹ *Ibid.*, XII.

⁹⁰ *Ibid.*, 48.

paragraph 138 and 139 of the document, all UN member states agreed that the international community is, “prepared to take collective action, in a timely and decisive manner, through the Security Council...on a case-by-case basis... [should] national authorities manifestly fail to protect their populations.”⁹¹ In a move that was hardly surprising given the Council’s fierce guarding of their own power ascendancy, the Summit Outcome Document overtly avoids mention of any of the reform measures, the use of the veto, or the precautionary principles recommended in the ICISS report. Despite its diluted form, S-G Annan has since proclaimed that the inclusion of RtoP in the document was one of his “most precious achievements.”⁹²

The Libya intervention in 2011 was initially perceived by many as an example of the successful application of RtoP. Security Council Resolution 1973, which sanctioned NATO airstrikes against the Qaddafi regime, had been described as an example of “the humanitarian imperative and the normative power of global civil society and specifically RtoP.”⁹³ Soon after the passing of the Resolution, Secretary-General Ban Ki-Moon issued a press release stating that,

The Security Council today has taken an historic decision. Resolution 1973 affirms, clearly and unequivocally, the international community’s determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government.⁹⁴

Academics such as Alex Bellamy claimed that Resolution 1973 had set a precedent for the Security Council in the sense that “it will not be inhibited as a matter of principle from authorising enforcement for protection purposes without host state consent.”⁹⁵ Likewise, Thomas Weiss claimed success in Libya would “put teeth in the fledgling RtoP doctrine.”⁹⁶ However, such optimism was soon stifled by the lack of sustained peace in Libya, as well as the eruption of the Syrian civil war and the subsequent lack of Council action. Details of the Council’s failures within this context will be further examined in Chapter Three.

⁹¹ UN General Assembly 2005 World Summit Outcome : Resolution / Adopted by the General Assembly, 24 October 2005, A/RES/60/1, <http://www.refworld.org/docid/44168a910.html> [accessed May 15, 2016].

⁹² Ramesh Thakur, “Libya: The First Stand or the Last Post for the Responsibility to Protect?,” *E-International Relations*, March 13, 2011, <http://www.e-ir.info/2011/03/13/libya-the-first-stand-or-the-last-post-for-the-responsibility-to-protect/> [accessed 15 May, 2016].

⁹³ Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2012), 13.

⁹⁴ United Nations, *Secretary-General Says Security Action on Libya Affirms International Community’s Determination to Protect Civilians from Own Government’s Violence*, SG/SM/13454-SC/10201-AFR/2144, March 18, 2011, <http://www.un.org/press/en/2011/sgsm13454.doc.htm> [accessed 3 January, 2015].

⁹⁵ Alex J Bellamy, “Libya and the Responsibility to Protect: The Exception and the Norm,” *Ethics and International Affairs* 25, no. 3 (September 2011): 264.

⁹⁶ Thomas G. Weiss, “RtoP Alive and Well after Libya,” *Ethics and International Affairs* 25, no. 3 (September 2011): 287.

CONTINUING FRUSTRATIONS WITH THE UNSC

Despite the Council's stated objectives, it has been roundly criticised by a vast array of world leaders. Criticism has commonly included accusations of paralysis, lack of impartiality, selectivity, hypocrisy, as well as strong condemnation of the Council for being undemocratic and unrepresentative. At the 2013 UNGA debate, Former Turkish President Abdullah Gül stated that:

We must realise that inaction by the Security Council only emboldens aggressive regimes. We need a UN capable of forcing the perpetrators of brutal actions to submit to justice and the rule of law. Decisive action is the only way that the UN system will remain relevant and credible. To face this new reality, we need a Security Council which is truly democratic, representative, effective, and accountable.⁹⁷

The conflict in Syria has featured heavily during recent UNGA summits and debates and is often cited as a contemporary example of the Council operating ineffectively, and with bias. Former Polish President Bronislaw Komorowski strongly criticised the P5 during his 2012 Debate, arguing that the P5 had prioritised their own national interests, resulting in an ineffective Council, he similarly commented on the inaction and self-interest surrounding the conflict during the 2013 Debate stating that:

Regrettably, in the Syrian dispute the members of the Security Council have spoken out for individual sides in the war and supported them in various ways rather than make them stop fighting and commit to peace talks. It revealed the lack of capacity and efficiency of the United Nations Organisation decision-making mechanisms.⁹⁸

Lack of fair representation is one of the most prevalent criticisms made against the Council, particularly given that it continues to reflect the balance of power as it existed at its inception in 1945. While numbers of UN membership have increased by almost 60% since 1945, this increase has not resulted in change to membership of the Council. Consequently, only 8% of the member states

⁹⁷ Abdullah Gul, "Address by H.E. Mr. Abdullah Gul President of the Republic of Turkey to the General Debate of the 68th Session of the United Nations General Assembly," *United Nations*, September 24, 2013, <http://gadebate.un.org/68/turkey> [accessed 15 May 2016].

⁹⁸ Bronislaw Komorowski, "Address by the President of the Republic of Poland at the UNGA on 25 September 2013," *United Nations*, September 25, 2013, <http://gadebate.un.org/68/poland> [accessed 15 May, 2016].

are now represented in the Council, compared with 20% in 1945.⁹⁹ Europe, which accounts for barely 5% of the world's population, still controls 33% of Council seats. Developing nations, who account for more than half the world's population, are largely underrepresented.¹⁰⁰ Richard M. Price and Mark W. Zacher note that, "throughout the 1990s, 65 of the estimated 79 episodes of conflict occurred within developing countries, and over half of the bottom 47 countries on the Human Development Index are still suffering from the aftermath of violent conflict."¹⁰¹ Conflict in the developing world occupies the Council's agenda more often than issues pertaining to the developed world; yet, developing nations are able to make only a small impact on decision-making processes which directly concern them, which is owed to the fact that they lack permanent representation.¹⁰²

Aside from being unrepresentative, the Council, contrary to the Organisation's endorsement of democracy, operates undemocratically. Article 2(1) of the Charter states that "the Organization is based on the principle of the sovereign equality of all its Members."¹⁰³ However, the agreed trade-off between idealism and realism, which allowed for the creation of the permanent seats that possess the veto privilege, undermined aspirations of a truly democratic organisation. The equality of Member States is expressed in the composition and voting procedures of the UNGA where every member is represented and has one vote, irrespective of size or population. For these reasons, the UNGA has frequently been referred to as the 'democratic' organ of the UN.¹⁰⁴ Comparing the operation of the UNGA to the Council generates a major contradiction: democracy is preached as the universally superior political system of the global age, but the pre-eminent global security institution is not ruled according to democratic values.¹⁰⁵ The unbalanced relationship between the UNGA and the Council has "affected the principles of representativeness and respect for sovereign equality as well as having weakened the legitimacy of decisions adopted by the Council."¹⁰⁶

It is evident that as long as the P5 maintain their current veto power, any response by the Council, and indeed the UN, to intrastate violence and crises will remain intrinsically both selective

⁹⁹ Sabine Hassler, *Reforming the UN Security Council Membership: The Illusion of Representativeness* (Abingdon, Oxon: Routledge, 2013), 90.

¹⁰⁰ C. Eduardo Vargas Toro, "UN Security Council Reform: Unrealistic Proposals and Viable Reform Options," *American Diplomacy*, November 25, 2008, 1–10.

¹⁰¹ Richard M. Price and Mark W. Zacher, *The United Nations and Global Security* (New York: Palgrave Macmillan, 2004), 248.

¹⁰² Hassler, *Reforming the UN Security Council Membership*, 93.

¹⁰³ United Nations, "Charter of the United Nations."

¹⁰⁴ Yehuda Z Blum, "Proposals for UN Security Council Reform," *The American Journal of International Law* 99, no. 3 (July 2005): 645, doi:10.2307/1602295.

¹⁰⁵ Giovanni Finizio and Ernesto Gallo, *Democracy at the United Nations: UN Reform in the Age of Globalisation* (Brüssel: P.I.E.-Peter Lang S.A, 2013), 149.

¹⁰⁶ Hassler, *Reforming the UN Security Council Membership*, 90.

and inconsistent. The selectiveness and inconsistency of the Council was highlighted during a speech Singapore's Permanent Representative to the UN in 2001:

While the New York City Fire Department is obligated to respond to every fire, the Council picks and chooses which emergencies to respond to on the basis of geopolitics and the national interests of its most important members. The question of whether the Council speaks for, and on behalf of, the international community becomes particularly pertinent when the 'representatives' chose 'targets for intervention selectivity while ignoring human rights violations of equal or greater magnitude elsewhere.¹⁰⁷

This selectiveness and inconsistency undermines any aspirations for a politically neutral organisation. From the outset of the intervention in Libya, for example, it was met with criticisms of being conducted in the face of other potentially more devastating crises, and "the hypocrisy ostensibly evidenced by the West's silence over oppression elsewhere in the Middle East."¹⁰⁸

The recent Council paralysis regarding the crises situations in Ukraine and Syria are examples of Council disappointment. Sydney D. Bailey suggested that the wielding of the veto might "cause a paralysis in the Council at the very moment when positive action is most needed."¹⁰⁹ The current Syrian conflict is a case in point. As of February 2016, the Syrian Center for Policy Research has documented the killing of more than 470,000 people since March 2011.¹¹⁰ The Council has passed eight resolutions regarding humanitarian access, observer missions and most recently, a ceasefire and political settlement. Russia and China have vetoed four draft resolutions on the grounds of adherence to the principle of nonintervention and respect of sovereign territory. Prior to the escalation of the crisis in Syria, the Libyan intervention was argued to have given clout to the RtoP doctrine, yet the subsequent inaction in Syria and the continuing humanitarian crisis in Libya only reinforces claims of a selective and inconsistent Council, one that is incapable of demonstrating political neutrality.

Another problematic crisis resulting in frustrations with the Security Council is the conflict in the Ukraine, which directly involves on-the-ground action by a P5 member. New Zealand Foreign

¹⁰⁷ Ibid., 87.

¹⁰⁸ Aidan Hehir, "The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect," *International Security* 38, no. 1 (2013): 139, doi:10.1162/ISEC_a_00125.

¹⁰⁹ Sydney D. Bailey and Sam Daws, *The Procedure of the UN Security Council*, 3rd ed. (Oxford: Clarendon Press, 1998), 3.

¹¹⁰ "Syria: Justice Needed for 5 Years of Abuses," *Human Rights Watch*, 14 March, 2016, <https://www.hrw.org/news/2016/03/14/syria-justice-needed-5-years-abuses> [accessed 15 May, 2016].

Affairs Minister Murray McCully argued at the 69th General Assembly in 2014 that: “The Council has been essentially a bystander as one of the Permanent Members has undermined the integrity of another member State.”¹¹¹ In March 2014, the Ukrainian port of Crimea was annexed by Russian and Russian-backed forces, following a widely criticised ‘referendum’ on whether the region wished to re-join Russia. Crimea was strategically very important to Russia, given Moscow’s quest to ensure continued access to their naval base in Sevastopol, which is home to Russia’s Black Sea Fleet. Despite early international condemnation and economic sanctions by some Western nations against Moscow, Russia has shown no signs of yielding control of the region, and the issue has all but fallen off the register of the current crises discourse. It is unsurprising that the only adopted Resolution concerning the Ukraine was Security Council Resolution 2202, which was merely an endorsement of the Minsk Agreements that contained a set of measures to alleviate the war in Donbass and, also unsurprisingly, made no reference to the annexation of the Crimean Peninsula by Russian-backed forces.

In July 2015, Malaysia, Australia, the Netherlands and Ukraine presented a Council Resolution attempting to give greater powers to the UN to prosecute those suspected of downing the passenger plane Malaysian Airlines MH17, which was brought down over eastern Ukraine in 2014. It is widely believed that the flight was brought down by Russian-backed separatists in Ukraine. Russia has vehemently denied any involvement in the disaster. The Resolution was quickly vetoed by Russia, with the Russian Permanent Representative to the UN, Vitaly Churkin defending the use of the veto, and arguing that there had been an “aggressive backdrop of propaganda in the media”¹¹² on the whole issue of MH17. In response to the vetoing of the Resolution, Minister McCully told the Council he was deeply disappointed in Russia’s actions, and that it was occasions such as these which demonstrated why New Zealand had taken a strong position on Council reform, and particularly reform of the veto power.¹¹³

The recent crises in Ukraine and Syria and the lack or limited Council action have, in part, caused the period of rejuvenation experienced during the post-Cold War era to return to one of disappointment, similar to the Council’s experience during the Cold War. The conflicts have

¹¹¹ Murray McCully, “Statement by the Honourable Murray McCully Minister of Foreign Affairs of New Zealand General Debate of the 69th Session of the United Nations General Assembly,” *United Nations*, September 29, 2014, <http://gadebate.un.org/69/new-zealand> [accessed 15 May, 2016].

¹¹² Roland Oliphant, “Russia Vetoes Bid to Set up Tribunal for Downed Flight MH17,” *The Telegraph*, July 29, 2015, sec. World, <http://www.telegraph.co.uk/news/worldnews/europe/netherlands/11771299/Putin-rejects-Dutch-plea-to-support-creation-of-MH17-tribunal.html> [accessed 15 May, 2016].

¹¹³ United Nations, *Security Council Fails to Adopt Resolution on Tribunal for Malaysia Airlines Crash in Ukraine, Amid Calls for Accountability, Justice for Victims*, SC/11990, July 29, 2015, <http://www.un.org/press/en/2015/sc11990.doc.htm> [accessed 15 May, 2016].

highlighted the partiality and self interest of the P5, and the inadequacy of the RtoP in addressing those issues. The Ukraine crisis, in particular, proved that it is impossible for the Council to act impartially, especially when a member of the P5 is one of the major parties to the conflict.

It has been clear since the early stages of the UN that adherence to the principles of neutrality and impartiality was inevitably going to be highly challenging. The very structure of the Council is in itself in the favour of the victors of World War II. The five permanent seats and accompanying veto privilege are, unsurprisingly, the strong points of criticism, as well as the common themes of Council reform efforts. The human rights agenda advocated by the likes of Franklin and Eleanor Roosevelt are based on concepts that are arguably ethnocentric and lack any sense of cultural relativism. The stalemate during the Cold War highlighted the implications that superpower rivalry would have on Security Council neutrality. A period of perceived rejuvenation following the end of the Cold War saw an increase in military interventions sanctioned by the Council, but also the occurrence of arguably preventable genocides in Rwanda and Srebrenica. The Council was heavily criticised for failing to prevent the occurrence of these atrocities, and increasingly the call from liberal pundits was for more politically neutral actions from the P5. While RtoP was initially lauded as a liberal remedy to the problems facing the Council, the cases of Libya and Syria have illustrated that the promulgation of the RtoP doctrine was not the solution to achieving political neutrality, and thus an effective and credible Council. But why is this the case? What are the fundamental issues that make impartiality so challenging for the UN?

CHAPTER 2: THE IMPOSSIBILITY OF POLITICAL NEUTRALITY

The agreement on the 2005 United Nations World Summit *Outcome Document* saw a UN commitment to the implementation of the responsibility to protect concept as part of its responsibility of maintaining international peace and security. According to Anne Orford, this commitment may be perceived “as an attempt to integrate pre-existing but dispersed practices of protection into a coherent account of international authority.”¹ This chapter examines the possible fallacies of reconciling the responsibility to protect concept with the impartiality principle. It will begin with a brief discussion on the original concepts of protection from a liberal perspective, followed by a critique of the scientism of liberalism. This will comprise of a critical analysis of liberal ideals such as rationalism, universal morality and the rule of law drawn from the ideas of influential theorists E.H. Carr and Hans J. Morgenthau. A subsequent discussion of the previous disappointments of Hammarskjöld will be provided by recalling Orford’s analysis of why the Secretary-General’s aspirations of impartiality could not be met. The chapter will then conclude with a discussion on the relevance of these criticisms today.

REALIST CRITIQUES OF THE ANTI-POLITICS OF LIBERALISM/IDEALISM

In order to understand Orford’s conclusions regarding the impossibility of the Council’s capacity to act impartially, it is important to take a closer look at the original liberal relationship between responsibility and protection, as well as the evolution of scientific thought. The liberal narrative “began during the Renaissance as a reaction to religious orthodoxy, gained strength throughout the Reformation, and became one of the main political forces in the Enlightenment.”² The end of feudalism in the 15th century and the development of the scientific method by the likes of Galileo, Bacon and Descartes in the late 16th and early 17th centuries led to the challenge of tradition and faith, and to the interest in reason and individualism.

This period saw the emergence of influential political thinkers such as Thomas Hobbes and John Locke. Although Hobbes is typically associated with the realist school of thought, his thought on the existence of universal natural rights is prevalent within the liberal perspective. Scholars such as Leo Strauss and Ferdinand Tönnies have gone so far in arguing that “Hobbes was the true founder of liberalism”³ and that he “had not been a teacher of despotism but of natural rights.”⁴ A

¹ Orford, *International Authority and the Responsibility to Protect*, 2.

² John Kekes, *Against Liberalism* (Ithaca: Cornell University Press, 1997), 2.

³ Liisi Keedus, “Liberalism and the Question of ‘The Proud’; Hannah Arendt and Leo Strauss as Readers of Hobbes,” *Journal of the History of Ideas* 73, no. 2 (April 2012): 321.

commonality that Hobbes and Locke shared was the need for a state to ensure the protection of natural rights, and the necessity for people to submit some of their freedoms to the sovereign in order to make this possible. Both theorists believed that it was necessary to cede some individual freedom to the state in order to maximise individual freedom. This idea would be further developed by Rousseau's *The Social Contract (1762)*, where he suggested that "what man loses by the social contract is his natural liberty and the absolute right to anything that tempts him and that he can take: what he gains by the social contract is civil liberty and the legal right of property in what he possesses."⁵

Where Hobbes and Locke diverged, in this regard, was on the extent to which a state should exercise its authority over its citizens. While Hobbes advocated for an absolute power, a Leviathan so powerful and fearful that it was unable to be contested, Locke proposed a constitutional sovereign that would be limited by the rule of law and the separation of powers. Furthermore, Locke believed that should the state fail to protect the natural rights of its citizens, citizens had the right to revolution. From this it can be surmised that in Hobbes's view, sovereignty was maintained by the sovereign, while in Locke's view, sovereignty was to be maintained by the people.

It is clear that Locke's idea of constitutional sovereignty was the most influential in the development of Western democracies. This is evident in the discourse surrounding the American and French revolutions. Less than a century after Locke's *Two Treatises of Government* was published, Thomas Jefferson drafted the 1776 United States Declaration of Independence which draws striking parallels to Locke's ideology, particular where it declares, "that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."⁶ In France, although it was never officially adopted, The Declaration of the Rights of Man and Citizen of 1793 similarly states that, "Government is instituted in order to guarantee to man the enjoyment of his natural and imprescriptible rights...these rights are equality, liberty, security, and property...all men are equal by nature and before law."⁷

At the time that the concepts of natural rights and sovereignty were developing, so were the developments of scientific thought and reason. By the 18th and 19th centuries, the acceptance of science and reason were well established. It was becoming commonly believed that the problems of

⁴ Ibid., 323.

⁵ Jean-Jacques Rousseau, *The Social Contract and Discourses* (London: Dent, 1973), 196.

⁶ "The Declaration of Independence, 1776," *Office of the Historian*, <https://history.state.gov/milestones/1776-1783/declaration> [accessed 15 May, 2016].

⁷ "Declaration of the Rights of Man and Citizen from the Constitution of Year 1 (1793), *Columbia University* <http://www.columbia.edu/~iw6/docs/dec1793.html> [accessed 15 May, 2016].

the social world could be solved by the application of scientific principles, and this is reflected in the emphasis on human rationality within liberal thought. This idea rests upon two premises: that human beings act rationally once educated; and that social problems can be treated similarly to mathematical problems. Given this, it was believed it was only a “matter of time before man will have acquired all the knowledge necessary to solve the problems of the physical and social world.”⁸

Liberal international thought suggests that “nations are associates and not rivals in the grand social enterprise.”⁹ Contrary to proponents of realism who believe that the enduring struggle for power and survival are at the core of international relations, liberal thought tends to espouse that power politics can be tamed through rational programmes and institutions, where the rational values of truth and justice prevail. Woodrow Wilson argued in 1917 that that the world was at the beginning of a new age where “it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.”¹⁰ Due to the apparent belief in the possible transfer of ‘the same standards of conduct’ to the international realm it was believed that relations between states should and could be modelled on relations between civilised individuals within a civilised state.

As identified by Mark W. Zacher and Richard Matthew, today, the many strands of liberal theory all hold in common the “beliefs in progress conceived in terms of greater human freedom, the importance of cooperation to progress, and a process of scientific and intellectual modernization as the driving force behind cooperation and human progress.”¹¹ It contributes significantly to the behaviours and organisation of the contemporary international arena, and is arguably the most extensive form of political theory that underpins international relations. While some commentators, such as John J. Mearsheimer, may argue that realism remains dominant in international relations¹², prevalent discourses of freedom, democracy and human rights are all derived from the liberal perspective. International institutions, such as the UN, and its predecessor, the League of Nations, were established to promote such principles in the endeavour to maintain international peace and security.

⁸ Hans J. Morgenthau, *Scientific Man vs. Power Politics* (London: Latimer House, 1947), 22.

⁹ James Summers, *Peoples and International Law: Second Revised Edition* (Martinus Nijhoff Publishers, 2014), 159.

¹⁰ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 40.

¹¹ Mark W. Zacher and Matthew, Richard A., “Liberal International Theory: Common Threads, Divergent Strands,” in *Controversies in International Relations Theory* (New York: St. Martin’s Press, 1995), 120.

¹² John J. Mearsheimer, “Realism, the Real World, and the Academy,” in *Realism and Institutionalism in International Studies* (Ann Arbor: The University of Michigan Press, 2002), 24.

It was following the League's failure and the horrors of WWII that political thinkers such as E.H. Carr and Hans J. Morgenthau criticised the liberal notions of rationalism, moral universalism, and the power of the legal formula. As previously mentioned, the UN was in part founded upon the liberal principle of impartiality which would allow for the organisation to transcend the politics of nation-states. This arguably erroneous premise will be explored in the next section, with an analysis of a realist critique of the anti-politics of liberalism. Here, the ideas of Carr and Morgenthau will be explored, with particular reference to Carr's *The Twenty Years' Crisis* (1939) and Morgenthau's *Scientific Man vs. Power Politics* (1946).

While E.H. Carr may be considered one of the founders of modern realism, *The Twenty Years' Crisis* critiques the idealism of the interwar years of 1919 – 1939, rather than providing a theory of realism.¹³ Ironically, Carr was appointed the Woodrow Wilson Chair of International Politics at the University of Aberystwyth in 1936, after serving time in the British Foreign Office. It was during this period that he wrote *The Twenty Years' Crisis* which heavily criticises the UN's predecessor, the League of Nations. Although written before the establishment of the UN, his ideas are still relevant and applicable to the contemporary world.

Likewise, *Scientific Man* still holds relevance today, despite being written only a year after the UN's establishment. In *Scientific Man*, Morgenthau makes an "attack not simply on mainstream international law but also on liberalism and Western modernity."¹⁴ Although it helped to pave the way for the Realist school of international relations, Morgenthau refrained from describing himself as a Realist. Instead, according to William E. Scheuerman, Morgenthau "endorsed a vision of political ethics which underscored a series of severe moral tests which responsible political actors were expected to pass."¹⁵

Morgenthau and Carr provide critiques of liberal theory that illuminate why commonly held expectations of international organisations are seldom met and thus deemed ineffective. Their critiques are particularly useful when measured against the functioning of the UNSC. Themes of science and rationality versus human nature and its lust for power are examined, as well as the concept of universal morality and the rule of law versus political solutions. This section will conclude with an investigation on the impact that liberal tools have had on the influence of international

¹³ John J. Mearsheimer, "E.H. Carr vs. Idealism: The Battle Rages On," *International Relations* 19, no. 2 (June 1, 2005): 141, doi:10.1177/0047117805052810.

¹⁴ William E. Scheuerman, "Was Morgenthau a Realist? Revisiting Scientific Man Vs. Power Politics," *Constellations: An International Journal of Critical & Democratic Theory* 14, no. 4 (December 2007): 506, doi:10.1111/j.1467-8675.2007.00464.x.

¹⁵ Ibid.

relations and why expectations of the United Nations Security Council are in need of reconsideration.

Rationalism vs. Human Nature

As has been outlined earlier in this chapter, the belief that science can transcend politics is premised on the assumption that problems in nature and society can both be remedied with the application of science, that is, a philosophy of rationalism. Carr and Morgenthau discuss at length the concept of rationalism, defined as the belief “that regards reason as the chief source and test of knowledge,” and that “reality itself has an inherently logical structure.”¹⁶ According to Morgenthau, liberalism assumes that “politics plays the role of a disease to be cured by means of reason.”¹⁷ By this definition, liberalism can only accept international aims which can be justified in the light of reason. The liberal belief that rationalism can overcome war is premised on the idea that the laws of nature provide for harmony and cooperation between people. According to Scott Burchill, liberals believe war is “both unnatural and irrational, an artificial contrivance and not a product of some peculiarity of human nature,”¹⁸ therefore all conflicts among states are believed to be capable of rational solution. The liberal belief in rationalism goes to the extent that in the event of conflict, men must eventually meet on the common ground of reason. When they do, they will realise that their apparent conflict can be “dissolved into a rational formula acceptable to all.”¹⁹

However, for both Morgenthau and Carr, rationalism is often misplaced when attempting to analyse the social world. The essence of Morgenthau’s argument is that liberalism attempts to apply scientific principles to the social world whilst failing to consider human nature’s lust for power. He claims that, “our civilization assumes that the social world is susceptible to rational control conceived after the model of the natural science, while the experiences, domestic and international, of the age contradict this assumption.”²⁰ He argues that the application of rationalism to the social world has misunderstood the nature of man, the nature of the social world, and the nature of reason itself.²¹

Regarding the nature of man, Morgenthau claims that human beings have not one, but three dimensions. Rationalism ignores man’s biological and spiritual dimensions which “misconstrues the

¹⁶ “Rationalism,” *Encyclopaedia Britannica*, <http://www.britannica.com/topic/rationalism> [accessed June 1, 2015]

¹⁷ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 66.

¹⁸ Scott Burchill, “Liberalism,” in *Theories of International Relations*, Fourth Edition (Palgrave Macmillan, 2009), 60.

¹⁹ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 70.

²⁰ *Ibid.*, 10.

²¹ *Ibid.*, 12.

function reason fulfils within the whole of human existence.”²² The failure to consider human beings’ biological and spiritual dimensions, suggests that all social problems can be solved by purely rational means, which distorts any ethical considerations. The nature of the natural world and the social world are not reconcilable and suggesting that they are “has misconstrued the nature of politics and political action altogether.”²³

In terms of the nature of reason itself, Morgenthau draws four conclusions about rationalism: that the rationally right and the ethically right are identical; that rationally right action is of necessity the successful one; education leads man to the rationally right, hence good and successful action; and that the laws of reason, as applied to the social sphere, are universal in their application.²⁴ To assume that the rationally right and ethically right are identical suggests that all ethical problems can be solved by adopting the scientific method. The morally right decision is therefore “determined by the universal laws of science, and thus only ignorance or irrationality prevented individuals from acting ethically.”²⁵ Assuming the rationally right action is necessarily the successful one stems from the acceptance that as “conformity with the laws of nature guarantees success in the physical world, so in the social world does compliance with the laws of reason.”²⁶ The conclusion that liberals believe education leads man to the rationally right suggests that all that is required to prevent conflict is education and social reform. This would, according to liberal pundits, generate universal moral enlightenment, which would in turn eradicate conflict and politics.

Carr claimed the liberal idea that education leads man to behave rationally was problematic because it placed too much trust in the power of public opinion. He argued that an essential foundation of the liberal creed was “the belief that public opinion can be relied on to judge rightly on any question rationally presented to it, combined with the assumption that it will act in accordance with this right judgement.”²⁷ However, the idea that public opinion could prevent war was challenged with the eruption of the Manchuria crisis. Carr claimed that this event demonstrated that “the condemnation of international public opinion was a broken reed.”²⁸ Carr’s work helps to demonstrate that no matter how strongly public opinion condemns a situation, states will act regardless in the pursuit of their self interests, if the perceived benefits outweigh the perceived costs.

²² Ibid.

²³ Ibid.

²⁴ Ibid., 19.

²⁵ Scheuerman, “Was Morgenthau a Realist?,” 507.

²⁶ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 19.

²⁷ E. H. Carr, *The Twenty Years’ Crisis, 1919-1939*, ed. Professor Michael Cox, New Ed edition (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2001), 27.

²⁸ Ibid., 40.

According to Carr, liberals previously assumed that wars were waged to satisfy the self interests of princes, and that under a republican form of government, there would be no war as reason would expose the absurdity of international anarchy. Furthermore, once more people received the necessary education “enough people would be rationally convinced” and put an end to international anarchy.²⁹ Democratic peace theory shares a similar underlying assumption in that democracies do not go to war with each other because “liberal states, founded on such individual rights as equality before the law, free speech and other civil liberties, private property, and elected representation are fundamentally against war.”³⁰ Given this, proponents of democratic peace theory argue that the more democracies there are, the more peace there will be. In other words, once states received the ‘necessary education’ they would be convinced to operate democratically. However, as Rene Girard argues, the problem with the democratic peace theory is that, while it provides conditions in which peace occurs, it ignores the origins of violence.³¹ For Girard, violence originates in desire.³² As subjects desire similar things, other subjects are seen as “roadblocks to that desire.” The can create violent conditions, and when it does, it does not necessarily occur between the competing subjects. As Girard argues, violence can be:

redirected to a surrogate victim who ends up being a scapegoat...non-democracies are merely scapegoats for democracies so that order can be maintained in communities for democracies. Therefore, if the world becomes composed entirely of democracies, there will be no scapegoats left and democracies will fight one another.³³

This argument echoes Morgenthau’s assumptions that what liberals fail to consider, from the realist perspective, is the reality of human nature. Basic impulses and the “irrational lust for power” are not given due consideration when contemplating the political realm. Hence, “Politics is a struggle for power over men, and whatever its ultimate aim may be, power is its immediate goal, and the modes of acquiring, maintaining, and demonstrating it determines the technique of political action.”³⁴

²⁹ Ibid., 25.

³⁰ Michael W. Doyle, “Liberalism and World Politics,” *The American Political Science Review* 80, no. 4 (December 1, 1986): 1151, doi:10.2307/1960861.

³¹ Kyle Scott, “A Girardian Critique of the Liberal Democratic Peace Theory,” *Contagion: Journal of Violence, Mimesis, and Culture* 15/16 (January 1, 2008): 46.

³² Ibid., 45.

³³ Ibid., 45–46.

³⁴ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 195.

Morgenthau believed, in short, that political science should pay particular attention to man's irrational tendencies.

Moral Universalism

Like the idea of rationalism, moral universalism is another feature of liberalism. The possibility of a perpetual peace (and democratic peace theory) is dependent on the concept of moral universalism, which assumes that every nation has an identical interest in peace. Furthermore, any nation which desires to disturb the peace is irrational and immoral.³⁵ Therefore, from a liberal perspective, their goal is to "develop and promote moral standards which would command universal consent, knowing that in doing so states may be required to jeopardize the pursuit of their own national interests."³⁶ Carr claims that supposed absolute and universal principles such as national self-determination, free trade or collective security are "not principles at all, but the unconscious reflexions of national policy based on a particular interpretation of national interest at a particular time."³⁷ Policies are judged good or bad according to the extent to which they conform to, or diverge from, such principles. Orford argues that the "the claim to be intervening on behalf of the universal values of a common humanity was so deeply embedded within a Christian metaphysics of action, that it was difficult for those who believed that the Third World needed saving to experience humanitarian action as political."³⁸ In order to maintain this vision, the unavoidable political predicaments of sovereignty and representation had to be projected onto the state and away from the international community so that the international community and international law could be perceived as apolitical and unified.³⁹

The belief in the universal applicability of the laws of reason to the social world is an extension of the universal applicability of the laws of nature. Keith Dowding argues that the universality of rationality and reason extends to "the sense that what constitutes reason must be interpretable and interpretation requires some common understanding or universal principles to enable comprehension."⁴⁰ However, he continues by stating that "what constitutes reasons and hence reasonable agreement might vary radically across times and places."⁴¹ The belief that peace is

³⁵ Carr, *The Twenty Years' Crisis, 1919-1939*, 53.

³⁶ Burchill, "Liberalism," 69.

³⁷ Carr, *The Twenty Years' Crisis, 1919-1939*, 87.

³⁸ Orford, *International Authority and the Responsibility to Protect*, 211.

³⁹ Ibid.

⁴⁰ Keith Dowding, "The Role of Political Argument in Justice as Impartiality," *Political Studies* 61, no. 1 (March 2013): 69, doi:10.1111/j.1467-9248.2012.00968.x.

⁴¹ Ibid.

a universal end “irrespective of conflicting interest and politics”⁴² is soon revealed to be a misconception when such abstract principles are applied to a political situation. Instead they are mere “transparent disguises of selfish vested interest.”⁴³ For liberals, the settings of ethical standards are considered to be formulated independent of politics and instead, they seek to make politics conform to these standards. However, such standards are “conditioned and dictated by the social order, and are therefore political.”⁴⁴ According to Carr “ethics must be interpreted in terms of politics and the search for an ethical norm outside politics is doomed to frustration.”⁴⁵

Rule of Law vs. Political Solutions

The actual application of science to the social world was believed to be manifested by the rule of law. The idea that adherence to the rule of law could eliminate power from international relations is a fundamental belief of the anti-politics of liberalism. According to Morgenthau, “liberal philosophy sees in the judicial process the ideal method of settling international conflict.”⁴⁶ Settling international conflict by this method requires the extension of the rule of law to an ever widening sphere and the submission of an ever increasing number of human actions to be subjected to legal regulation.⁴⁷ Morgenthau claimed that “persuasion, propaganda, education, scientific proof, and democratization of foreign affairs”⁴⁸ was the means by which governments would place international relations under the dominance of the rule of law and “universal treaties became the ideal of lawmaking in the international field.”⁴⁹ The idea was that more treaties equalled more peace. International law was thought capable of regulating international relations to the extent that the relations would be rational, free from the supposed irrationalities of war. Eventually, politics would be history. Morgenthau argues that:

The rule of law has come to be regarded as a kind of miraculous panacea which, wherever applied, would heal, by virtue of its intrinsic reasonableness and justice, the ills of the body politic, transform insecurity and disorder into the calculability of a well-ordered society, and put in the place of violence and bloodshed with peaceful and reasonable settlement of social conflicts.⁵⁰

⁴² Carr, *The Twenty Years' Crisis, 1919-1939*, 87.

⁴³ *Ibid.*, 88.

⁴⁴ *Ibid.*, 21.

⁴⁵ *Ibid.*

⁴⁶ Hans J. Morgenthau, *Scientific Man vs. Power Politics*, 1947, 97.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, 100.

⁴⁹ *Ibid.*, 101.

⁵⁰ *Ibid.*, 100.

What this belief fails to address are questions surrounding authority, and therefore of enforcement in the international realm: who has the authority to decide what international law is? Who enforces this? How are international laws to be enforced?

According to Hobbes, “the sovereign of a commonwealth, be it an assembly or one man, is not subject to the civil laws. For having power to make and repeal laws, he may, when he pleaseth, free himself from that subjection by repealing those laws that trouble him.”⁵¹ In other words, the sovereign is immune from the law. In the international sphere, the UNSC has the authority to decide what constitutes lawful action in order to maintain international peace and security. It is because of this authority in the international system that the P5 effectively enjoy immunity. Furthermore, the Council may have the authority to adopt resolutions that dictate what actions should happen in the name of peace, but with no overarching enforcer there is no guarantee that these actions will happen, and whether these actions would in fact prevent further “violence and bloodshed.” In this vein, Carr maintains that:

Law is thus divorced altogether from ethics. It is regarded as binding because there is an authority which enforces obedience to it. It is an expression of the will of the state, and issued by those who control the state as an instrument of coercion against those who oppose their power. The law is therefore the weapon of the stronger.⁵²

Morgenthau and Carr both allude to the liberal assumption that there can be a set formula that requires only the prescribed administration once an issue arises in order to settle disputes. This belief does not take into account that different solutions are required at different times. According to Thomas G. Masaryk, modern democracy has transformed state organisation from a question of power and aim to rule, into a problem of administrative technique.⁵³ Furthermore, C. Delisle Burns, democratic principles are “merely principles of science applied to public policy and democracy is the discovery of new truth.”⁵⁴

Morgenthau claimed that the liberal conception of the function which the rule of law actually fulfils misinterprets reality in three ways: it misunderstands the general relationship between law and peace, it overlooks the particular conditions which the rule of law encounters in the international sphere, and it presumes that all social conflicts, domestic and international, can be

⁵¹ Thomas Hobbes, *Leviathan*, ed. Edwin Curley, Underlined, Notations edition (Indianapolis: Hackett Publishing Company, 1994), 174.

⁵² Carr, *The Twenty Years' Crisis, 1919-1939*, 176.

⁵³ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 32.

⁵⁴ *Ibid.*

settled on the basis of established rules of law.⁵⁵ Liberalism, Morgenthau claimed, had been led astray by generalising its domestic experience.⁵⁶ In the domestic setting, when an individual disturbs the peace, or two or more individuals are in dispute, a court of law will decide the obligations or punishments. Liberal international law assumes that this process can be extended to international field.⁵⁷ However, philosopher Jean-Jacques Rousseau did warn:

that to discover the rules of society that are best suited to nations, there would need to exist a superior intelligence, who could understand the passions of men without feeling any of them, who had no affinity with our nature but knew it to the full, whose happiness was independent of ours, but who would nevertheless make our happiness his concern, who would be content to wait in the fullness of time for a distant glory, and to labour in one age to enjoy the fruits in another. Gods would be needed to give men laws.⁵⁸

Morgenthau criticised the League of Nations for dealing with political situations which presented themselves as legal issues. He claimed that when dealing with such situations, the League:

could deal with them only as isolated cases according to the applicable rules of international law and not as particular phases of an over-all political situation which required an over-all solution according to political principles. Hence, political problems were never solved but only tossed about and finally shelved according to the rules of the legal game.⁵⁹

There is nothing to indicate that the current functioning of the UN is any different from problems with the League of Nations as set out by Morgenthau. Morgenthau described Chamberlain's belief that a piece of paper with Hitler's peace pledge was a guarantee of peace, as a "tragic symbol of this period of intellectual history, which believed in the miraculous power of the legal formula through its inherent qualities to drive out the evil and improve the conditions of man."⁶⁰ Furthermore, when Wilson was on his way to the Peace Conference in Versailles in 1919, he responded to adversaries of the League by assuring them that "If it won't, it must be made to work."⁶¹

⁵⁵ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 103.

⁵⁶ *Ibid.*, 95.

⁵⁷ *Ibid.*, 97.

⁵⁸ Rousseau, *The Social Contract*, 213.

⁵⁹ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 105–106.

⁶⁰ *Ibid.*, 102–103.

⁶¹ "Realism and Idealism - Wilsonian Diplomacy," *Encyclopedia of the New American Nation*, <http://www.americanforeignrelations.com/O-W/Realism-and-Idealism-Wilsonian-diplomacy.html> [accessed 15 May, 2015].

The failure of the League, for Carr, “revealed the inadequacy of pure aspiration as the basis for science of international politics.”⁶² The peace experienced in the Victorian era was misinterpreted as being evidence that proved legislation could be a tool to transform the findings of liberal ‘science’ into social facts. According to Morgenthau, what liberals believed was a relationship of “cause and effect, was actually a coincidence or, at best, took for cause what was actually effect.”⁶³ It was the peace and order existing in society at the time which allowed for the orderly process of the rule of law, not vice versa. In the words of Carr, “peace between the major powers has not been preserved by any process of international legislation... but by the traditional procedures of diplomacy, based on the calculation and manipulation of the balance of power.”⁶⁴

It is unsurprising that when theories of liberal democracy were transplanted to countries at different times, who were at a different stage of development, and whose practical needs differed from those of Western Europe, inevitable dismay ensued. The impact that liberal tools have had on the influence of international relations has led to inevitable disappointments. The inability of the UNSC to ineffectively administer impartial legal tools to prevent violence and bloodshed during the process of decolonisation is evidence of the erroneous belief that the application of rationalism, moral universalism, and the rule of law is all that is required to maintain international peace and security.

The experiences of Hammarskjöld, in particular the crisis in the Congo, provide an illustration of the challenges posed by the political challenges outlined above. The application of rationalism, moral universalism, and the rule of law in attempt to remedy a political crisis proves inadequate and leads to disappointment.

THE DISAPPOINTMENTS OF DAG HAMMARSKJÖLD

The increase in the number of states as a result of decolonization meant that the traditional conference diplomacy approach to international relations would be too slow and cumbersome. To tackle this problem, then S-G Hammarskjöld insisted upon a dynamic executive action approach. This developed from the UN’s understanding of itself as impartial and resulted in the creation of a long-term policing and managerial role in the decolonized world. The policing and managerial role of the UN, as outlined in the preceding chapter, was supposed to incorporate independence from any

⁶² Roger Morgan, “E.H. Carr and the Study of International Relations,” in *Essays in Honour of E.H. Carr* (Archon Books, 1974), 9.

⁶³ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 103.

⁶⁴ Morgan, “E.H. Carr and the Study of International Relations,” 172.

ideologies and interests of specific states, impartiality between conflicting parties, and the consent of the states in which the UN would be intervening, as well as the promise to “only take actions necessary to achieve the mandate.”⁶⁵ Hammarskjöld’s belief that the UN could remain impartial was reaffirmed with success of the Peking formula, which he explained as the S-G’s right and duty to do what he could to help find a peaceful solution when world peace was threatened,⁶⁶ and with the development of successful executive rule during the Suez crisis. However, this belief would soon be tested with the eruption of the Congo crisis.

Following independence from Belgian rule, Congolese soldiers revolted against the remaining Belgian officers, which led to the dispatch of Belgian troops back into the Congo. Congolese President Kasavubu and Prime Minister Lumumba wrote impassionedly to Hammarskjöld, claiming that Belgium’s decision to dispatch troops was “in violation of a treaty of friendship signed between Belgium and the Republic of Congo.”⁶⁷ Kasavubu and Lumumba requested urgent UN military assistance to protect the national territory of the Congo from external aggression. The same day, Belgium invaded in the resource rich province of Katanga, purportedly on the grounds of ensuring the safety of Europeans. The following day Katanga declared independence with the support of Belgian business interests, leading the UN to be faced with competing claimants to lawful authority over the province.

In response to the crisis, the Security Council adopted Resolution 143, which called upon “the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo” and authorised Hammarskjöld to “take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary.”⁶⁸ Thus, Hammarskjöld, in his role of Secretary-General, was entrusted with discretion as to what the necessary steps were, but not in deciding which parties he would liaise with. Faced with competing claimants to authority, Hammarskjöld justified UN intervention by stating that “it was the breakdown of those instruments of Government, for the maintenance of law and order which had created a situation which through its consequences represented a threat to peace and security.”⁶⁹ The United Nations Operation in the Congo (ONUC) was to be “limited to assisting the Government

⁶⁵ Orford, *International Authority and the Responsibility to Protect*, 6.

⁶⁶ Brian Urquhart, “Foreign Affairs Magazine: The Next Secretary-General: How to Fill a Job With No Description,” *The New York Times*, October 24, 2006, sec. International, http://www.nytimes.com/cfr/world/20060901faessay_v85n5_urquhart.html [accessed 13 May 2016].

⁶⁷ Orford, *International Authority and the Responsibility to Protect*, 69.

⁶⁸ UN Security Council, *Resolution 143 (1960) of 14 July 1960*, July 14, 1960, S/RES/143 (1960) <http://www.refworld.org/docid/3b00f00d50.html> [accessed 15 May 2016]

⁶⁹ UN Secretary-General, “First Report of the Secretary-General on the Implementation of Security Council Resolution S/4387 of 14 July 1960,” UN SCOR, 15th Sess., UN Doc. S/4389, 18 July 1960, para 5.

in the maintenance of law and order and would have no direct functions in relation to the withdrawal of Belgian troops.”⁷⁰

Belgium refused to withdraw its troops from Katanga and as a result Katangese authorities refused UN troop access to the area. A few days later at a Security Council meeting, Hammarskjöld affirmed that Resolution 143 applied to the territory of the Congo as a whole, Katanga inclusive. He did, however, reassert that the peacekeeping force deployed could not intervene or be party to any internal conflict; therefore, the UN could not intervene in the attempted Katanga secession.⁷¹

In her study of the crisis, Orford highlights a few situations which illustrate clearly the difficulties of adhering to the UN’s impartiality doctrine in practice. One example of this difficulty was illustrated with a decision made by Hammarskjöld’s executive assistant, Andrew Cordier, who for three weeks in 1960 was the acting Secretary-General’s interim special representative to the Congo. Cordier closed all airports and radio stations in Leopoldville after an exchange of broadcasts by President Kasavubu and then by Prime Minister Lumumba. Kasavubu broadcast the dismissal of Lumumba and Lumumba responded by broadcasting that his dismissal defied the Parliament and people, and that the situation was an internal matter which should not be subjected to external interference. A few days prior, Cordier had met with Kasavubu who had warned Cordier of his intentions. At the meeting, Kasavubu requested protection by the ONUC, asked that Lumumba be denied access to the radio station, and appealed for the closure of the airport to pro-Lumumba troops.

While the closure of the facilities appeared to be a neutral act, as it applied to both parties, it implicitly worked in favour of Kasavubu. His support base was in Leopoldville while Lumumba’s were elsewhere and reachable only by plane. Furthermore, Lumumba was an “effective speaker so that depriving Lumumba of so use of the radio denied him a significant political advantage.”⁷² Kasavubu also had access to transmitters through his alliance with the President of the Congo-Brazzaville, allowing Kasavubu to broadcast to Leopoldville anyway. Three days later, “Lumumba won the overwhelming support of both houses of the Congolese Parliament, which voted to reinstate him as Prime Minister.”⁷³ As this example shows, what could be initially perceived as behaving impartially, always produces an inherently political outcome of favouring one side of the conflict over the other.

⁷⁰ Orford, *International Authority and the Responsibility to Protect*, 76.

⁷¹ Ibid.

⁷² Ibid., 82.

⁷³ Ibid.

Another situation which the UN was faced with during the crisis was the question of lawful authority. The day after Lumumba was reinstated as prime minister, Hammarskjöld declared at a Council meeting that the President had the right to revoke the mandate of the Prime Minister. Because the UN must recognize the chief of state, and because the chief of the cabinet was in opposition with chief of state, the UN was unable to consult any Congolese as doing so would “pass judgement on the stand taken by either one of the parties in the conflict.”⁷⁴ With this in mind, the UN now had to decide which authority it would recognise when deciding on whom to distribute aid to, by way of a \$US1 million grant for food and wages of the Congolese army. Cordier decided to fund Colonel Mobutu who had just been appointed chief-of-staff by Kasavubu. This effectively bought the soldiers “loyalty for Kasavubu and himself and to pave the way for his attempted coup a few days later,”⁷⁵ and forced the UN’s hand in deciding upon legitimate authority. Once Mobutu had neutralised the Chief of State, the two rival governments and the Parliament, he called in ‘technicians’ to run the country, and again, the UN had to “decide which authorities they would liaise with in order to administer the country.”⁷⁶

A year later Hammarskjöld reflected on the period concluding that the situation “revealed the special possibilities and responsibilities of the Organisation in situations of a vacuum.”⁷⁷ Yet despite the UN’s doctrine of impartiality, the organisation had to make decisions regarding which claimant had lawful authority.⁷⁸ The insistence that impartiality must be a core principle of executive rule meant the UN officials had “no adequate account of the basis upon which they should choose one set of internal actors rather than another as the appropriate parties with which to engage in practical tasks.”⁷⁹

As Orford notes, “the UN was not, and could not be, neutral in the Congo. It was there as an actor and its action shaped the political situation.”⁸⁰ The difficulties the UN faced in the Congo, whilst attempting to implement the impartiality principle, continue to rear their head, and have not been resolved. Thus, as previously discussed, the impartiality principle appears to be impossible to apply in situations of political conflict. As Carr has stated, “every political judgement helps to modify the facts on which it is passed. Political thought is itself a form of political action.”⁸¹ The next section

⁷⁴ Ibid.

⁷⁵ Ibid., 83.

⁷⁶ Ibid.

⁷⁷ Ibid., 84.

⁷⁸ Ibid., 80.

⁷⁹ Ibid., 87.

⁸⁰ Ibid., 85.

⁸¹ Carr, *The Twenty Years’ Crisis, 1919-1939*, 5.

will discuss why those difficulties have not been resolved and why for the UNSC impartiality continues to be an unattainable goal.

ARE THESE CRITICISMS RELEVANT IN THE CURRENT CONTEXT?

The UNSC is charged with the apolitical goal of protecting human life and, in attempting to obtain this, it claims to do it impartially. However, as Orford identifies, there are primarily three factors that prevent the realisation of a politically neutral Council that seeks to implement the RtoP concept. Firstly, the RtoP “grounds authority on the capacity to guarantee protection.”⁸² Secondly, it requires “choosing between competing institutional claimants to authority.”⁸³ Finally, deciding on a strategy to maintain and protect life requires decisions about “what protection is required in a particular time and place, and who must make the sacrifices in the name of protection.”⁸⁴

The fact that authority is grounded upon the capacity to guarantee protection is problematic in the context of neutrality. In order for the UN “to make decisions about authority based upon deciding which actor has the will and capacity to guarantee security in a particular territory will inevitably involve privileging certain kinds of claimants to authority over others.”⁸⁵ It raises questions such as, why does the capacity to guarantee protection determine who has lawful authority? Why is the capacity to guarantee protection above any other method for determining lawful authority? Who decided that the capacity to protect determines lawful authority? Answering any of these questions relies on some preconceived notion of why the capacity to protect determines lawful authority. Orford notes that deciding who has lawful authority based on the capacity to protect “serves to delegitimize those whose claim to power is based on tradition, on the capacity to realise spiritual ends or on the realisation of self-determination.”⁸⁶ Furthermore, deciding on who the lawful authority is, based on *de facto* as opposed to *de jure* grounds, marginalises questions regarding whether the capacity to protect was lawfully acquired, and whether or not the authority is fairly representing its subjects. Answering all of the above questions requires intense political engagement, the contours of which the responsibility to protect concept is unable to provide.

The second reason why neutrality is an impossible goal for the UN to achieve is that it requires “choosing between competing institutional claimants to authority.”⁸⁷ Whatever claimant

⁸² Orford, *International Authority and the Responsibility to Protect*, 192.

⁸³ *Ibid.*, 193.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, 192.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, 193.

the UN decides to assist, for example by aid or military assistance, it is ultimately going to have an impact on the internal politics of the state, thus rendering it a partial arbitrator to the conflict.

Finally, “deciding which techniques to use in maintaining order and protecting life can never be apolitical, neutral or impartial.”⁸⁸ Techniques include security sector reform, the use of force, and redistribution of property. The administrators who decide which techniques to use will base their decisions on something that they believe they are upholding or promoting, whether it is the protection of a population by the redistribution of welfare or the preservation of existing entitlements.⁸⁹

This chapter has examined the inherent problems with attempting to reconcile the impartiality principle with the responsibility to protect concept, and the inevitable impossibility of political neutrality. It has provided an overview of the liberal origins relating to sovereignty, as well as the evolution of scientific thought and the implications it has had in the political realm. The emphasis liberal theorists place on rationalism does not take adequate consideration of the state of human nature; in particular, it does not address man’s lust for power. *Politics Among Nations*, Morgenthau contended that a political policy will always enviously either seek to “keep power, to increase power, or to demonstrate power.”⁹⁰ Taking this understanding of power in the context of the RtoP doctrine, it is clear that the P5 members of the UNSC are involved in a struggle to keep, increase and demonstrate their power. Carr and Morgenthau have both provided liberal critiques and have argued strongly that the liberal concepts of rationalism, moral universalism, and the rule of law are not always capable of solving political conflicts.

What this means for the UNSC, as an institution founded upon those principles, is that expectations of what it stands for, and what it is capable of achieving, are in need of serious reconsideration and recalibration. Particularly, its inability to act impartially needs to be properly appreciated. The idea that it acts impartially, or that it is even possible for it to do so, is flawed and only results in an heightened expectation of what it can achieve, which time and again wavers and fails to live up to its grandiose tenets. This is most apparent on two levels. Firstly, the procedures of the Security Council itself do not lend themselves to the impartiality principle. This will be discussed in further detail in Chapter Four, with an analysis of Council reform efforts. Secondly, as discussed by Orford, there are structural difficulties in any attempt to apply the impartiality principle in conflict

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, Sixth Edition (New York, 1985), 58.

situations. It is impossible for the UN, as an actor, to avoid shaping political situations. Even in situations where it is claiming to be acting impartially, it inevitably changes the course of the conflict by intervening in the conflict. Situations where the UN claims to be treating both parties to a conflict as equals, and therefore impartially, are routinely found to be falsehoods, and it is often discovered that one or more parties are being advantaged, to the detriment of other parties, by the UN's actions. This case of the 2011 Libyan intervention exemplifies the challenges of achieving political neutrality within the context of the UNSC.

CHAPTER 3: THE CASE OF LIBYA

Rebellion against the 42 year reign of Colonel Muammar el-Qaddafi began on the evening of 15 February 2011, in the midst of the Arab Spring. In the Libyan case, protests erupted outside the headquarters of a police station in Libya's second largest city, Benghazi, following the arrest of a human rights lawyer. However, unlike in Egypt and Tunisia, the non-violent protests in Libya were met with an immediate brutal crackdown by the Libyan government. In a swift and rare move, just 11 days after protests began, the UNSC had managed to find consensus and unanimously adopted Resolution 1970 under Article 41 of the UN Charter. The same day, Libyan rebels formed the National Transitional Council (NTC). The terms of the Security Council Resolution 1970 included an end to the violence, an imposition of an arms embargo, a travel ban, and an assets freeze of the Qaddafi family and selected government officials. Most significantly, it referred the situation to the International Criminal Court (ICC), despite the fact that Libya was not party to the Rome Statute, the treaty which had established the ICC. Only a few days after the referral, the prosecutor of the ICC, Luis Moreno Ocampo, announced the opening of the investigation in Libya, making it the fastest preliminary examination in the history of proceedings at the ICC.¹ After its adoption, Secretary-General Ban-Ki Moon personally phoned Qaddafi in the hopes of persuading him to comply with the conditions of resolution.² When it was clear that there would be no cooperation, the Council quickly moved into further action.

In the early weeks of March 2011, it appeared that the rebel army may be crushed by Colonel Qaddafi's forces. The rebels were surrounded in Benghazi, and reports were coming in of a possible rebel defeat. As a result of this, the UNSC reconvened to discuss the evolving situation and the increasingly dire humanitarian crisis. On 17 March 2011, the Council adopted Resolution 1973 which passed with ten votes in favour, and five abstentions (Brazil, China, Germany, India, and the Russian Federation.) The primary aspects of the Resolution included the further denunciation of systematic human rights violations, the authorisation of the use of force under Chapter VII of the UN Charter in order to establish a no-fly zone, and the authorisation for states to take all necessary measures to have these measures enforced.³ Two days later, the US and European allies launched operation Odyssey Dawn. The US-led coalition launched air and missile strikes against Libyan forces and destroyed Libya's air defence system within 72 hours. Following the success of Operation

¹ Carsten Stahn, "Libya, the International Criminal Court and Complementarity A Test for 'Shared Responsibility,'" *Journal of International Criminal Justice* 10, no. 2 (May 1, 2012): 329, doi:10.1093/jicj/mqs016.

² Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," 265.

³ UN Security Council, *Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya]*, 17 March 2011, S/RES/1973, <http://www.refworld.org/docid/4d885fc42.html> [accessed January 25, 2016].

Odyssey Dawn, the US “sought NATO’s agreement to take over command and control of the operation in order to ensure effective integration of allied and partnered militaries.”⁴ Consequently, on 27 March 2011, Operation Unified Protector was created, under NATO auspices, comprising of “three separate tasks: policing the arms embargo, patrolling the no-fly zone, and protecting citizens.”⁵ By 21 August 2011, rebels had seized control of the capital Tripoli, and within two months the NTC had secured primary control of the country. On 19 October 2011, rebels seized Sirte and executed Colonel Qaddafi, and by 31 October 2011, Operation Unified Protector came to an end.

As previously outlined, the UN unanimously adopted the RtoP concept at its 2005 World Summit and identified the UNSC “as the primary conduit for the application of the use of force in situations of gross violations of human rights.”⁶ Six years later, the UNSC decision which had sanctioned the 2011 Libyan intervention was hailed by many as a successful first test case for translating the RtoP concept into practice.⁷ In response to Resolution 1973, Secretary-General Ban Ki-moon stated that “the Security Council today has taken an historical decision, Resolution 1973 affirms, clearly and unequivocally, the international community’s determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government.”⁸ Similarly, Alex Bellamy argued that Resolution 1973 set a precedent for the UNSC in the sense that “it will not be inhibited as a matter of principle from authorizing enforcement for protection purposes without host state consent,”⁹ and Thomas Weiss claimed success in Libya would “put teeth in the fledgling RtoP doctrine.”¹⁰

When force is declared to be employed for humanitarian purposes, such as in the case of Resolution 1973, it is always proclaimed to be under the pretext that human protection is an apolitical goal. However, what proponents of RtoP fail to sufficiently recognise is that deciding to intervene on humanitarian grounds, where there is the inevitable likelihood of civilian death and/or displacement, is inherently a political decision. In the case of Libya, the tools employed to implement the RtoP doctrine, namely the ICC referral and no-fly zone, were presented as impartial measures to

⁴ Ivo H. Daalder and James G. Stavridis, “NATO’s Victory in Libya: The Right Way to Run an Intervention,” *Foreign Affairs* 91, no. 2 (2012): 3.

⁵ *Ibid.*

⁶ David Berman and Christopher Michaelsen, “Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?,” *International Community Law Review* 14, no. 4 (October 2012): 344, doi:10.1163/18719732-12341235.

⁷ *Ibid.*, 387.

⁸ “Statement by the Secretary-General on Libya,” *United Nations*, March 17, 2011, <http://www.un.org/sg/STATEMENTS/index.asp?nid=5145> [accessed 29 December, 2015].

⁹ Bellamy, “Libya and the responsibility to protect: the exception and the norm.” Pg 264

¹⁰ Weiss, “RtoP Alive and Well after Libya.” Pg 287

counter the violence of the Qaddafi regime, yet those tools were decided upon and administered by “the quintessential political body: the Security Council.”¹¹

Interestingly, throughout the conflict, there had been a reluctance to call the situation a civil war.¹² If it had been deemed so, UNSC intervention would have been perceived as a breach of Libya’s sovereignty and a violation of the UN Charter. However, politicians refrained from using the term and the situation was portrayed as conflict with an obvious aggressor and a population that required saving, as opposed to a civil war where both belligerents committed violent and unjust acts. This made room for the implementation of the RtoP doctrine, as the conflict was framed so that there was an apparent clear friend (the Libyan population, including the rebels) that required saving from a seemingly clear enemy (the Qaddafi regime).

This chapter will explore the UNSC’s behaviour surrounding the 2011 intervention in Libya and highlight the implications such actions have on both the desirability and the possibility of political neutrality. It will begin by examining universal values and the RtoP in the UNSC’s response to the crisis, namely the adoption of Resolution 1970 and Resolution 1973. Following this will be a discussion on the problems of UNSC authority and how it relates to political biases and preferences, followed by a discussion on the problem of selectivity. This chapter will conclude with a discussion on how politics lay at the heart of decision making in the case of Libya, and how such behaviour has had serious repercussions for any expectation that the UNSC can act as an impartial arbiter of when humanitarian interventions can occur.

THE RtoP AND UNSC RESOLUTION 1970 AND 1973

The 2011 Libyan intervention was significant as it was the first situation in which the UNSC invoked and directly referenced the RtoP norm to justify intervention. As discussed in the previous chapter, the RtoP concept “grounds authority on the capacity to guarantee protection,” which raises the question of who has the rightful authority to decide the criteria for such capacity and protection. In the Libyan intervention, the UNSC decided that Qaddafi did not have the will or capacity to guarantee protection or security within Libya, and gave NATO a mandate to effectively exercise the authority to decide upon who to protect in Libya, how protection should be administered, and who exactly should exercise the protective measures. Aside from grounding the concept of authority on

¹¹ Louise Arbour, “The Rise and Fall of International Human Rights,” *International Crisis Group*, April 27, 2011, <http://www.crisisgroup.org/en/publication-type/speeches/2011/the-rise-and-fall-of-international-human-rights.aspx> [accessed 15 January 2016].

¹² Jeremy Moses, *Sovereignty and Responsibility* (Palgrave Macmillan, 2014), 111.

the capacity to protect, the RtoP doctrine requires “choosing between competing institutional claimants to authority.”¹³ While the proclaimed purpose of Resolution 1973 was “to end the violence, to protect civilians and to allow the people of Libya to determine their own future,”¹⁴ the UNSC and NATO made an implicit decision to back the NTC over Qaddafi, by implementing the no-fly zone against Qaddafi’s air force, which in-turn directly took the decision-making authority away from the Libyan people. Furthermore, the RtoP concept requires decisions on which techniques to use in maintaining order and protecting life. Any claims of humanitarian action tend to result in states implying impartiality and the transcendence of national self-interest. In the case of Libya, this was especially evident in two key elements: the ICC referral, and the establishment of the no-fly zone, which are both represented and perceived as neutral measures. While these elements are logically dependent on a neutral decision making body, they are sanctioned by the inherently political UNSC, which further highlights the problem of impartiality in the UN system.

Resolution 1970: referral of the case of Libya to the International Criminal Court

As previously mentioned, on 26 February 2011 Resolution 1970 was unanimously adopted, only eleven days after protests erupted. Amongst other provisions, it condemned the violation of human rights, imposed targeted sanctions, and referred the case of Libya to the ICC. The Libyan referral is of particular significance as it was the first case in which the UNSC referred a situation to the ICC that was “expressly associated with the RtoP concept.”¹⁵ In order for the UNSC to enforce international human rights, it requires the RtoP doctrine to prevent and cease human rights violations, and the ICC seeks to punish human rights violators.¹⁶ The efficacy of both is dependent on the Council, as is the manner in which the RtoP and ICC are operationalized.¹⁷ Therefore, while the ICC is “presented by its advocates as a legal bastion immune from politics,”¹⁸ the dependence on the Council means that it is inherently political. The ability of the P5 to refer and defer cases, as well as block their own prosecution, reinforces the dominance of the political in international relations as “it

¹³ Orford, *International Authority and the Responsibility to Protect*, 194.

¹⁴ “PM Statement on the UN Security Council Resolution on Libya - Oral Statements to Parliament,” *GOV.UK*, March 18, 2011, <https://www.gov.uk/government/speeches/pm-statement-on-the-un-security-council-resolution-on-libya> [accessed 14 May, 2016].

¹⁵ Stahn, “Libya, the International Criminal Court and Complementarity A Test for ‘Shared Responsibility,’” 326.

¹⁶ Aidan Hehir and Anthony Lang, “The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect,” *Criminal Law Forum* 26, no. 1 (March 1, 2015): 160, doi:10.1007/s10609-015-9245-4.

¹⁷ *Ibid.*, 161.

¹⁸ Sarah M. H. Nouwen and Wouter G. Werner, “Doing Justice to the Political: The International Criminal Court in Uganda and Sudan,” *European Journal of International Law* 21, no. 4 (November 1, 2010): 941, doi:10.1093/ejil/chq064.

recognizes these powers as the foundation for international legal reform and yet accepts that they themselves operate beyond the reach of the law that they make.”¹⁹ This ability of the P5 is reminiscent of Carr’s assertion that the “law is therefore the weapon of the stronger.”²⁰

Of the P5 members, France and the UK are both state parties to the Rome Statute; Russia and the US have signed but not ratified; and China is a non-party state. Despite the fact that not all P5 members are state parties to the ICC, the UNSC can still veto any related decision to refer an issue to the institution. What was unique about Resolution 1970 was that it was the UNSC’s first unanimous referral to the ICC, as well as the first time it “referred a situation to the ICC in the early stages of an ongoing conflict and as part of a resolution containing a comprehensive plan to try to end it.”²¹ Eleven weeks after the referral, the Office of the Prosecutor (OTP) filed applications for warrants of arrest for Muammar Qaddafi, Saif Qaddafi, and the Head of Intelligence in Libya, for crimes against humanity, making it the shortest time in which the OTP had requested an arrest warrant following the initiation of an investigation.²² At that point, the only other referral (Resolution 1593) the Council had made to the ICC concerned the conflict in Darfur in March 2005. The conflict there had already been raging for two years and had been described by then Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland as an “ethnic cleansing,”²³ illustrating the gravity of the crisis. It is worth mentioning two points: first, like Libya, Sudan is not a state party to the Rome Statute; and second, France, Russia and the UK voted in favour of ICC intervention in Darfur, while the US and China abstained.

After the passage of Resolution 1970, U.S. Permanent Representative to the UN, Susan Rice, stated that “the United States and all the members of the Council felt that what is transpiring is absolutely unacceptable and demanded an urgent and unanimous response.”²⁴ Other than mentioning that the Council had “unanimously referred an egregious human rights situation to the International Criminal Court,” Rice gave no justification as to why the US agreed to do so. This is noteworthy, as the US had abstained from voting on Resolution 1593 on the grounds that it “fundamentally object[ed] to the view that the Court should be able to exercise jurisdiction over the

¹⁹ Moses, *Sovereignty and Responsibility*, 141.

²⁰ Carr, *The Twenty Years’ Crisis, 1919-1939*, 176.

²¹ Karen L. Corrie, “International Criminal Law,” *The International Lawyer* 46, no. 1 (2012): 145.

²² *Ibid.*, 146.

²³ *Ibid.*

²⁴ Susan E. Rice, “Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at the Security Council Stakeout, on Resolution 1970, Libya Sanctions,” *United States Mission to the United Nations*, February 26, 2011, <http://usun.state.gov/remarks/4983> [accessed 15 May 2016].

nationals, including government officials, of States not party to the Rome Statute,”²⁵ and that it believed that “the Rome Statute is flawed and does not have sufficient protections from the possibility of politicized prosecutions.” While a response to the differing US views regarding the two ICC referrals could be that the resolutions were decided upon under different US presidencies so making it unsurprising to have two different outcomes or justifications, it could be argued that if the ICC was really ‘immune from politics’ then who holds the presidency of the US should be irrelevant.

Like the US, China also abstained from voting for Resolution 1593, but voted in favour of Resolution 1970. China’s former Permanent Representative to the UN, Li Baodong, made no mention of the ICC after the Resolution 1970 passage, stating that they voted in favour due to “the special situation in Libya at this time and the concerns and views of the Arab and African countries.”²⁶ However, after the adoption of Resolution 1593, the Permanent Representative of China, Wang Guangya stated that reasons for abstaining were that China “cannot accept any exercise of the ICC’s jurisdiction against the will of non-State parties, and we would find it difficult to endorse any Security Council authorization of such an exercise of jurisdiction by the ICC.”²⁷

The inconsistency between China and the US’s voting behaviour between the two resolutions can either be viewed as acts of self interest, or a new principled acceptance and belief in the ICC. Unsurprisingly, Associate Trial Lawyer to the ICC, Karen Corrie argues in favour of the latter, explaining that the referral demonstrated a marked shift in the international community’s regard for the ICC and showed that “members of the Council, even those who have not ratified that Statute, view the ICC as a legitimate and valuable institution that can contribute to the maintenance of international peace and security.”²⁸ However, it could alternatively be argued that the inconsistency of Chinese and US voting behaviour for each of the Resolutions highlights the selectivity of the Council. While the voting behaviour surrounding Resolution 1953 may have been portrayed as a principled decision to respect the jurisdiction of states, the voting behaviour of Resolution 1970, suggests that the results in both situations were an outcome of the individual P5 strategic interests at the time.

²⁵ Susan E. Rice, “United Nations Security Council 5158th Meeting,” S/PV.5158, March 31, 2005, 3, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5158 [accessed 14 May, 2016].

²⁶ Baodong Li, “Statement by H.E. Ambassador Li Baodong, Permanent Representative of China to the United Nations, at the Security Council Meeting on the Situation in Libya,” *Permanent Mission of the People’s Republic of China to the UN*, February 26, 2011, <http://www.china-un.org/eng/gdxw/t823989.htm> [accessed 15 May 2016].

²⁷ Wang Guangya, “United Nations Security Council 5158th Meeting,” S/PV.5158, March 31, 2005, 3, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5158 [accessed 14 May, 2016].

²⁸ Corrie, “International Criminal Law,” 147.

Further P5 hypocrisy regarding the ICC is evident in the vetoing of a draft resolution in May 2014 that would have referred the situation in Syria to the ICC. In this instance, Vitaly Churkin, Russia's Permanent representative to the UN, had earlier dismissed the vote as a "publicity stunt" and warned that if the resolution had passed it would "hinder efforts to end the country's three-year war."²⁹ Yet, Russia supported both the Libyan and Darfur referral to the ICC. While it could be argued that the Libyan referral happened extremely quickly after protests broke out and therefore had a better chance of a peaceful result, the conflict in Darfur had been raging for two years. In addition, *The Guardian* reported that the US only "agreed to support the draft resolution after ensuring that Israel would be protected from any possible prosecution at the ICC related to its occupation of the Syrian Golan Heights."³⁰ The protection of Israel is an example of the pursuit of justice being made "subservient to political interests."³¹ The double-standards displayed by the US and Russia in these instances is further evidence of a selective Council that is primarily concerned with its own self-interests, and is therefore unable to act impartially. As Louise Arbour argues, the entanglement of justice and politics prevents the ICC from holding any "credibility and legitimacy as a professional and impartial substitute for deficient national systems of accountability."³²

The ICC is "intended to promote impartiality, since in a conflict situation both government and oppositional military forces can commit international law crimes."³³ In other words, the court is geared towards overcoming the politics and partiality of sovereign states. However, in order for it to do so, it must rely on a neutral decision-making body, not the inherently political UNSC. Additionally, according to Michael J. Struett, "the ICC is an institution with significant powers to regulate the ways that states or other groups use force and to punish individuals who violate these international laws"³⁴ However, for the ICC to exercise its powers, it must attain the permission of the P5. Therefore, while it could potentially regulate some states, if all P5 members agree, the P5 are effectively immune, which in effect negates from the idea of an institution capable of overcoming the politics and partiality of sovereign states. Furthermore, Jennifer Welsh has argued that the strategy of "naming" in Resolution 1970 by the UNSC was a deliberate act, which was "first, to change the incentives of those who were in a position to commit atrocities against civilians; and

²⁹ Ian Black, "Russia and China Veto UN Move to Refer Syria to International Criminal Court," *The Guardian*, May 22, 2014, sec. World news, <http://www.theguardian.com/world/2014/may/22/russia-china-veto-undraft-resolution-refer-syria-international-criminal-court> [accessed 3 December, 2014].

³⁰ Ibid.

³¹ Arbour, "The Rise and Fall of International Human Rights."

³² Ibid.

³³ Michael J. Struett, *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency* (New York: Palgrave Macmillan, 2008), 2.

³⁴ Ibid., 1.

second, to encourage defections that might contribute to the fall of Qaddafi's regime."³⁵

Manipulating incentives and encouraging defections that might contribute to regime change clearly favours a particular side and is therefore problematic for the espoused impartiality rhetoric from the UN. Moreover, as Resolution 1970 demonstrated, the RtoP doctrine and international criminal justice cannot be separated from political considerations when they are administered by a political body such as the UNSC.³⁶ Finally, the Council's inability to generate any consistency in the manner in which it refers cases to the ICC simply reinforces their own power in the international system, to the detriment of weaker states, who are ultimately held accountable to a higher standard under international law. This raises the question, "can law ever function to depoliticize international relations, or is it forever beholden to the political preferences of the powerful?"³⁷

Resolution 1973: No-Fly Zone

After the adoption of Resolution 1970 and the continued violence in Libya, some members of the international community, including regional organisations, rallied together and called for a no-fly zone over Libya. According to Alexander Benard, "the term 'no-fly zone' is used to describe a physical area of a nation that is patrolled using airpower of another sovereign state or coalition,"³⁸ with the main purpose of denying an enemy the use of a designated airspace as well as the ability to "monitor enemy ground positions and movements within the zone."³⁹ If any aircraft enter the no-fly zone without permission or "do not leave immediately upon demand, they will be engaged by the enforcing aircraft."⁴⁰ Furthermore, the monitoring aspect also includes working in "cooperation with friendly forces on the ground or acting unilaterally against any emerging threats."⁴¹ Similarly to the dependency of a neutral decision-making body regarding ICC referrals, the very idea of a no-fly zone is dependent on a neutral enforcement power that maintains the right to fly in the zone, which is still nonetheless labelled a no-fly zone.

The events leading up to the adoption of Resolution 1973 began on 1 March 2011 when a non-binding resolution was passed by the US Senate, which condemned the violence committed by

³⁵ Welsh, "Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP," 259.

³⁶ Arbour, "The Rise and Fall of International Human Rights."

³⁷ Moses, *Sovereignty and Responsibility*, 144.

³⁸ Alexander Benard, "Lessons from Iraq and Bosnia on the Theory and Practice of No-Fly Zones," *Journal of Strategic Studies* 27, no. 3 (September 1, 2004): 455, doi:10.1080/1362369042000282985.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

the Qaddafi regime, and suggested that the UNSC consider a no-fly zone.⁴² In a joint statement on March 7, the Gulf Cooperation Council (GCC) demanded that the UNSC take the necessary steps to protect civilians, including a no-fly zone in Libya.⁴³ Illuminating the significance of the unravelling situation in Libya to the GCC, this demand was the first substantive foreign policy position taken by the regional group since 1991.⁴⁴ Around this time, the Organisation of Islamic Cooperation and Libyan Interim Transitional National Council also publicly endorsed a no-fly zone.⁴⁵ Likewise, in an unprecedented move on March 12 2011, the League of Arab States (LAS) also called upon the Council to establish a no-fly zone. While this was seen as a remarkable step, it is noteworthy that “only eleven of the twenty-two members of the LAS were present at the meeting, and a majority of the eleven were also members of the GCC that had called for the establishment of a no-fly zone only five days earlier.”⁴⁶ UN Secretary-General Ban Ki-moon added weight to the growing international chorus, and urged the international community to undertake a rapid response to protect Libyan civilians from further violence, and furthermore asked the Council to agree to protective measures that would ensure the safety of the Libyan population.⁴⁷

On 17 March, the Council responded with Resolution 1973 which was submitted by France, Lebanon, the UK and the US. It has been variously described as an example of “the humanitarian imperative and the normative power of global civil society and specifically RtoP,”⁴⁸ as well as an example of “US imperialism and the West’s thirst for oil.”⁴⁹ UN Secretary-General Ban Ki-Moon stated that “the Security Council today has taken an historic decision. Resolution 1973 affirms, clearly and unequivocally, the international community’s determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government.”⁵⁰ This was viewed as an extraordinary measure as it was the only time that the UNSC had authorised the use of military

⁴² Jocelyn Vaughn and Tim Dunne, “Leading from the Front: America, Libya and the Localisation of R2P,” *Cooperation and Conflict* 50, no. 1 (March 1, 2015): 39, doi:10.1177/0010836714532916.

⁴³ Kareem Shaheen, “GCC Wants No-Fly Zone over Libya,” *The National*, March 8, 2011, <http://www.thenational.ae/news/uae-news/politics/gcc-wants-no-fly-zone-over-libya> [accessed 28 December, 2015].

⁴⁴ Emily O’Brien and Andrew Sinclair, “The Libyan War: A Diplomatic History | February - August 2011” (New York University: Center on International Cooperation, August 2011), 9–10, http://cic.es.its.nyu.edu/sites/default/files/libya_diplomatic_history.pdf. [accessed 30 December 2015]

⁴⁵ Vaughn and Dunne, “Leading from the Front,” 39.

⁴⁶ Luke Glanville, “Intervention in Libya: From Sovereign Consent to Regional Consent,” *International Studies Perspectives* 14, no. 3 (August 2013): 334, doi:10.1111/j.1528-3585.2012.00497.x.

⁴⁷ “United Nations Response to Violence against Civilians in Libya Sends Strong Message There Is ‘No Impunity’ for Crimes against Humanity, Secretary-General Says” *United Nations*, <http://www.un.org/press/en/2011/sgsm13425.doc.htm> [accessed 14 May, 2016].

⁴⁸ Hehir, *The Responsibility to Protect*, 13.

⁴⁹ Ibid.

⁵⁰ Ban Ki-Moon, “Statement by the Secretary-General on Libya,” United Nations, March 17, 2011, <http://www.un.org/sg/STATEMENTS/index.asp?nid=5145> [accessed 15 May, 2016].

force for human protection purposes, in the face of clear opposition of a functioning state. Resolution 1973 was also unprecedented in the sense that, as well as a lack of host state consent, “diplomacy produced a decisive response in a relatively short period of time.”⁵¹

While the action was deemed by former French Foreign Minister, Bernard Koucher, as a “minimum countermeasure” to the violent actions of Qaddafi’s forces,⁵² criticisms of the airstrikes were voiced early on in the intervention, with some arguing that the strikes went beyond the mandate, and that the lines between civilian protection and regime change were blurring.⁵³ However, Secretary-General Ban Ki-moon defended NATO’s actions stating that “Security Council resolution 1973, I believe, was strictly enforced within the limit, within the mandate.”⁵⁴ Furthermore, he claimed that the defeat of Qaddafi and subsequent regime change “were done by the people, not by the intervention of any foreign forces, including the United Nations.”⁵⁵

Amongst the criticisms, at a meeting of the South African Cabinet on 30 March, 2011, the South African government called for an “immediate ceasefire and for restraint to avoid further casualties,” further stating that “if you read the resolution itself, you will see it is very clear about no military intervention or foreign occupation of Libya.”⁵⁶ Likewise, amidst the intervention in May 2011, James Pattison suggested that there was evidence of mission creep, stating that “it appears that as the intervention progresses, the primary objective may become regime change rather than the protection of civilians.”⁵⁷ Theo Neethling stated that “in the case of Libya, it soon transpired that Western powers...also believed that a no-fly zone required certain military actions... to protect the planes and the pilots, including bombing targets like the Libyan defence system.”⁵⁸ Forewarning of the ramifications that mission creep in Libya produced, South African Permanent Representative to the UN, Baso Sangqu stated at the 2011 UNGA debate that:

My delegation has expressed its condemnation of recent NATO activities in Libya which went far beyond the letter and spirit of resolution 1973 adopted by this Council. Abusing the authorization

⁵¹ Welsh, “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP.” Pg 255

⁵² Theo Neethling, “Reflections on Norm Dynamics: South African Foreign Policy and the No-Fly Zone over Libya,” *South African Journal of International Affairs* 19, no. 1 (April 1, 2012): 25, doi:10.1080/10220461.2012.670381.

⁵³ Glanville, “Intervention in Libya,” 338.

⁵⁴ Louis Charbonneau, “U.N. Chief Defends NATO from Critics of Libya War,” *Reuters*, December 14, 2011, U.S. edition, <http://www.reuters.com/article/us-libya-nato-un-idUSTRE7BD20C20111214> [accessed 30 December 2015].

⁵⁵ Ibid.

⁵⁶ Neethling, “Reflections on Norm Dynamics,” 26.

⁵⁷ James Pattison, “The Ethics of Humanitarian Intervention in Libya,” *Ethics & International Affairs* 25, no. 03 (September 2011): 273–274, doi:10.1017/S0892679411000256.

⁵⁸ Neethling, “Reflections on Norm Dynamics,” 26.

granted by this Council to advance political and regime change agenda's does not bode well for future action by this Council in advancing the protecting of civilians agenda. This could lead to a permanent state of paralysis within this Council in addressing similar situations in future.⁵⁹

In a similar vein, President of the Russia Federation, Vladimir Putin, expressed his strong condemnation of the perceived unlawful expansion of the Resolution 1973 mandate. He told reporters that he believed that the Resolution was both "defective and flawed,"⁶⁰ and furthermore it was a "sort of call to crusade when someone would appeal to someone to go to a certain place and free someone else."⁶¹ It was quickly evident that some members of the UNSC felt deceived by the mission creep they felt was conducted by the US-led coalition, and ultimately NATO. There was a strongly held belief that the Resolution had been nefariously misinterpreted and misused by the Western members of the P5. The decisions taken by the Western members of the UNSC seriously undermined all consensus that had been built on how to respond to the Libya crisis, and many UNSC members, particularly Russia, were determined to make sure that they were not deceived in the same manner again.

THE PROBLEMS OF UNSC AUTHORITY AND LIBYA

The Libyan intervention was arguably sanctioned as a result of a "unique constellation of necessarily temporal factors."⁶² The unusual clarity of the situation, coupled with a direct request from regional organisations, such as the LAS and the African Union (AU), were crucial elements in acquiring a mandate in order to sanction action. This is considered the vital element that led to Russia and China abstaining rather than vetoing Resolution 1973. In this section I will examine more closely the differing political interest of the P5 members, in attempting to explain the rationale behind their decisions to pass Resolutions 1970 and 1973. Ultimately, I will argue that the self-interest of the P5 was the reason behind their decision to intervene in Libya.

⁵⁹ Jacob Zuma, "Statement by H.E. Mr. Jacob Zuma President of the Republic of South Africa on the Occasion of the General Debate of the 68th Session of the United Nations General Assembly," *United Nations*, <http://gadebate.un.org/68/south-africa> [accessed 14 May, 2016].

⁶⁰ "Putin Slams UN Libya Resolution as 'medieval Crusade,'" *NOW.*, March 21, 2011, https://now.mmedia.me/lb/en/archive/putin_slams_un_libya_resolution_as_medieval_crusade_ [accessed 13 May, 2016].

⁶¹ *Ibid.*

⁶² Hehir, *The responsibility to protect: rhetoric, reality and the future of humanitarian intervention*. Pg 16

Various Political Interests of the P5

Understanding how the Council reached this unprecedented decision requires an examination of the P5 voting behaviour. The somewhat typical P3 (France, UK and US) and P2 (China and Russia) split was evidenced in the sanctioning of Resolution 1973 where the P3 voted in favour, and the P2 abstained. Of the states who voted in favour, their proclaimed reasons for doing so included: the championing of democracy; the protection of civilians against crimes against humanity; action against the lack of adherence to Resolution 1970; a response to the call from regional organisations; the demonstration of rights and duties pursuant to Chapter VII of the UN Charter; and the self determination of the Libyan people. French Foreign and European Affairs Minister, Alain Juppé, claimed that “the international community has reacted in near unanimity,”⁶³ citing regional groups such as the European Union, the LAS, and the AU, and that “we must not allow the rule of law and international morality to be trampled underfoot.”⁶⁴ Similarly, the British Permanent Representative to the UN, Mark Lyall Grant, commented on the apparent influence of the international community, stating that “international opinion has looked to the Security Council to act,” and expressed that the central purpose of Resolution 1973 was:

to end the violence, to protect civilians and to allow the people of Libya to determine their own future...The Libyan population wants the same rights and freedoms that people across the Middle East and North Africa are demanding and that are enshrined in the values of the United Nations Charter. Today’s resolution puts the weight of the Security Council squarely behind the Libyan people in defence of those values⁶⁵.

US Permanent Representative to the UN, Susan Rice expressed her view that “the Council’s purpose is clear – to protect innocent civilians,” and that “the future of Libya should be decided by the people of Libya. The United States stands with the Libyan people in support of their universal rights.”⁶⁶ The image being promoted by the P3 Council members was that there was a universal condemnation of the crisis in Libya, and a united international front against the tyrannical and freedom hating Libyan government. The P3 members were also keen to foster the image that the humanitarian crisis was

⁶³ United Nations, Security Council, *6498th meeting*, S/PV.6498 (17 March 2011), 2, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%20S%20PV%206498.pdf> [accessed 16 May 2016]

⁶⁴ Juppé, Alain. “17 March 2011 - Security Council - Libya - Statement by Mr Alain Juppé, Ministre d’Etat, Minister of Foreign and European Affairs,” *France ONU*, <http://www.franceonu.org/17-March-2011-Security-Council>. [accessed January 12, 2016].

⁶⁵ *Ibid.*, 4

⁶⁶ *Ibid.*, 5

the primary reason for intervention, and largely avoided any references to the need for regime change at the hands of UN or NATO (rather leaving this to the will of the Libyan people). Furthermore, the situation was never deemed a civil war, and instead was framed within the RtoP narrative. This image required a clear aggressor and a population in need of protection so that intervention could be considered acceptable, and to avoid accusations of a breach in Libya's sovereignty.

Despite their traditional non-interventionist foreign policies in the UN context, Russia and China chose not to invoke their veto powers. Their official reasons for not voting in favour for Resolution 1973 included the lack of clarity over the terms of engagement and the risk of further destabilization of an already volatile area. The request for action from the LAS and AU were, however, the crucial factors that led to abstention, rather than an outright veto.⁶⁷ Russia and China's decision to refrain from invoking their veto powers in this situation was something that proponents of RtoP claimed to be as in indication of the acceptance of the emerging norm.⁶⁸

China's decision to abstain from voting was based upon "the special circumstances surrounding the situation."⁶⁹ Permanent Representative of China to the UN, Li Baodong stated that "the Security Council should follow the United Nations Charter and the norms governing international law, respect the sovereignty, independence, unity and territorial integrity of Libya and resolve the current crisis in Libya through peaceful means," and furthermore that "China is always against the use of force in international relations."⁷⁰ However, in the end Baodong explained that the Chinese decision to not block the Resolution with their veto power had been particularly influenced by the call for the establishment of a no-fly zone over the Libyan airspace by the LAS, as well as the similar position taken by African countries and the AU.⁷¹

Russian Permanent Representative to the UN, Vitaly Churkin, explained that Russia's decision to abstain from voting, rather than actively voting to support it, was due to the fact there were many unanswered questions about implementation, such as how the no-fly zone would be enforced and agreement on the limits of engagement. Churkin stated that the Russian preference was for there to be an immediate ceasefire, as there was an urgent need to avoid further destabilisation of the region.⁷² He also expressed his concern at the changing nature of the

⁶⁷ Ibid., 10

⁶⁸ Weiss, "RtoP Alive and Well after Libya," 289.

⁶⁹ "United Nations Security Council 6498th Meeting," 10.

⁷⁰ Ibid.

⁷¹ Ibid

⁷² Ibid., 8.

Resolution, noting that “the draft was morphing before our very eyes, transcending the initial concept as stated by the League of Arab States. Provisions were introduced into the text that could potentially open the door to large-scale military intervention.”⁷³ Churkin advised that in the end Russia did not block the veto because of the common humanitarian values that it shared with the international community. In an explanation of Russia’s position on the Resolution, Churkin explained that Moscow firmly advocated for the protection in Libya, “guided by this principle as well as by the common humanitarian values that we share with both the sponsors and other Council members, Russia did not prevent the adoption of this resolution.”⁷⁴

An examination of the politics of the P5 leading up to the intervention may also illuminate some of their true motivations underlying the sanctioning of the no-fly zone. According to Michael Walzer, an analysis of Russia and China’s decision to abstain from Resolution 1973 reveals that the decision was primarily in service of their self-interest. Walzer claims that Russia and China felt that it was the best possible outcome of the situation; that it was an option which suited their interests in the Middle East and Africa.⁷⁵ In the case of Russia, there were substantial economic interests working as a motivating factor for Moscow to remain engaged in the UNSC’s response to the crisis. Some reports have put Russian investment into Libya, before the height of the crisis, as high as US\$70 billion,⁷⁶ with significant commercial interests ranging from oil and gas contracts, to railway and infrastructure construction.⁷⁷ By abstaining from the voting on the Resolution, Russia was attempting to carefully calibrate and balance its response to the crisis. While Russia had vocally expressed its concerns with some of the tenets of the Resolution (namely in relation to the limits of engagement and enforcement), it wanted to continue to be influential, and to be seen as a constructive arbitrator to the crisis. Should Russia have blocked the Resolution, by invoking its veto privilege, it is likely that the other Western P3 members of the UNSC would have reacted by attempting to sideline Moscow from future cooperation on the crisis. Furthermore, it is highly likely that the P3 would have proclaimed that Russia’s vetoing was the nefarious actions of an actor only observant to its own self-interest, in the face of an ever growing humanitarian crisis.

Indicative of the balancing act that Russia was attempting to navigate, there were persistent rumours that the ruling elite in Moscow had disagreed on how to respond to the draft Resolution. It

⁷³ Ibid.

⁷⁴ “United Nations Security Council 6498th Meeting,” 8.

⁷⁵ Hehir, *The Responsibility to Protect*, 15.

⁷⁶ “Russia’s Response to the Libyan Crisis: A Paradigm Shift?,” *Russia Beyond the Headlines*, March 25, 2011, http://rbth.com/articles/2011/03/25/russias_response_to_the_libyan_crisis_a_foreign_policy_paradigm_shif_12617.html [accessed 20 January, 2016].

⁷⁷ Ibid.

has been claimed that while then-President Dmitry Medvedev wanted the Russian Federation to vote in favour of the Resolution, Foreign Minister Sergey Lavrov strongly insisted on vetoing the proposal.⁷⁸ In the end, it is likely that decision to abstain was a calculated assessment of Russia's self-interest, and a compromise between the two opposing views amongst political elites in Moscow. Once the decision to abstain from the vote was announced, President Medvedev was quick to put down any internal opposition. In a bold move, Medvedev dismissed the then-Russian Ambassador to Libya, Vladimir Chamov, for "the misrepresentation of Russia's position in the Libyan conflict."⁷⁹ Chamov had reportedly condemned Medvedev's decision not to veto the Resolution.⁸⁰ When Medvedev was asked by reporters why Russia had not used its veto power, the President reinforced the calculated decision taken by Moscow:

Russia did not use its power of veto for the simple reason that I do not consider the resolution in question wrong. Moreover, I think that overall this resolution reflects our understanding of events in Libya too, but not completely. This is why we decided not to use our power of veto.⁸¹

China's decision to abstain rather than invoke its veto powers can also be arguably owed to calculations of self-interest, rather than altruistic motives. It is noteworthy to begin by commenting that Libyan officials from Qaddafi's regime travelled to China to purchase US\$200 million worth of rocket launchers, anti-tank missiles, portable surface-to-air missiles designed, along with other weapons from state controlled companies in July 2011, despite the Resolution 1970 arms embargo. While the Chinese government confirmed the visit, they claimed they were unaware of negotiations taking place between the weapons manufacturers and Qaddafi's officials. This is despite that fact that documents to that effect were found printed on the paper of a government procurement department in a neighbourhood where many government officials lived, before the defeat of Qaddafi. According to Omar Hariri, the chief of the rebel's military committee, the completion of the deal could explain how brand-new weaponry had reached the battlefield.⁸² Yet, a spokeswoman for the Chinese Government claimed that no contracts had been signed and no weapons were

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Team of the Official Website of the President of Russia, "Statement by Dmitry Medvedev on the Situation in Libya," *President of Russia*, March 21, 2011, <http://en.kremlin.ru/events/president/news/10701> [accessed 20 January, 2016].

⁸² Tania Branigan, "Chinese Arms Companies 'Offered to Sell Weapons to Gaddafi Regime,'" *The Guardian*, September 5, 2011, sec. World news, <http://www.theguardian.com/world/2011/sep/05/chinese-arms-companies-weapons-gaddafi-regime> [accessed 20 January, 2016].

exchanged.⁸³ Assuming the likelihood that the weapons trade went ahead, Beijing's proclaimed humanitarian objectives for deciding to refrain from using the veto are highly questionable. One only need to briefly mention the ongoing controversy surrounding Tibet, and China's prevailing concern over its oil supply in Darfur while mass atrocities were occurring. In part, China's traditional approach to stick steadfastly to state sovereignty and non-intervention is a result of their own international actions. In other words, in order to avoid action against themselves, they avoid directly challenging other states on these matters.

Another reason why China may have chosen to abstain is arguably related to Beijing's interest in maintaining closer relations with Saudi Arabia. Riyadh strongly supported the overthrow of the Qaddafi government, with Qaddafi accusing Saudi Prince Abdullah of "making a pact with the devil,"⁸⁴ in relation to Saudi support of US military action in the region. Abdullah retorted by bluntly responding, "your lies precede you and your grave is in front of you."⁸⁵ For China, Saudi Arabia has become an increasingly close international partner, as well as an influential aid donor. Following the 2008 Sichuan earthquake, Saudi Arabia was the largest international relief donor, and it has recently outstripped the US as the biggest oil importer from the Arab State.⁸⁶ The Chinese Foreign Minister Yang Jiechi even went as far as justifying China's decision to refrain from exercising the veto as being, in part, due to Beijing's "attached great importance to the requests of the Arab League and African Union."⁸⁷ In light of Saudi Arabia's influence, particularly in the GCC and the LAS, it is conceivable that Beijing found itself unwilling to be the sole cause of the failure of the passing of the UNSC resolution. As with the Russian case, it appears that the choice by China to abstain from voting was more of a calculation of self-interest, and an assessment of the current geopolitical context, as opposed to any overriding altruistic or humanitarian considerations.

The self interest displayed in deciding to refrain from exercising the veto is not limited to the P2. The Western P3 also had self-interested motivations at the forefront of their minds when deciding how to approach the Libyan crisis. While the US voted in favour of Resolution 1973, it was not always so keen to do so. At the beginning of March 2011, it was reported that President Obama had showed no willingness to support a no-fly zone, and instead wanted to increase US support for

⁸³ Ibid.

⁸⁴ "Are Libyan Rebels Backed by Saudi Arabia or Iran?," *International Business Times UK*, June 6, 2011, <http://www.ibtimes.co.uk/are-libyan-rebels-backed-by-saudi-arabia-or-iran-157943> [accessed 20 January 2016].

⁸⁵ Ibid.

⁸⁶ Glanville, "Intervention in Libya," 337.

⁸⁷ 6498th meeting, 10.

humanitarian assistance, and enforce an assets freeze.⁸⁸ Defence Secretary Robert Gates and National Security Advisor Tom Donilon had questioned whether Libya was even critical to US national security interest's calculations, "thus posing the traditional realist objection to humanitarian intervention."⁸⁹

Over the course of the next couple of weeks, however, the US administration changed its position. The change, according to some reports, had been directly attributed to Obama's personal view on the protection of civilians.⁹⁰ According to Vaughn and Dunne, why the US worked so hard to find consensus to ensure the vote was won can be understood in relation to the localised variant of the RtoP, which is the US governments focus on genocide and mass atrocity prevention/protection (GMAPP).⁹¹ While the GMAPP shares similar tenets to the RtoP, its differentiating point is its focus on US national security priorities. In other words, the GMAPP is the "domestic adaption" of the RtoP.⁹² The US Governments GMAPP focus was an attempt to "confront past policy failures"⁹³ such as its failure to act in Rwanda and Darfur, and its delayed responses to the Bosnian and Kosovo atrocities, which "weakened its credibility and legitimacy as a supporter of humanitarian values."⁹⁴ In order to improve its reputation, the US saw Libya as an opportunity to renew its commitment to multilateralism and mass atrocities prevention.⁹⁵ Once the US had swung its position towards a substantially greater role in Libya, particularly in the form of establishing and policing the no-fly zone, the personal campaign to get other states on sides by Obama and his Permanent Representative to the UN, Susan Rice kicked into overdrive. According to reports, Rice strongly lobbied Portugal, Brazil and Russia in particular, while Obama personally phoned South African President, Jacob Zuma, telling him that the passing of the Resolution was a "personal priority."⁹⁶ Obama similarly discussed the US position directly with then-Russian President, Dmitry Medvedev, as well as French President Nicolas Sarkozy.⁹⁷ Explaining why the US ultimately decided to intervene in Libya, Obama addressed the US public and outlined the administrations reasoning for its changed approach:

⁸⁸ Tim Dunne and Katharine Gelber, "Arguing Matters The Responsibility to Protect and the Case of Libya," *Global Responsibility to Protect* 6, no. 3 (September 2014): 341, doi:10.1163/1875984X-00603004.

⁸⁹ *Ibid.*, 340–341.

⁹⁰ *Ibid.*, 341.

⁹¹ Vaughn and Dunne, "Leading from the Front," 29–30.

⁹² *Ibid.*, 32.

⁹³ *Ibid.*, 30.

⁹⁴ *Ibid.*, 31.

⁹⁵ *Ibid.*, 32.

⁹⁶ Dunne and Gelber, "Arguing Matters The Responsibility to Protect and the Case of Libya," 342.

⁹⁷ *Ibid.*, 341–342.

We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We had had the ability to stop Qaddafi's forces in their tracks without putting American troops on the ground.⁹⁸

Aiden Hehir claims that Obama's world view comprises of a pragmatic assessment of individual cases rather than his adherence to a law or principle.⁹⁹ This assessment of individual cases and has ultimate implications for the reputation of the UNSC which is already subjected to accusations of selectivity and partiality. The US decision to intervene in Libya demonstrates the inherent self interests of states, as it appears the primary reason for intervening was to remediate its past foreign policy failures.

After a UNSC presidential speech on 22 February 2011 condemning the violence in Libya, the UK and France took the opportunity to spearhead the efforts gearing towards the Libyan intervention. For the UK, it provided an opportunity to take the lead in drafting Resolution 1973. A delegate from a large non-permanent member of the UNSC at the time stated that "the UK and France were very active in showing that they had the moral high ground and [they were] the good guys supporting the Libyan people."¹⁰⁰ As the US were not so readily keen on the idea of a no-fly zone, on the evening of 15 March 2011, UK officials sought "a compromise formula that would meet American objectives without offending the Arab League, which refused to have Western boots on the Libyan ground."¹⁰¹ After gaining US support, the conflict continued to be carefully framed within the friend/enemy dichotomy. The US took advantage of Bosnia and Herzegovina's seat at the UNSC with one US delegate asking "Do you want another Srebrenica?" The Bosnia and Herzegovina Permanent Representative allegedly replied "I know what airstrikes can do, I was there, but eventually it did bring peace."¹⁰² However, Cameron's humanitarian motives are questionable given the fact that he had to be advised that there was no legal basis to bomb the main oil refinery

⁹⁸ Barack Obama, "Remarks by the President in Address to the Nation on Libya," *Whitehouse.gov*, March 28, 2011, <https://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya> [accessed 16 May 2016].

⁹⁹ Hehir, *The responsibility to protect: rhetoric, reality and the future of humanitarian intervention*. Pg 16

¹⁰⁰ Rebecca Adler-Nissen and Vincent Pouliot, "Power in Practice: Negotiating the International Intervention in Libya," *European Journal of International Relations* 20, no. 4 (December 1, 2014): 901, doi:10.1177/1354066113512702.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

supplying Tripoli because Resolution 1973 specified that ‘all necessary measures’ could only be taken to protect civilians.¹⁰³

What is even more damning is the recent release of over 3,000 emails from the US State Department, which included an email sent to Hilary Clinton in April 2011 with the subject line of “France’s client and Qaddafi’s gold.”¹⁰⁴ The email identifies five reasons why France decided to lead the attack on Libya: a desire to gain a greater share of Libya oil production; increase French influence in North Africa; improve his (Sarkozy) internal political situation in France; provide the French military which an opportunity to reassert its position in the world; and address the concern of his advisors over Qaddafi’s long term plans to supplant France as the dominant power in Francophone Africa.¹⁰⁵ As the subject line suggests, Qaddafi’s gold was of most interest, with his gold and silver reserves estimated at approximately 140 tons each. This was believed to pose a threat to the French franc which was circulating as a prime African currency.¹⁰⁶ A direct quote from the email states the following:

This gold was accumulated prior to the current rebellion and was intended to be used to establish a pan-African currency based on the Libyan golden Dinar. This plan was designed to provide the Francophone African Countries with an alternative to the French franc (CFA). (Source Comment: According to knowledgeable individuals this quantity of gold and silver is valued at more than \$7 billion. French intelligence officers discovered this plan shortly after the current rebellion began, and this was one of the factors that influenced President Nicolas Sarkozy’s decision to commit France to the attack on Libya.¹⁰⁷

Even though the US had information that the French had significant self-interest involved, they still moved forward with the Resolution, as it was in the US interest to have the French on-side, even if their motivations were highly questionable.

¹⁰³ Patrick Wintour and Nicholas Watt, “David Cameron’s Libyan War: Why the PM Felt Gaddafi Had to Be Stopped,” *The Guardian*, October 2, 2011, sec. Politics, <http://www.theguardian.com/politics/2011/oct/02/david-cameron-libyan-war-analysis> [accessed 20 January 2016].

¹⁰⁴ Brad Hoff, “New Hillary Emails Reveal Propaganda, Executions, Coveting Libyan Oil and Gold,” *Levant Report*, 4 January 2016, <http://levantreport.com/2016/01/04/new-hillary-emails-reveal-propaganda-executions-coveting-libyan-oil-and-gold/> [accessed 7 January 2016].

¹⁰⁵ “H: France’s Client & Q’s Gold. Sid,” April 2, 2011, https://www.foia.state.gov/searchapp/DOCUMENTS/HRCEmail_DecWebClearedMeta/31-C1/DOC_0C05779612/C05779612.pdf [accessed 7 January 2016].

¹⁰⁶ Hoff, “New Hillary Emails Reveal Propaganda, Executions, Coveting Libyan Oil and Gold.”

¹⁰⁷ “H: France’s Client & Q’s Gold. Sid.”

The above analysis demonstrates that self-interest could at least be construed as a primary factor for all P5 members when the UNSC authorised intervention in Libya in 2011. When the self interest of the P5 is at play, Council selectivity is always going to be inevitable. The question that follows, therefore, concerns the implications of selectivity have for the UNSC in its desire to act in a politically neutral manner.

The problem of selectivity

For some advocates of intervention, the problem that the case of Libya highlighted was not that the intervention occurred, but that there was no comparable action in other similar crisis situations. In the context of the Arab Spring, governments such as Bahrain, Egypt, and Israel engaged in violence towards their citizens, yet the UNSC failed to respond. Early on in the Libyan intervention Obama alluded to the problem of selectivity when he insisted that “America cannot use our military wherever repression occurs. And given the costs and risks of intervention, we must always measure our interests against the need for action.”¹⁰⁸ His assertion illustrates the primacy of US national interests for US decision-makers, and provides further evidence of why political neutrality is impossible to achieve.

James Pattison argues that selectivity in intervention is not morally problematic *per se*, but rather, it is the basis of which the selection is made upon that determines whether intervention is morally just. He argues that the problem in Libya was “that the coalition chose to intervene in Libya rather than in response to even worse situations where it could have saved more lives.”¹⁰⁹ Therefore, selectivity is ethical if decisions on where to intervene is based on considerations of where the most lives can be saved. However, this notion of moral selectiveness is problematic due to the uncertainty that surrounds intervention.

While the idea of moral selectivity that is based on saving the greatest number of lives is theoretically sound, it is virtually impossible to implement in practice. It is impossible for the P5 to be in the position to have the information required to determine how many lives will be saved or lost in situations of both intervention and non-intervention. Because of this, it makes Pattison’s notion of moral selectivity difficult to achieve, and therefore renders selectivity as an irremediable problem. Even if the P5 were in a position to have all the information required to know how many lives would potentially be saved or lost, the disposition of states dictate that this would still have to be measured against their national interests. While this would make it clearer when deciding whether intervention is ethical or not, it still does not actually constrain the power of the P5, so they

¹⁰⁸ Glanville, “Intervention in Libya,” 338.

¹⁰⁹ Pattison, “The Ethics of Humanitarian Intervention in Libya,” 276.

are therefore free to intervene in accordance with their own political interests. As Orford states, the RtoP doctrine “provides a discretionary mandate to undertake executive action in order to further the goal of protecting civilians,” and that the “mandate has unapologetically been exercised in a selective fashion.”¹¹⁰

In addition, Hehir argues that the implementation of RtoP is “ultimately dependent on whether the members of the P5 have a collective interest in – or are at least not opposed to – halting a particular looming or actual mass atrocity.”¹¹¹ So while the ethics of selectivity may prescribe a standard for what is acceptable P5 intervention, it does not change the inherent disposition of states. Selectivity is unavoidable. The reliance that the RtoP has on the alignment of P5 national interests makes political neutrality an impossibility. As Hehir and Lang state, “RtoP entrenches the very structural problems that have contrived to produce the poor record advocates of RtoP sought to redress.”¹¹² The RtoP enforces the current world order which allows the P5 to selectively intervene as their biases and preferences dictate, while failing to maintain the protection of individuals. Therefore, the selective application of the RtoP doctrine illustrates the challenges of achieving a politically neutral UNSC.

The Libyan intervention demonstrated that political neutrality and impartiality are impossible to achieve via the UNSC. The referral to the ICC was geared towards overcoming the political partiality of sovereign states, yet it was used by the members of the UNSC as a political tool to primarily serve their own self interests. As the case of Libya demonstrated, “the RtoP and international criminal justice cannot be sheltered from political considerations”¹¹³ The UNSC’s ability to refer and defer cases highlights the “lack of credibility, impartiality and independence towards a Court that many hoped would transcend state politics.”¹¹⁴ The air campaign illustrated that the nature of the UN’s involvement has shifted “from one of genuine (or at least professed) impartiality – a hallmark of the UN’s original approach to peacekeeping – to one of taking sides.”¹¹⁵ The UNSC’s ability to sanction a no-fly zone was premised on the idea that there would need to be a neutral

¹¹⁰ Anne Orford, “From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept,” *Global Responsibility to Protect* 3, no. 4 (December 1, 2011): 421, doi:10.1163/187598411X602008.

¹¹¹ Hehir, “The Permanence of Inconsistency,” 152.

¹¹² Hehir and Lang, “The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect,” 178.

¹¹³ Arbour, “The Rise and Fall of International Human Rights.”

¹¹⁴ Dan Zhu, “Who Politicizes the International Criminal Court,” FICHL Policy Brief Series (Torkel Opsahl Academic Publisher, 2014), 4, https://www.ficlh.org/fileadmin/ficlh/documents/FICHL_Policy_Brief_Series/141012_FICHL_PB28_ZHU.pdf [accessed 8 May, 2016].

¹¹⁵ Welsh, “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP,” 258.

enforcement power. However, the supposed neutral power (NATO) necessarily maintained the right to fly in the zone which is nonetheless a 'no-fly zone.'

Jennifer Welsh argued that the text of Resolution 1973 states "not only about the protection of civilians but also the protection of civilian populated areas."¹¹⁶ Accordingly, this choice of words suggests that the UNSC was "effectively inserting itself in the ongoing struggle, putting certain cities out of bounds for Qaddafi and his forces."¹¹⁷ While it is understandable to focus on civilian-populated areas, it nonetheless moved the UNSC away from the impartiality principle by aiding one side and restricting the movements of the other. Furthermore, NATO's wide interpretation of Resolution 1973 has led critics to claim evidence of mission creep. As Welsh argues, "the by-product of this creep towards partiality is that the ambition of the military mission no longer matches the narrowly circumscribed political objective of civilian protection."¹¹⁸ The texts of both of the Libyan resolutions move away from impartiality, she suggests, by identifying "particular individuals as the targets of action, both in terms of sanctions and international criminal justice."¹¹⁹

Thomas Weiss forewarned that if the intervention in Libya went "badly" critics would redouble their opposition, and future decision would be made more difficult.¹²⁰ The subsequent Syrian civil war illustrates this point; the resulting Council inaction has suppressed hopes of an international community that is determined, as Secretary-General Ban Ki-Moon stated after the adoption of Resolution 1973, "to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government."¹²¹ Allegations of mission creep by NATO have arguably produced a backlash within in the UNSC against any further UN intervention in internal affairs of other states for the foreseeable future. The defeat of Qaddafi has led Russia and China to rule out any parallel resolution with regard to Syria. At the time of writing, the UNSC has drafted 11 resolutions on the Syrian conflict, eight of which were adopted, and four of which were vetoed by China and Russia. The UNSC's use of its Chapter VII powers has been erratic, and dependent on the assent of each member of the P5. The intervention in Libya again illustrated the centrality of the P5 and the pervasive influence of the whims of these states.¹²² Whether anything can be done to address this problem of political partiality is the subject of the next chapter.

¹¹⁶ Ibid., 259.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Weiss, "RtoP Alive and Well after Libya." Pg 287

¹²¹ "Statement by the Secretary-General on Libya."

¹²² Hehir, *The Responsibility to Protect*, 14.

CHAPTER 4: IS UN REFORM POSSIBLE?

The current devastation in Syria and lack of action on the part of the UN is often referred to as evidence of a UNSC that is in desperate need of reform. As previously mentioned, criticisms the Council faces include accusations of paralysis, lack of impartiality, selectiveness, hypocrisy, as well as strong condemnation for being undemocratic and unrepresentative. In 2005, former UN Secretary-General Kofi Annan declared that “the UN must undergo the most sweeping overhaul of its 60-year history. World leaders must recapture the spirit of San Francisco and forge a new world compact to advance the cause of larger freedom.”¹ Ten years later, the world is still awaiting the return of the ‘San Francisco spirit.’

The only change to the Council’s configuration occurred in 1965 when the number of non-permanent UNSC seats was extended from six to ten, which is now indicative of its current composition. Despite the lack of any further reform action in the UN’s seventy year history, the idea of reforming the UNSC is still widely discussed and supported. However, exactly how reform should take shape is largely contested and there are countless proposals for change. The key areas of contention include: support for the enlargement of the Council but no agreement on the number of new members, the extent of the new members powers; which states would be the top candidates to join an expanded Council; and most controversially, the issue of altering the power of the veto.² A near constant theme running through all reform proposals is that “the Council’s legitimacy is in peril unless the body can be reformed to account for recent changes in world politics.”³ These changes are due to developments in the geopolitical arena, the international system, and in international norms. Changes in geopolitics have seen a shift in the distribution of military and economic powers since the Council’s founding in 1945. Systemic changes have resulted in a dramatic increase of UN members as a result of decolonisation and the breakup of the Soviet Union. Normatively, there is a stronger push given today to valuing diversity, equity and representation.

This chapter addresses the question of whether Council reform is possible. It will provide an overview of the leading proposals, but will primarily focus on the two leading proposals that call for veto restraint; the Accountability, Coherence and Transparency (ACT) group’s Code of Conduct and

¹ Kofi A. Annan, “‘In Larger Freedom’: Decision Time for the UN,” *Global Policy Forum*, June 2005, <https://www.globalpolicy.org/un-reform/32299-qin-larger-freedomq.html> [accessed 17 April 2016].

² Benjamin MacQueen, “Muslim States and Reform of the United Nations Security Council,” *Journal of Middle Eastern and Islamic Studies (in Asia)* 4, no. 3 (2010): 52, <http://mideast.shisu.edu.cn/picture/article/33/8c/d6/4971605f45b09e139c09cecc3059/b610afaf-831b-4a94-be36-8c81b6f22321.pdf>.

³ Ian Hurd, “Myths of Membership: The Politics of Legitimation in UN Security Council Reform,” *Global Governance* 14, no. 2 (April 2008): 199.

the political statement on the suspension of the veto in case of mass atrocities, the latter of which is spearheaded by France and Mexico. Finally, this chapter will examine whether proposed reforms are capable of transcending the politics of the UNSC, and will continue to explore whether impartiality is desirable or even possible.

PROPOSALS FOR EXPANSION

At the 2013 UNGA General Debate, Brazilian President Dilma Rousseff, a strong advocate for the expansion of the UNSC, expressed that “the recurring polarization between permanent members generates a dangerous paralysis,” and furthermore “only with the expansion of the number of permanent and non-permanent members and the inclusion of developing countries in both categories will correct the Council’s deficit of representation and legitimacy.”⁴ The following section outlines a number of the leading and current proposals for Council expansion.

The 2004 Report of the High-Level Panel on Threats, Challenges and Change proposed two reform models that were later endorsed in the *In Larger Freedom* report the following year. Model A in the report provides for six new permanent member seats with no veto power which would be divided into the major regional areas as follows: Africa (2), Asia and Pacific (2), Europe (1), Americas (1). In addition to these permanent seats, three new non-permanent and non-renewable seats for a two year period would be added, bringing the number of total non-permanent seats to 13. The new non-permanent seats would be divided among the major regional areas as follows: Africa (4), Asia and Pacific (3), Europe (2) and the Americas (4). This would bring the total number of seats of the Council to 24, with six seats each representing the four major regional areas.⁵ Model B does not propose the expansion of permanent seats, but instead proposes to expand the number of non-permanent seats from 10 to 19. Of the 19, eight will be four-year renewable-term seats and two seats are to be held by each of the four major regional areas. The 11 remaining seats will be two-year non-renewable seats and divided among the four major regional areas with 2 seats per area. In addition, one new two-year non-permanent (and non-renewable) seat, divided among the major regional areas as follows: Africa (4), Asia and Pacific (3), Europe (1) and the Americas (3). Likewise

⁴ Dilma Rousseff “Statement by H.E. Dilma Rousseff, President of the Federative Republic of Brazil at the 68th Session of the United Nations General Assembly 24 September 2013 ,” http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf [accessed 16 May, 2016].

⁵ UN General Assembly, *Note [transmitting report of the High-level Panel on Threats, Challenges and Change, entitled "A more secure world : our shared responsibility"]*, 2 December 2004, A/59/565, 67, <http://www.refworld.org/docid/47fdfb22d.html> [accessed 16 May, 2016]

with Model A, this brings the total number of seats of the Council to 24 with six seats each representing the four major regional areas.⁶

In September 2004, the representatives of Brazil, Germany, India and Japan (G4) issued a joint statement calling for the need of a Council that is “expanded in both the permanent and non-permanent categories, including developing and developed countries as new permanent members.” They maintained that this was required due to the “four-fold increase in the membership of the United Nations since its inception in 1945.”⁷ Specifically, the group seeks to expand the Council to a total of 25 seats, by adding 6 permanent seats without veto power and four non-permanent seats. Collectively known as the G4, each state supports each other’s candidature for permanent membership as well as an African permanent membership. Each of these states agrees to forgo the veto privilege. There is, however, a provision for the review of extending the veto to the new members after 15 years. The G4 also propose to expand the number of non-permanent seats to 14, bringing the total number of seats in the Council to 25. Benjamin MacQueen claims that the G4 proposal is the “most promising alternative to the existing structure of the UNSC.”⁸

Uniting for Consensus (UfC),⁹ also known as ‘the Coffee Club’, is a counter group to the G4 who seek the expansion of non-permanent member seats to 20. Their premise is based on their resentment of a “select few breaking free of their current second-rank status in the world body.”¹⁰ Some members of this group claim they are motivated by principle, asserting that “the very existence of permanent membership is wrong, and have no desire to compound the original sin by adding more members to a category they dislike,”¹¹ while others are reportedly motivated by “competition, historical grievance, or simple envy.”¹²

In March 2005 the African Union (AU) released the Ezulwini Consensus which contained yet another set of reform proposals for various UN organs. On the subject of the UNSC, it proposed that the Council be expanded to 26 seats, which would include with six new permanent members with the right of veto and five new non-permanent seats. The AU asserted strongly that there should be

⁶ Ibid.

⁷ “Meeting of the Leaders of Brazil, Germany, India and Japan on UN Reform Joint Press Statement,” *Ministry of Foreign Affairs of Japan*, September 21, 2004, <http://www.mofa.go.jp/policy/un/reform/joint0409.html> [accessed 12 December, 2014].

⁸ MacQueen, “Muslim States and Reform of the United Nations Security Council,” 52.

⁹ The UfC comprises of: Argentina, Canada, Colombia, Costa Rica, Indonesia, Italy, Malta, Mexico, Pakistan, San Marino, South Korea, Spain and Turkey.

¹⁰ Shashi Tharoor, “Security Council Reform: Past, Present, and Future,” *Ethics & International Affairs* 25, no. 4 (December 1, 2011): 399.

¹¹ Ibid.

¹² Ibid.

no less than two African permanent seats.¹³ MacQueen claims that this proposal is currently “the most visible alternative to the G4 expansion plan.”¹⁴ The Ezulwini Consensus is an argument against the G4’s non-extension of the veto privilege. Nigeria, Egypt and South Africa were initially the loudest proponents who worked towards generating an African consensus that would see at least one majority Muslim state gaining a permanent seat.¹⁵

These four sets of proposals represent the current leading propositions for the expansion of UNSC membership, through which they are all seeking to inject a greater sense of fair representation and balance in the Council, reflecting the changes to the geo-political arena since 1945. However, it is increasingly the case that reform discourse is focused strongly on restraining the powers of the current permanent members, as opposed to the expansion of the Council’s membership. Primarily, reform efforts have been focused on the use of the veto power by the P5 members.

VETO RESTRAINT

Of all of the proposals for reforming the power of the veto, two similar initiatives have recently gained considerable traction: the ACT Code of Conduct and the France/Mexico initiative. These two proposals have prompted the #restrainthetveto campaign which, according to Aidan Hehir, is being “retweeted, liked and shared” and is “one of the most visible and fast-spreading social media campaigns in the UN’s history.”¹⁶ Despite his recognition of the popularity of the ‘hashtag’ campaign, Hehir is candid in his criticism of the initiative, noting that popularity does not equate with the campaign making any sense. The #restrainthetveto campaign was launched by the Global Centre of the Responsibility to Protect (GCR2P) in January 2015, after four UNSC resolutions regarding the current crisis in Syria were vetoed by Russia and China. GCR2P believe and assert that “when the world needs the UN Security Council to respond to genocide, war crimes, crimes against humanity and ethnic cleansing, the five permanent members...have a responsibility not to use their veto.”¹⁷

The idea of veto restraint was voiced in 2001 when then French Foreign Minister Hubert Védrine suggested that the P5 voluntarily refrain from using their veto power when dealing with

¹³ MacQueen, “Muslim States and Reform of the United Nations Security Council,” 56.

¹⁴ Ibid.

¹⁵ Ibid., 57.

¹⁶ Hehir, “The Campaign to Restrain the UN Security Council’s Veto Is Wrongheaded and Pointless.”

¹⁷ “The Veto,” #RestrainTheVeto, <http://www.restrainthetveto.com/tour/> [accessed January 19, 2016].

mass-atrocity crimes where their own national interests were not involved.¹⁸ The 2001 ICISS report, which promoted the principle of the RtoP, similarly suggested that the P5 refrain from using the veto “in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.”¹⁹ In the 2004 report of the UN Secretary-General’s High Level Panel on Threats, Challenges and Change, there was also a recommendation that the P5 refrain from using their veto “in cases of genocide and large-scale human rights abuses.”²⁰ According to former Canadian Foreign Minister Lloyd Axworthy and former Canadian Ambassador to the UN, Allan Rock, there were attempts to discuss veto restraint during the negotiations of the RtoP principle in the 2005 World Summit Outcome Document. Axworthy and Rock claim, however, that this discussion was abandoned because “fierce P5 opposition forced negotiators to drop the demand or risk losing approval for R2P altogether.”²¹ Examples such as this shed light on the inherent difficulties present in any attempt to change the current power wielded by the P5 members.

This section will examine the two leading veto restraint initiatives that the #restrainthetveto social media campaign is based on. The ACT Code of Conduct and the French/Mexican political declaration do not directly challenge the legitimacy of the veto, but rather allege current misuse of it. Furthermore, the initiatives are designed as political commitments, which would not be legally binding. They seek to change the behaviour of the P5, rather than to redefine their powers.²² Permanent Representative of Liechtenstein to the UN, Christian Wenaweser, explained in a press conference that the ACT Code of Conduct and the French/Mexican initiative are complementary; both initiatives pursue the same goals, and they are mutually reinforcing. Furthermore, he stated that ACT was encouraging all states that have subscribed to their text, to also sign the political declaration put forward by France and Mexico. The major point of difference between the two proposals is that the ACT Code of Conduct is directed at all states, whereas the French/Mexican political declaration specifically targets the P5. Wenaweser explained that the ACT initiative was “not

¹⁸ “UN Security Council and the Responsibility to Protect: Voluntary Restraint of the Veto in Situations of Mass Atrocity,” *The United Nations Association - UK*, n.d., <http://www.una.org.uk/sites/default/files/Briefing%20-%20Veto%20code%20of%20conduct.pdf> [accessed 16 May 2016].

¹⁹ “The Responsibility to Protect,” December 2001, xiii.

²⁰ “A More Secure World: Our Shared Responsibility” December, 2004, 82.

²¹ “Putting Down Their Cards: Limiting the Veto in RtoP Cases,” *ICRtoP Blog*, , <http://icrtopblog.org/2013/10/28/putting-down-their-cards-limiting-the-veto-in-rtop-cases/> [accessed January 16, 2016].

²² Aidan Hehir, “Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring,” *Cooperation and Conflict*, November 2015, 9, doi:10.1177/0010836715612849.

meant to be a code of conduct or gentlemen's agreement among the P5 members of the SC, but it is a commitment from all states when they serve on the council."²³

ACT Code of Conduct

The Accountability, Coherence and Transparency (ACT) Group formally launched the Code of Conduct on 23 October 2015 to coincide with the 70th anniversary of the entry into force of the UN Charter. The group first emerged in 2005 after the release of the UN World Summit Outcome Document. While the document did not make any recommendations on the use of the veto, it did recommend that the Council improve its working methods so that it could become more transparent and accountable. In response to this recommendation, in late 2005, Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland formed a group known as the Small Five (S5), in the endeavour to tackle the Council's working method problems. In order to avoid paralysis, the group formulated a number of proposals to improve the working methods of the UN that could be passed by a single majority of the General Assembly, and furthermore avoided any proposals that would require a two-thirds majority, such as changing the composition of the Council.

In 2012, the S5 boldly drafted General Assembly resolution L.42 Rev. 2 which specifically targeted the P5, calling upon them to, firstly, circulate a written rationale to all UN members, explaining how its use of the veto is consistent with the purposes and principles of the UN Charter, and secondly, refrain "from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity."²⁴ Unsurprisingly this proposal resulted in a strong reaction by the P5 and the non-permanent members of the Council. The P5 made it clear that the Council should decide on its own working methods and that it was the P5's decision alone to take.²⁵ Behind closed doors, the P5 undertook a unified approach, and collectively endeavoured to discourage states from voting in favour of the draft resolution, which happened to coincide with "the much-publicized confrontation between Russia (and in its tailwind China) on the one side, and the Western permanent members on the other, over the Council's response to the civil war in Syria."²⁶ For example, it has been reported that China placed pressure on African countries to not

²³ Volker Lehmann, "Reforming the Working Methods of the UN Security Council: The Next ACT" (New York, August 2013), 3, <http://library.fes.de/pdf-files/iez/global/10180.pdf>.

²⁴ United Nations, General Assembly, *Sixty-Sixth Session - Agenda Item 117 Follow-up to the Outcome of the Millennium Summit*, A/66/L.42/Rev.2 (May 15, 2012), 5, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a%2066%20142%20rev2.pdf> [accessed 16 May 2016].

²⁵ Volker Lehmann, "Reforming the Working Methods of the UN Security Council: The Next ACT" (New York, August 2013), 3, <http://library.fes.de/pdf-files/iez/global/10180.pdf> [accessed 16 May 2016].

²⁶ Ibid.

vote in favour of the resolution, while the P3 pressured the UN's Under-Secretary-General for Legal Affairs and UN Legal Counsel, Patricia O'Brien, to consider making the resolution require a two-thirds majority to pass in the GA. O'Brien subsequently announced that, due to its importance, instead of a simple single majority, the resolution would require the two-thirds majority in the GA.²⁷ While this would make it more difficult for the S5, there was also other forces as play attempting to discredit the draft resolution. According to Volker Lehman it was "a tactical manoeuvre by the UfC group in the run-up to the vote,"²⁸ that finally caused the S5 to withdrawal the resolution, before the formal vote even took place. Initially, the UfC had been supportive of the S5 proposal, but as it became clear that the G4 also supported the S5, the UfC decided to withdraw its support and in doing so, would have prevented a successful vote taking place.²⁹ Political wrangling and the battle for the maintenance of power ascendency, which is inherent in the UN system, in the end saw the death of the draft resolution.

Only hours before the draft resolution was due to be deliberated and voted on in the GA, it was dropped, or as Thalif Deen eloquently put it "the resolution unceremoniously disappeared from the hallowed precincts of the United Nations."³⁰ According to a developing-nation diplomat who told the *Inter Press Service* under a condition of anonymity, the S5 withdrew the draft resolution because they "came under intense pressure from the P5, both in New York and in the capitals."³¹ Assuming this is true, the 'disappearance' of the resolution unsurprisingly demonstrates that the P5 dictate the actions and proceedings of the Council. According to Lehmann, the S5's failure represents "first and foremost a show of force on the part of a P5 determined to maintain their control over the representation of member states interests and the reform agenda at the UN."³²

On the other hand, Stephen Zunes argues that despite the P5's power, "they are coming under increasing challenge, their credibility is weakening, and their moral failure is becoming increasingly obvious to an ever larger majority of the international community."³³ Zunes argues that in blocking the reform, the P5 may "have done untold damage to the credibility of the Security Council"³⁴ and as a consequence more countries may refuse to comply and may even completely bypass the Council. However, the fallout experienced as a direct consequence of the blocking of the

²⁷ Ibid.

²⁸ Ibid., 3.

²⁹ Ibid., 3.

³⁰ Thalif Deen, "'Big Five' Crushes 'Small Five' Over Veto Powers," *Inter Press Service News Agency*, May 25, 2012, <http://www.ipsnews.net/2012/05/big-five-crushes-small-five-over-veto-powers/> [accessed 13 January 2016].

³¹ Ibid.

³² Lehmann, "Reforming the Working Methods of the UN Security Council: The Next ACT," 4.

³³ Deen, "'Big Five' Crushes 'Small Five' Over Veto Powers."

³⁴ Ibid.

S5's resolution seems rather minimal, if not nonexistent. The Council's credibility has already been questioned, time and time again. In the eye of many UN member states, the credibility of the P5 has been, for some time, broken. The blocking of the S5 resolution is hardly likely to cause the 'untold damage' that Zunes claims may happen. The fact of the matter is that the credibility problems of the P5 are systemic and are already well advanced and understood. It is unlikely that the quashing of the resolution was a surprise to many in the corridors of New York.

Despite the fact that the draft resolution was seemingly withdrawn under pressure, the support base for the S5 grew. Indeed, in a speech on 24 April 2013, the Swiss UN Permanent Representative, Paul Seger, stated that the decision to withdraw draft resolution L.42 Rev.2 was "not an end, but a starting point for a new approach."³⁵ In May 2013, the ACT group, which originated as a group of five small states, officially launched with a membership of 27 states³⁶ that are committed to "working to improve the accountability, coherence and transparency of the UN Security Council."³⁷ ACT would work separately from the already established Intergovernmental Negotiations on Security Council reform (IGN), as IGN addresses the broader reform issues of the Council, including enlargement and composition, whereas ACT proposes initiatives that maintain the Council's current composition. It places an emphasis on improving the current composition of Council, implying no further Council expansion, as the reform proposals discussed in the preceding section suggest.³⁸

Amongst the provisions of the Act Code of Conduct is a pledge "not to vote against a credible draft resolution before the Security Council on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes."³⁹ Here, it encourages all members of the Council, not just the P5, to refrain from voting according to the above types of resolutions. Furthermore, the Code invites,

³⁵ Paul Seger, "Better Working Methods for Today's UN Security Council" (New York, April 24, 2013), <http://www.centerforunreform.org/sites/default/files/Invitation%20Launch%20ACT%20-%202%20May%202013%20-%20Civil%20society.pdf> [accessed 16 January 2016].

³⁶ ACT comprises 27 countries from all continents: Austria, Chile, Costa Rica, Denmark, Estonia, Finland, Gabon, Ghana, Hungary, Ireland, Jordan, Liechtenstein, Luxembourg, Maldives, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Slovenia, Sweden, Switzerland, Tanzania and Uruguay. Switzerland is the coordinator of ACT.

³⁷ "The Accountability, Coherence and Transparency Group – Better Working Methods for Today's UN Security Council," June 2015, <http://centerforunreform.org/sites/default/files/FACT%20SHEET%20ACT%20June%202015.pdf> [accessed 16 January 2016].

³⁸ Ibid.

³⁹ "Explanatory Note on a Code of Conduct Regarding Security Council Action against Genocide, Crimes against Humanity or War Crimes," September 1, 2015, http://www.regierung.li/files/medienarchiv/unoallgemein/2015-09-01_SC_Code_of_Conduct_Atrocities.pdf?t=635772758068406873 [accessed 16 January, 2016].

the Secretary-General, making full use of the expertise and early-warning capacities of the United Nations System, in particular the Office of the High Commissioner for Human Rights and the Office on Genocide Prevention and the Responsibility to Protect, to continue to bring situations that, in her or his assessment, involve or are likely to lead to genocide, crimes against humanity or war crimes to the attention of the Council.⁴⁰

In sum, the application of the Code of Conduct can subject to the assessment of a particular situation by either a committed state or the S-G.

On 1 October, 2015, at the ACT Group Event on the Code of Conduct at the UN, the UK declared that it would sign up to the ACT Code of Conduct. Ambassador Matthew Rycroft of the UK Mission to the UN stated that “I’m glad to say that the UK has not used our veto since 1989. I am proud to say today that we will never vote against credible Security Council action to stop mass atrocities and crimes against humanity.”⁴¹ Rycroft claimed that the Code of Conduct helps increase “the political cost to those who do use their veto to block the way.”⁴² He referred to Syria as yet another “collective failure” and “stain on our conscience” and blamed the “narrow self-interests of some” for the ongoing crisis.⁴³ Furthermore, he warned that the lack of action in Syria had “consequences for the Security Council and indeed the United Nations as a whole.”⁴⁴ As of 23 October 2015, 105 member states and 1 observer have signed the Code of Conduct.⁴⁵ The application of the code would be determined by the “facts on the ground,” and “subject to the assessment of a particular situation by a state that has expressed its commitment to the Code of Conduct,” rather than a specific procedural trigger. Furthermore, in the spirit of Article 99 of the UN Charter, the S-G is invited to bring to the attention of the Council what he or she determines to be a current or foreseeable mass atrocity situation. Here, the S-G avoids having the sole decision-making

⁴⁰ Ibid.

⁴¹ “I’m Proud to Say That the United Kingdom Is Signing up to the ACT Code of Conduct,” *GOV.UK*, October 1, 2015, <https://www.gov.uk/government/speeches/im-proud-to-say-that-the-united-kingdom-is-signing-up-to-the-act-code-of-conduct> [accessed 16 January, 2016].

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ “Restraining the Use of Veto in the Face of Mass Atrocities,” <http://link.brightcove.com/services/player/bcpid1722935254001/?autoStart=false&bctid=4521133219001&height=270&secureConnections=true&width=480> [accessed 17 January 2016].

burden as its role is of importance but is not the determining voice,⁴⁶ unlike the burden the role carries with the French/Mexican declaration, to which I now turn my attention.

French/Mexican Declaration

A similar initiative to the ACT Code of Conduct was voiced at the 68th UNGA debate in September 2013, when French President François Hollande proposed that “a code of good conduct be defined by the permanent members of the Security Council, and that in the event of a mass crime they can decide to collectively renounce their veto powers.”⁴⁷ On 4 October, French Foreign Minister Laurent Fabius published an Op-Ed in *The New York Times*, where he strongly criticised the Council for inaction in Syria, stating that “for all those who expect the United Nations to shoulder its responsibilities in order to protect populations, this situation is reprehensible.”⁴⁸ He then expanded upon what Hollande had proposed at UNGA a few weeks prior, noting that while France was also in favour of enlargement of the UNSC, he recognised that the international community was still far from reaching an agreement that would progress efforts in that direction. In the meantime, France proposed that the P5 “voluntarily regulate their right to exercise their veto.”⁴⁹ There would be no change to the UN Charter; rather it would be “implemented through a mutual commitment from the permanent members.”⁵⁰ The process would be triggered firstly, by 50 member states voicing their concerns, secondly, the S-G would provide his or her opinion, and finally, the code of conduct would immediately apply. Recognising the self-interests of states, and attempting to circumvent the immediate rejection of the initiative by the other P5 members, Fabius stated that “to be realistically applicable, this code would exclude cases where the vital national interests of a permanent member of the Council were at stake.”⁵¹ Fabius claimed that by taking such action the Council would preserve its credibility and “it would prevent member states from becoming prisoners of their own principled positions.”⁵²

⁴⁶ “The Veto” (New York, NY: Security Council Report, October 19, 2015), 6, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf.

⁴⁷ François Hollande “Statement by Mr. François Hollande, President of the Republic at the Opening of the 68th Session of the United Nations General Assembly September 24, 2013”, <http://gadebate.un.org/68/france> [accessed 17 January 2011].

⁴⁸ Laurent Fabius, “A Call for Self-Restraint at the U.N.,” *The New York Times*, October 4, 2013, <http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html> [accessed 16 January, 2016].

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

Fabius and the Mexican Secretary of Foreign Affairs, José Antonio Meade Kuribreña and Kuribreña's successor, Claudia Ruisz Massie, met in the margins of both the 2014 and 2015 UNGA debates to discuss the issue of the veto. Prior to the 2015 Ministerial meeting, France launched a 'Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocity,' stating that:

...the Security Council should not be prevented by the use of veto from taking action with the aim of preventing or bringing an end to situations involving the commission of mass atrocities. We underscore that the veto is not a privilege, but an international responsibility. In that respect, we welcome and support the initiative by France, jointly presented with Mexico, to propose a collective and voluntary agreement among the permanent members of the Security Council to the effect that the permanent members would refrain from using the veto in case of mass atrocities.⁵³

On 20 September 2015, Fabius and Massie hosted an event in the margins of the 70th UNGA entitled "Regulating the Veto in the Face of Mass Atrocities." Other participants included, Sidiki Kaba, Minister of Justice of Senegal and the President of the General Assembly of States Parties to the Rome Statue of the International Court, and Kenneth Roth, Executive Director of Human Rights Watch. In addition, a joint statement was released and circulated during the meeting by Human Rights Watch, the Global Centre for the Responsibility to Protect, Amnesty International, the International Federation for Human Rights, and the World Federalist Movement. Furthermore, ten states delivered statements in support of the proposal (Czech Republic, France, Guatemala, Indonesia, Liechtenstein, Mexico, The Netherlands, Senegal, Spain, and Tunisia.)

A document published on France's Ministry of Foreign Affairs website entitled *Why France wishes to regulate use of the veto in the United Nations Security Council*, states that:

France envisages the possibility of giving the United Nations Secretary-General a key role, in the spirit of Article 99 of the United Nations Charter. In order to ascertain the existence of mass atrocities, the United Nations Secretary-General would decide to refer the matter to the Security Council either on his own initiative or on a proposal from the High Commissioner for Human Rights or from a certain number of Member States, which France proposes setting at 50.⁵⁴

⁵³ "Political Statement on the Suspension of the Veto in Case of Mass Atrocities Presented by France and Mexico" (70th General Assembly of the United Nations, August 2015), <http://www.globalr2p.org/media/files/2015-07-31-veto-political-declaration-final-eng.pdf> [accessed 17 January, 2016].

⁵⁴ "Why France Wishes to Regulate Use of the Veto in the United Nations Security Council," *France Diplomatie :: Ministry of Foreign Affairs and International Development*, <http://www.diplomatie.gouv.fr/en/french-foreign-policy/united-nations/france-and-the-united-nations/article/why-france-wishes-to-regulate-use> [accessed 17 January, 2016].

While the S-G's role of bringing to the attention to the Council any matter he or she deems necessary is identical to that of the ACT Code of Conduct and the spirit of Article 99 of the UN Charter, the proposal that the occurrence of a mass atrocity be determined by 50 or more Member States is unique. The ultimate goal of the initiative is to avoid paralysis, yet the process of getting 50 member states to agree and then request that the S-G take action is likely to be a "time-consuming and bureaucratic process"⁵⁵ which could arguably prevent timely responses to cases of mass atrocity situations. Furthermore, the French/Mexican proposal has been criticised for placing too much pressure on the S-G to be the ultimate moderator of the initiatives application. In doing so, it reinforces the politicization of the S-G role which already occurs by virtue of Article 99.

Gareth Evans proposes three sets of conditions that he believes are required in order for all P5 members to subscribe to the French/Mexican initiative. These conditions are namely scene-setting conditions, clarifying conditions, and protective conditions. Firstly, he claims that the correct scene-setting conditions include a general international agreement that there is a "powerful case to be made both ethically and in terms of the proper discharge of the Security Council's functions under Article 24 of the UN Charter;"⁵⁶ the "issue is real" and that using the veto would inhibit the Council's action of which the majority are in support of; and that "a purely voluntary commitment is worth having."⁵⁷ The importance Evans places on general international agreement is evidence of Carr's assertion regarding the liberal erroneous belief that "public opinion can be relied on to judge rightly on any question rationally presented to it."⁵⁸ How can we be sure that public opinion is always ethically right? As Hehir argues, "a blanket call for automatic restraint...misses the fact that draft resolutions may well be ill-conceived to the point where they need to be vetoed."⁵⁹ The uncertainty that is unavoidable in intervention makes it impossible to know whether action would be for the better or for the worse. Public opinion can be so frivolous and easily manipulated that it is dangerous to rely upon it when deciding on the most ethically sound option.

Secondly, Evans argues that the following 'clarifying conditions' require P5 agreement in the following areas: on an initiating mechanism; on how the veto restraint agreement should be described; on kinds of cases to which the veto restraint agreement applies; on a trigger process for

⁵⁵ "The Veto," October 19, 2015.

⁵⁶ Gareth Evans, "The French Veto Restraint Proposal: Making It Work" (International Conference on Limiting the Use of Veto at the UN Security Council in the Case of Mass Atrocities, Sciences Pro, Paris, January 21, 2015), 2, <http://www.globalr2p.org/media/files/vetorestraintparis21jan25i15rev.pdf> [accessed 18 January, 2016].

⁵⁷ *Ibid.*, 3.

⁵⁸ Carr, *The Twenty Years' Crisis, 1919-1939*, 27.

⁵⁹ Hehir, "The Campaign to Restrain the UN Security Council's Veto Is Wrongheaded and Pointless."

determining when an appropriate case for applying the veto restraint agreement has arisen; and finally, on the kinds of Council action to which the agreement applies. In order to clarify these conditions, inherently political questions would need to be addressed. Evans is correct in pointing out that the proposal is lacking a few parameters. For example, the proposal fails to stipulate what exactly constitutes a mass atrocity crime. Could a perceived threat be enough to trigger a restraint the veto situation? Does a certain death toll need to have been reached? Is a stated intent, such as Qaddafi's call to "cleanse Libya house by house,"⁶⁰ sufficient criteria? What happens if the P5 disagree on whether a certain crisis has reached the restraint the veto situation level? Unfortunately, Evan's suggestion that the kinds of UNSC action that could apply could be "just to resolutions authorizing military intervention for human protection purposes as ICISS originally proposed,"⁶¹ is dangerous and opens further doors to RtoP abuse.

Thirdly, Evans argues that agreement on the following 'protective conditions' is required to gain P5 support: namely in response to the fact that P5 members will not be bound by the veto restraint agreement in certain circumstances; and that the veto restraint agreement will be reviewed after experience of its operation. What is most short-sighted about these protective conditions, namely the national interest exception clause, is that it simply reinforces and reaffirms the existing system that the proposal seeks to change. Is it not the original protective condition, the veto, the crux of the issue here? How is providing the P5 with even further protection going to actually change anything? As Hehir argues, it would not be difficult for Russia to claim that it does have vital national interests at stake in Syria given that: "its only Mediterranean naval base is at the Syrian port of Tartus; it has and continues to sell offensive weaponry to Syria; and Russian oil company Soyuzneftegaz has signed huge contracts with the Syrian Oil Ministry since the crisis began."⁶² According to Stewart M. Patrick, the current situation in Syria is evidence that the national interest is already at play and questions whether "the Russians and Chinese *have already in fact* defined coercion against the government of Bashar al-Assad as contrary to their national interests,"⁶³ which is evidenced by their continuous blocking of UNSC resolutions on the current crisis.

⁶⁰ "Libya Protests: Defiant Gaddafi Refuses to Quit," *BBC News*, <http://www.bbc.com/news/world-middle-east-12544624> [accessed 18 January, 2016].

⁶¹ Evans, "The French Veto Restraint Proposal: Making It Work," 5.

⁶² Hehir, "Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring," 12.

⁶³ Stewart M. Patrick, "Limiting the Veto in Cases of Mass Atrocities: Is the Proposed Code of Conduct Workable?," *Council on Foreign Relations*, <http://www.cfr.org/france/limiting-veto-cases-mass-atrocities-proposed-code-conduct-workable/p36019> [accessed 17 January, 2016].

CRITIQUE OF THE VETO RESTRAINT PROPOSALS

What is most interesting about the veto restraint proposals is that two of the permanent five members are willing to advocate and even spearhead the initiatives. This calls the question of why would any member of the P5 be interested in relinquishing their power? It could be argued that the commitment to restrain the veto is an example of “unconscious reflexions of national policy based on a particular interpretation of national interest at a particular time,”⁶⁴ rather than a realisation of some kind of moral enlightenment. It is highly unlikely that France and the UK would have been agreeable to such initiatives while they were both considered global hegemony, and supremely relevant in the international area, as opposed to today’s current political climate where they have lost the power and relevance they once enjoyed when the UN was first established. One idea why France decided to spearhead the Restrain the Veto campaign was that it is weary of its fading relevance within the P5 and wanted to be perceived as maintaining some form of higher morality over its permanent counterparts. The same could be argued about the UK’s willingness to subscribe to the Code. In a January 2016 article in *The Guardian*, Former UK Permanent Representative to the UN from 1998 – 2003, Sir Jeremy Greenstock, stated that he was “not so much a power any more, our relative power has faded...the number of armed forces has gone down, our contribution to peacekeeping is negligible, we haven’t succeeded in our interventions in Iraq, in Afghanistan.”⁶⁵ Does the UK’s subscription to the Code actually reflect the relative weakness of those P5 members who support veto restraint? It certainly could it be argued that the willingness of both permanent members is an attempt to wield some type of normative power, in lieu of their hard power they once enjoyed.

Of the other permanent members who have yet to agree to the initiatives, Russia has unsurprisingly been the most publically vocal in its opposition to the veto restraint initiatives. On 11 August 2015, Lavrov tweeted that “ideas of scrapping or limiting the #UNSC veto power have been voiced before. We think they have no future.”⁶⁶ As for the US, it has publicly refrained from expressing its views on the proposals, but privately “it has reportedly expressed its reservations on

⁶⁴ Carr, *The Twenty Years’ Crisis, 1919-1939*, 87.

⁶⁵ Tracy McVeigh, “Cuts Have Left Britain a Fading Power, Says Former Top Diplomat,” *The Guardian*, January 16, 2016, sec. Politics, <http://www.theguardian.com/politics/2016/jan/16/cuts-britain-fading-power-sir-jeremy-greenstock> [accessed 19 January, 2016].

⁶⁶ MFA Russia Verified account, “#Lavrov: Ideas of Scrapping or Limiting the #UNSC Veto Power Have Been Voiced Before. We Think They Have No futurepic.twitter.com/uvIXMymeid,” microblog, @mfa_russia, (August 11, 2015), https://twitter.com/mfa_russia/status/631110823679787008.

veto restraint to diplomats from other member states.”⁶⁷ Meanwhile, China has been characteristically reticent, making no comment on any of the proposals.

In a similar case to the Council, there are also opposing views amongst the UNGA. As previously mentioned, many states have already supported the veto restraint initiatives. Some states are going so far as to base who they vote for in regards to non-permanent membership on who supports the initiatives. Yet, there are some states which have expressed concern that the emphasis on veto restraint will hinder the broader Council reform agenda. Their belief is that the proposals are too ambitious, and could stifle meaningful, albeit less far reaching, change. In the opposing camp, there are states that do not think the proposals have gone far enough; some states argue that proposals should be extended from mass atrocity situations to include veto restraint in regard to Secretary-General selection and requests for UN membership.⁶⁸ The differing views on how UNSC reform should take place illustrate the difficulties in finding the consensus required to achieve such an ambition. However, such an achievement is still foremost dependent on the desires of the P5.

Advocates of veto restraint believe that a more impartial UNSC is one which refrains from exercising the veto in mass atrocity situations. In their view, a veto restraint agreement is a necessary measure to ensure that the Council upholds its commitment to the RtoP doctrine. This would mean, in a practical sense, that the Council would be more likely to authorise the use of force and refer perpetrators to the ICC, thus promoting human rights while punishing human rights violators. Current criticisms surrounding inaction in the cases of Syria, Israel/Palestine, and the Ukraine, are only a few examples of, according to RtoP proponents, a selective Council that is failing to uphold its RtoP commitment and act impartially. Advocate for veto restraint and Founding Steering Committee member of the International Coalition for the RtoP, William Pace, has gone so far to argue that the ‘misuse’ of the veto was responsible for millions upon millions of deaths.⁶⁹ However, the assumptions of veto restraint advocates are based on two flawed premises: firstly, that intervention necessarily saves more lives than non-intervention; and secondly, that restraint of the veto is, in itself, an impartial action. Furthermore, the proposed reforms raise a number of issues. Do they adequately address the issue of impartiality? How likely is veto restraint or Council expansion, considering the primacy state motivating factor of self-interest? What even constitutes an impartial P5? Is a more impartial Council actually desirable? And most importantly, is a more impartial Council even possible?

⁶⁷ “The Veto,” October 19, 2015, 8.

⁶⁸ Ibid.

⁶⁹ Deen, “‘Big Five’ Crushes ‘Small Five’ Over Veto Powers.”

In order to answer these questions, an acceptance of the primacy of self-interest, and that there is not always a solution to a deemed problem, is required. What actually requires adjustment is the conception that politics can be fixed, in order for expectations of what the Council is actually capable of achieving to be shifted. In the current contemporary international arena, it would seem that an impartial UNSC, even with the proposed reforms in place, is indeed impossible.

CONCLUSION

Exploring political neutrality within the context of the UNSC is more important and relevant than ever. The protracted conflict in Syria has entered its sixth year and has aided to the rise of the Islamic State, and to the biggest refugee crisis the world has seen since World War II. The current Council deadlock around the Syrian conflict has fuelled the traction that the current veto restraint proposals are gaining. However, the current veto restraint proposals fail to sufficiently address the drivers and limitations of state behaviour, and are therefore doomed to failure. By adequately addressing the drivers and limitations of state behaviour, there will be a better understanding of what is required for successful UN reform.

This thesis has explored the desirability and possibility of political neutrality within the context of the UNSC. Specifically, a critique of liberalism was applied to the case of the 2011 Libyan intervention and to the current proposed UNSC reform efforts, particularly those concerning the restraint of the veto. It has demonstrated that ever since the UN's inception, adherence to the principles of neutrality and impartiality were inevitably going to be highly challenging, primarily due to the inherent disposition of states and also to the very structure of the Council itself. While RtoP was initially lauded as a liberal remedy to the problems facing the Council, the cases of Libya and Syria have illustrated that the promulgation of the RtoP doctrine was not the solution to achieving politically neutrality, nor the solution leading towards an effective and credible Council.

The belief that such a solution can exist is based on the liberal premise that the application of rationalism, moral universalism, and the rule of law to a political situation is what is required to fix a perceived social problem. This belief has distorted expectations of what is possible to achieve in the international political realm, and is exemplified in the belief that RtoP has the capacity to solve conflict situations. The 2011 Libyan intervention illustrated that this belief is not the reality and instead highlighted the centrality of the P5 and the pervasive influence of the whims, drive by self-interest, of these states. It revealed that the apparent 'impartial' tools, namely the ICC referral and the establishment of the no-fly zone, are actually political tools that necessarily serve the interests of the P5. The resulting allegations of mission creep committed by NATO has arguably produced UNSC backlash against any further UN intervention in regional affairs for the foreseeable future, as the case of Syria is currently demonstrating.

The response to Council deadlock has included the veto restraint proposals which are manifestations of the liberal assumption that "politics plays the role of a disease to be cured by

means of reason.”¹ In other words, the proposals suggest a remedy (veto restraint) that is to cure the disease (Council deadlock and selectiveness; politics) and are presented as a ‘rational formula acceptable to all.’ However, because the veto restraint proposals have failed to adequately consider the cause of the ‘disease,’ their prescribed ‘remedies’ are doomed to fail. The veto restraint proposals identify the problems of the Council and focus on how states ought to behave, while failing to adequately address the drivers and limitations of state behaviour. The failure to sufficiently examine the disease or problem has led to a false assumption that the problem is certainly curable. Yet, not everything is curable or solvable as, in the words of Morgenthau, “Politics is an art and not a science.”²

The Desirability and Possibility of Political Neutrality

This thesis has also raised doubts as to whether political neutrality in the UNSC is a desirable outcome, and secondly whether it is even possible. The question of whether political neutrality is desirable can be answered by addressing the two flawed premises on which veto restraint advocates base their assumptions on, namely that intervention necessarily saves more lives than non-intervention, and that restraint of the veto is, in itself, an impartial action.

Firstly, proponents of veto restraint and the RtoP fail to consider the uncertainty surrounding intervention and the inevitable unintentional consequences that make it impossible to ascertain whether a course of action is the most responsible. In some situations, it may arguably be more responsible to exercise the veto. For instance, in a situation that involves an ill-thought-out resolution, is the use of the veto not a more responsible action, resulting in a more responsible outcome for the UNSC? In these situations, the veto may actually serve as an instrument to constrain the coercive and exploitative powers of individual P5 members. As Patrick argues, “the unwillingness of the Security Council to act in Syria could be interpreted not as evidence of its failure, but of its working as intended, by preventing coercion from being authorized contrary to the perceived interests of one (or more) permanent member.”³ Here, veto restraint (or impartiality, depending on one’s perspective) may not be a desirable feature of a responsible UNSC at all. As Churkin stated on 2 September 2015, at the beginning of Russia’s UNSC presidency, the veto is “a tool which allows the Security Council to produce balanced decisions” and that “sometimes the

¹ Morgenthau, *Scientific Man vs. Power Politics*, 1947, 66.

² *Ibid.*, 16.

³ Patrick, “Limiting the Veto in Cases of Mass Atrocities.”

absence of veto can produce disaster.”⁴ But again, the uncertainty surrounding intervention makes it impossible to undeniably ascertain the most responsible decision. As Morgenthau has cautioned, actions which seemingly attempt to create a more peaceful world system often fail to take into account the uncertainty which is inherent in international politics: “how often have statesmen been motivated by the desire to improve the world, and ended up making it worse? And how often have they sought one goal, and ended up achieving something they neither expected, nor desired?”⁵

Secondly, veto restraint not does necessarily equate to impartiality. An affirmative vote may actually be primarily serving self-interest, rather than a principled desire to maintain international peace and security. Both the use of the veto and the non-use of the veto are inherently political actions. In both cases, actions are firstly based upon considerations of national self-interest. Because of this, concerns have been raised that “the restraint the veto could be hijacked by countries seeking to intervene for ulterior motives under the cloak of RtoP.”⁶ This was arguably the case in the 2011 Libyan intervention. In this instance, the P5 perceived that it was in their national interest to refrain from exercising the veto and framed their justification for sanctioning the Libyan intervention within the RtoP context. For an example, as previously discussed, China’s non-use of the veto was, in part, owed to the desire to maintain its alliance with Saudi Arabia. This demonstrates just one example of how deciding to not use the veto is just as much of a political decision as wielding the veto, and the difficulty of assessing the ‘impartiality’ of that action.

As previously mentioned, there had been a reluctance to call the situation in Libya a civil war.⁷ If it had been deemed so, UNSC intervention would have been perceived as a breach of Libya’s sovereignty and a violation of the UN Charter. However, politicians refrained from using the term and the situation was portrayed as conflict with an obvious aggressor and a population that required saving, as opposed to a civil war where both belligerents committed violent and unjust action. Here, there was a clear friend (the Libyan population, including the rebels) that required saving from a clear enemy (the Qaddafi regime). This friend/enemy dichotomy is required for the validity of the RtoP doctrine as it requires the need to protect against something, namely an enemy. This means that the doctrine relies on the political, because deciding who is a friend and who is an enemy are inherently political decisions, therefore framing intervention within the RtoP context, in reality, does not accommodate for impartial action. From this, it could be concluded that in some situations it

⁴ “In Hindsight: Security Council Decision-Making and the Veto : October 2015 Monthly Forecast : Security Council Report,” accessed March 31, 2016, http://www.securitycouncilreport.org/monthly-forecast/2015-10/in_hindsight_security_council_decision-making_and_the_veto.php?print=true.

⁵ Morgenthau, Hans J. (1993:6) *Politics Among Nations: The Struggle for Power and Peace*. 6th ed. Revised by Kenneth Thompson. New York: McGraw-Hill

⁶ Patrick, “Limiting the Veto in Cases of Mass Atrocities.”

⁷ Moses, *Sovereignty and Responsibility*, 111.

may appear that being seen to be impartial is desirable while, in others not and therefore the question of whether impartiality is desirable within a UNSC context is inconclusive.

The final question which this thesis has sought to address is whether UNSC impartiality is even possible. The possibility of this is dependent on the capacity of all individual P5 members' to cast aside national self-interest as the primary motivation when deciding how to act in situations where there has been a breach in international peace and security. It is clear, however, that any rudimentary examination of the history of military intervention demonstrates that this is not possible. It is difficult to foresee a future where an assessment of national self-interest will not be the primary decision-making factor for states. Despite RtoP proponents' effusive language, such as that of Ramesh Thakur and Thomas G. Weiss describing it as the "most dramatic normative development of our time,"⁸ the doctrine has not resulted in a demonstrable change in the inherent disposition of states. As a result, it is difficult to believe that the veto restraint proposals will similarly produce any different behaviour.

The history of the RtoP demonstrates the limits of moral advocacy, which is reminiscent of Carr's assertion that power of public opinion is a broken reed. This limit is currently evident in the current inaction in Syria despite countless pleas for action from the 'international community.' As the RtoP has demonstrated, there is a difference between the declared discourse of states, and actual state action. RtoP, in this sense, has not changed state behaviour. Even if the elements of the proposed reforms were successfully enacted, what could actually prevent the P5 from circumventing veto restraint? As Hehir has stated, "the notion that we can find the right combination of words to change the disposition of states is illusory."⁹

Despite the adoption of the RtoP doctrine, the Council continues to hold a discretionary entitlement to act, so therefore receives no direct punishment if it decides to not implement the RtoP in cases where there appears to be a strong case to do so. This makes it difficult to believe that the proposed reforms will change the inherent disposition of states, especially considering that the national interest clause gives the P5 a direct 'out' as virtually anything could be argued to be in the national interest. The fact of the matter is that there is no overarching presence in the current international system which has the power and authority to dictate terms and conditions over the P5

⁸ Ramesh Thakur and Thomas G. Weiss, "R2P: From Idea to Norm—and Action?," *Global Responsibility to Protect* 1, no. 1 (February 1, 2009): 22, doi:10.1163/187598409X405460.

⁹ The Hague Institute. "Aidan Hehir on the Limits of R2P". Filmed [July 2014]. YouTube video, 5:28. Posted [August 2014]. <https://www.youtube.com/watch?v=mb-n2qdipXo>.

members. Nothing in the current reform proposals seeks to address this, and as a result it is difficult to see how the initiatives will ever limit or change the decision making power of the UNSC.

A way forward?

This research has identified the impossibility of political neutrality which is due to the primacy of national self-interest which drives state behaviour. It is therefore prudent to begin with this premise when considering further research on UN reform. In terms of veto restraint (and assuming that it is desirable) it is important to consider what factors are required for such a proposal to be enforced. This is crucial because what the current proposals lack are incentives for compliance, and incentives are required because states will act foremost based upon their self-interests. Given this, as states have everything to gain by acting in their self-interests, the only motivating factor for veto restraint compliance would have to involve the fear or cost of punishment for noncompliance. This suggests that in order for veto restraint to become a possibility the world order would require an overarching independent international authority that has the capacity to enforce international law. Further research could explore this idea.

Yet, even a cursory examination of the idea of an independent international authority as a possibility seems highly difficult to achieve, if not impossible, considering the significant implications it would have for sovereignty, authority, and the balance of power. In addition, the possibility of an independent international authority has further implications for political neutrality; such an institution would inevitably have to pick sides in a conflict situation, whether it is, for example, the side of the government, the rebels, or to gain their own control over a disputed territory. While it could be argued that such an authority could seek to enforce a ceasefire with the aim of establishing a negotiated settlement, the counter argument to that is that the demand and expectation of action from such an authority cannot result in anything other than problematic uses of force, such as 'neutral' no-fly zones, and the dangerous principles and precedents. In addition, settling internal conflicts requires a decision-making authority, yet there is no reason to believe that those decisions can be better handled by external actors, rather than an internal power, as there are always ambiguities and moral problems arising from civil war situations, which ultimately have implications for relativism and moral universalism.

Possible questions for future research could include the current reasons for the absence of such a body and the possible costs of its emergence. There are enduring structural and political problems, all revolving around questions of sovereignty and decision-making that will always be tied to any use of force for any purposes. Further research into this area may discover that this approach will inevitably raise significant doubts about the possibility or viability of an institution created (by

whom?) for the legal resolution of violent political conflicts and will generate similar issues experienced in the contemporary international arena.

This thesis has set out to explore the challenge of political neutrality in the United Nations Security Council. It has found that political neutrality, within the context of the UNSC, is impossible to achieve in the current political environment. The proposed reforms do not sufficiently recognise the self-interests and lust for power that drives state behaviour, nor do they recognise the inherently political nature of crisis situations, such as the ongoing conflict in Syria and its neighbouring states. By failing to adequately address the political drivers of state behaviour, the proposed reforms are incapable of transcending the politics of the UNSC. This is due to the fact that the UNSC is the only authority which can sanction legitimate military intervention, which means the inevitability of political input. The UNSC's use of its Chapter VII powers has been erratic and dependent on the assent of each member of the P5, and this will continue to be the case so long as there remains no overarching independent international enforcement authority. The UNSC does not work towards actually acting impartially as the case of the 2011 Libyan crisis demonstrated. Instead, it moulds, manipulates, and frames a situation so it at least appears to be acting so, while hiding behind the discourse of the political itself. By presenting a mass atrocity situation as either a romanticised story of an evildoer inflicting violence upon a population in distress (friend/enemy dichotomy), or as a civil war, the decision will determine what the accepted response will be. In order for the UN's adopted RtoP doctrine to be applied, the former framing of a crisis situation is required. This renders political neutrality as an impossible achievement as deciding who is a friend and who is an enemy are inherently political decisions. This thesis has found that the current expectations of any reform of the UNSC are in need of reconsideration, and that the limitations of political neutrality need to be addressed and acknowledged in order for the institution to hold any credibility. Particularly, its inability to act impartially needs to be properly appreciated. The flawed idea that it acts impartially, or that it is even possible for it to do so, only results in a heightened expectation of what it can achieve, and instead what is required is the acceptance that it is impossible for the UN, as an actor, to avoid shaping political situations.

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