Wishful Thinking[1]

In Search for a Comprehensive Understanding of Humanitarian Intervention

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[1] The title *Wishful Thinking* is taken from Kuperman's, "Wishful Thinking Will Not Stop Genocide: Suggestions for a More Realist Strategy." Kuperman looks specifically to the habitual failures of U.S. political members, their laws and institutions. In direct relation, as a former U.S. employee working within the international, humanitarian sector, I wrote this thesis in efforts to reconstruct my prior assumptions of what humanitarian interference can accomplish and why it is implemented.

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Preface:

On March 5, 2012, non-profit organization Invisible Children released a video exposing the atrocities committed toward children by fugitive warlord Joseph Kony and the militia he commands, the Lord's Resistance Army (LRA). Film director and narrator Jason Russell pleaded before a targeted audience to "make Kony famous" as a means for mobilizing the U.S. government into humanitarian intervention.[2] Due to its exorbitant success through social media, the film fell into an unprecedented window of publicity, both positive and negative. While the conversation over *Kony 2012* is the most popular and current, its occurrence has unveiled a phenomenon not outside the norm. Neither Kony's behavior nor the foreign discord over how to respond (by political elites and everyday citizens) is significantly different from cases past and present.

Foreign diplomats spent two and half years debating what action was appropriate during the conflict of Bosnia, while disagreements continue to be heard over the legitimacy of NATO's invasion into Kosovo. And while politicians and UN diplomats argue over the right response in present-day Syria, President al-Assad continues his systematic violence against unarmed civilians. In cases of mass violence outside of our nation's domain, controversy of how to react routinely unfolds. The topic of discussion is not limited to any specific region or time; instead, humanitarian intervention is a continuously controversial topic that profusely debates questions spanning a country's right to govern its people to the responsibility of outsiders to protect strangers.

With over one hundred million Youtube views, Facebook posts, tweets and scholarly discussions, Russell has undoubtedly succeeded at his intermediate goal: "To change the conversation of our culture." This conversation, though specific to *Kony 2012*, can be applied to the general framework of discussions over the use of violence as a means to end violence. A quick look to this discussion, relatively known to the general American public, highlights the major and popular platforms of opinion.

Those in support of Invisible Children are not limited, nor of low caliber. International Criminal Court Chief Prosecutor Luis Moreno Ocampo supported the

[2] *Kony 2012*

infamous film by saying, "Stop [Kony] and that will solve all of the other problems."[3] Pulitzer Prize-winning journalist Nikolas Kristof responded with, "bravo for the film-makers for galvanizing young Americans to look up from their iPhones." Former U.S. Secretary of State Madeline Albright confirmed, "Shining a light makes a lot of difference."[4] Nonetheless, as support barreled in, the film was mutually met with criticism over its urgent call for the use of force and for mobilizing citizens unaware of the complete, complicated situation.

UN Secretary General Special Representative for Children and Armed Conflict, Radhika Coomaraswamy criticized Invisible Children for placing too much emphasis on a "military solution" and not enough on the "reintegration" of former child soldiers.[5] President and CEO of Childfund International, Anne Goddard warned the film gave false hope "by defining success so singularly."[6] Others accused the film of simplifying the complex history instead of educating the viewer.[7] In general example, if a military campaign sought to destroy Joseph Kony and his army, how can those previously abducted against their will and forced to fight in the LRA be protected?

In addition to criticisms from outside of Africa, disagreement has been expressed from those within. Victor Ochen, founder and director of the African Youth Initiative Network (Ayinet), called the film "offensive."[8] Nigerian-born American author, Teju Cole condemned Invisible Children's approach under the phrase, "White Savior Industrial Complex."[9] He accused the supporters for *Kony 2012* of lacking comprehensive thought. "All [the supporter] sees is need, and sees no need to reason out the need for that need." If those motivated by the film want to bring useful intervention, "a little due diligence is a minimum requirement." According to Cole, one method to bring that laborious care is through the reevaluation of American foreign policy. In other words, before quickly concluding foreign intervention is best, one should study the cause

[3] "Joseph Kony 2012: International Criminal Court chief prosecutor support campaign" p. 1
[4] Kristof p. 1
[5] Roopanarine p. 1
[6] Goddard p. 1
[7] Luttrell-Rowland p. 1
[8] Jones p. 1
[9] Cole pp. 1- 6

and effect of past international policies to better evaluate the potential result of future interventions.

In an effort to respect Cole's call for "a little due diligence," to avoid the potential of causing further harm, and to appraise Russell's value placed on stopping a violent ruler through good willed intentions, the thesis sets out to analyze the impact of humanitarian intervention and the institutions that implement its authority. Before the general public moves in haste over decisions to interfere in outside affairs, we must ask ourselves: How does foreign intervention—in the name of humanitarian response—affect state sovereignty during times of mass atrocity?

To answer this question, the thesis explores the history of evolving international relations and the consequential law it has created. In application, with a specific look to the conflicts in twentieth century Eastern Europe and present-day Syria, the study provides a more comprehensive framework of how and why foreign powers intervene, and what success or failure that intervention embodies. Before quickly jumping to trendy conclusions heralding the value of humanitarian intervention, and as citizens living in countries capable and responsible for past and present response, we would do best to first understand the history of foreign interference while targeting the role our governments have played.

Chapter One: *The Right to State Sovereignty versus the Responsibility to Protect* looks to the historical evolution of international relations and their effects on global law. More specifically, the chapter examines the most recent and comprehensive doctrine *The Responsibility to Protect* and its efficiency at providing a sustainable framework for the use of force during times of mass atrocity. Because the doctrine habitually refers to the past failures of the United Nations during the conflicts in Bosnia and Kosovo, Chapter Two: *The Lengthy Adoption and Selective Application of Genocide Law* explores the context of these wars and how humanitarian intervention unfolded. In addition, as to not limit the scope of inspection for the workings of legal mandate, the chapter also explores the adoption and evolution of genocide law into international standards of legitimacy. In the final chapter: *9,000 Dead and Counting* the thesis looks to present-day Syria and the conversation had amongst the five permanent members within the Security Council and its effect on the lack of humanitarian intervention.

Chapter 1:
The Right to State Sovereignty versus the Responsibility to Protect

A historical framework of self-determination, the international community, and legal interpretations.

The acknowledgement of state sovereignty dates back to the 17th century. However, as arguments on human rights and morality have taken precedence in more recent times, alterations on this global concept have followed. Beginning with the Peace of Westphalia and ending with the *Responsibility to Protect*, a historical framework sheds light on this complex, ever-evolving concept.

Part I: Old Frameworks

A look to definitions:

According to the most recent U.S. specifications, *mass atrocity* is the widespread and systematic use of violence by state or non-state armed groups against non-combatants.[10] By using this definition, an umbrella can be placed over more specific instances of genocide and ethnic cleansing, in addition to the circumstances more ambiguously referred to as "crimes against humanity", or "serious human rights violations."

To counter the event of mass atrocity, humanitarian intervention can sometimes follow. Though no concrete definition exists, J.L. Holzgrefe defines it as:

> *"The threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied."*[11]

Using this definition is beneficial, however Holzgrefe omits one type of behavior which needs to be added for the particular case studies brought forth in this body of work. Humanitarian intervention can also include non-forcible interventions such as the threat or use of economic, diplomatic, and other sanctions.[12]

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[10] For more information, see: Mass Atrocity Response Operation (MARO) military planning book (2007).

[11] Holzgrefe p. 18

[12] "Humanitarian intervention should be understood to encompass… non-forcible methods, namely intervention undertaken without military force to alleviate mass human suffering within sovereign borders," Scheffer p. 266.

While the frameworks of mass atrocity and humanitarian intervention are fairly simple, and found throughout the international relations pertaining Bosnia, Kosovo, and Syria, the ideas of state sovereignty and the international community are more complex. Throughout history, there has been great controversy over who decides the rules and how they must be administered.

What is State Sovereignty?

During the seventeenth century, Central Europe was in a state of lengthy, international conflict. Under the Peace of Westphalia (1648), the concept of state sovereignty enabled relative harmony by establishing legal identity and political order to individual states. According to its principle, the Holy Roman Empire was now legally stripped of its power to meddle in the internal affairs of the Imperial States. In more general terms, states could now do anything they deemed right within their borders.[13] This historic event created the concept of *Westphalian Sovereignty*. Backed by legal representation, nation-state sovereignty was to be honored and protected under the two ideas of territoriality and the absence of a role for external agents in domestic structures.[14]

While this peace treaty is the historic landmark for discussions of national self-autonomy, it is just one of the numerous examples where international players come together to form agreements on how the global community will co-exist.[15] Before jumping to the present day definition of state sovereignty, a deconstruction of the ever-evolving international community is needed. Without acknowledgement of who writes and enforces the law, a full understanding of historical state sovereignty is unfounded.[16]

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13 Speech by Solana (1998)
14 Naimark p. 199
15 Hankel outlines the historical influence of the Cold War and how it sparked the international conflict which then determined the international limitations on relationships, pp. 579-595. For a similar discussion see, Gow pp. 1-11.
16 NATO and U.N. Security Council are the two enforcers of law that I will address. Their present day military documents for legalities of intervention include MARO and the Responsibility to Protect. For a detailed synopsis of MARO see, Üngör pp. 32-38. Responsibility to Protect will be extensively explored in the following text.

What is the International Community?

Defining the term "international community" is a core concern for debates on state sovereignty and foreign interference. In times of mass atrocity, who is the decision maker in calling for foreign intervention, and is there a complete and unchanging legal framework with which they must follow?

In 1823, the Monroe Doctrine reestablished the goals of state sovereignty while expanding formalities on international relationships. Based on the concept of self-determination and self-rule, the trans-Atlantic agreement forbade European powers from further intervention in North and South American colonies. Any advancement of European interference in the Americas would be viewed as signs of aggression and could lead to potential justification for international warfare.[17] While the doctrine protected European immigrants from future, foreign land grabs or population redistribution, it gave no similar rights to the interests and well being of Native Americans. As far as the document was concerned, only new regimes that conformed to the wishes of the U.S. were protected. All others were disregarded.[18]

Arguably, the Monroe Doctrine's most notable achievement is referred to as the "special relationship."[19] This historic bond, enjoyed by the United States and the United Kingdom, remains solid in present-day in regard to economic, military, political, and diplomatic affairs. By bonding two of the most powerful nations in the world, the doctrine continued the concept of state sovereignty while creating a partiality between the two nations. Within the context of international communities, centuries of alliances for few, at the exclusion of others, had taken hold; and, what is paramount is that this relationship continued to mature.[20]

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[17] Semelin explores this document and its effect on international relations, p. 108.
[18] Hankel p. 584
[19] Though the concept had been used much earlier, Winston Churchill famously emphasized the relationship in a public and political speech given in 1946.
[20] For more information on this relationship see Tony Blair's speech, "Doctrine of the International Community" (1999). The most valuable themes to be noted are: Blair's pro-American attitude versus his "evil" rhetoric towards Saddam Hussein and Slobodan Milošević, anti-isolationism, the importance of national interests, and the value of education. In order to continue these ideas, Blair insists on the necessity of the continuation for the relationship between Great Britain and the United States.

At the end of World War II, the ambitious project of establishing a global organization was founded. In order to prevent such massive violence from occurring again, the two super powers (the United States and the United Kingdom), with three additional permanent members (the Russia Federation, China, and France) came to form the backbone of the United Nations. While these five countries are the original and current frontrunners of the UN, there are an additional one hundred and eighty-seven member states presently involved. Together, all members are "committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights." The Charter of 1945, which holds legitimacy in present-day, declared the calling for foreign intervention in times of mass atrocity the concern of all member states within the institution of the United Nations.[21]

To be sure, no argument has been made that the United Nations is the international community; instead, it has established itself as the principle institution for constructing, consolidating and using the authority of the international system. It declares itself the key player of order and stability. In efforts to sustain the society of states, the United Nations is the institutional framework for which members of the international community can negotiate agreements on the rules of behavior and legal norms of acceptable conduct.[22]

In ultimate confusion, who the international community is and for whom the UN works, has yet to be universally agreed upon.[23] Without a clear definition of who belongs to the international community, are criticisms that suspect the UN of giving unfair advantage to the five permanent members reasonable? Given the role bias and favoritism have played in the past, it appears necessary to address the skepticism. After understanding the cynicism felt internationally, it seems unlikely that the most recent changes made in the legal frameworks of the UN intervention policy were accidental.

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[21] A brief history of the United Nations, in addition to its stated objectives, can be found on the website: www.un.org.

[22] Responsibility to Protect (6.8)

[23] To identify the complexity of this debate, even within the institution there are nations who deny the legitimacy of the United Nations. The most topical example to date can be found in an interview between Barbara Walters and President Bashar al-Assad (2010), in which the president of Syria declares his country's membership to the organization is merely "a game we play."

Criticisms of State Sovereignty and the International Community:

With old and new definitions of state sovereignty and the international community, much criticism has accumulated. What are some of these criticisms? In response to the concern of potential vulnerability for preferential treatment, how has the most recent legal document on foreign intervention been written?

At the 1998 Symposium on the Political Relevance of the 1648 Peace of Westphalia, then-North Atlantic Treaty Organization Secretary General Javier Solana argued, "humanity and democracy [were] two principles essentially irrelevant to the original Westphalia order." According to Solana, by honoring this outdated document, current institutions which were established in order to represent the international community (i.e. the United Nations) have difficulty in legitimately meddling in the internal affairs of other nations.[24] Subsequently, when the nation in question is behaving outside the norms of present-day international law, Naimark argues that the principle of sovereignty can either legitimize policies that infringe on human rights, or allow for indifference from humanitarian organizations.[25] In agreement, Semelin succinctly explains, "In both cases state sovereignty merely constitutes a legal argument to justify [the nation's] action or inaction."[26] In further accusation, Kuper gives more weight to, or expects more from, the self-proclaimed protectors. Under his argument, because the UN defends the right of state sovereignty, it is in essence defending the right of nations to commit actions of mass atrocity.[27]

Just as the original documents on state sovereignty and international relationships leave room for accusations of causing biased *social interconnectedness*, the United Nations has brought on similar discussion.[28] By appointing themselves at the head of the most powerful international institution, it can be argued that the five permanent powers of

[24] Speech by Solana (1998)
[25] Naimark p. 199
[26] Semelin pp. 109-110
[27] Kuper p. 161
[28] Bellamy (2010) p. 602

the UN established themselves in an unearned, privileged position.[29] The right to this position can easily be questioned with a quick look back to the past half-century.[30]

Though the United Nations may declare more altruistic aims, its reception of criticism for promoting the private interests of its participants while ignoring, or in some cases harming the needs of others, does not seem unfounded.[31] In response to this condemnation, the self-declared representatives of the international community have attempted to address these concerns once more. The *Responsibility to Protect* is the newest document intended to serve as the instrument of referral for international moral response, or in other words, it is the legal framework for how the international community is expected to respond in times of mass atrocity.

Part II: New Frameworks
Response to Criticisms:

Within its *Responsibility to Protect,* the International Commission on Intervention and State Sovereignty (ICISS) (an order of the Canadian government and legitimized by the UN) sets out quickly to address the conflict of state sovereignty. "There continues to be disagreement as to whether, if there is a right of intervention, how and when it should be exercised, and under whose authority." Fundamentally, the *Responsibility to Protect* was created to modify all previous roles of state sovereignty and intervention in response to past failures of the UN and current social norms of human rights.[32]

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[29] Hankel p. 580
[30] The USA supported, armed and funded the genocidal regime in Guatemala during the 1980s. France funded and armed the Hutu party in Rwanda. China (and to a lesser extent Russia) assisted Sudan during its acts of mass killing. Refer to Bellamy (2010) for further elaboration.
[31] The use of humanitarian rhetoric worked to justify the 2003 invasion of Iraq. Such interventions on state sovereignty provoke international discussion of how military force can at times provoke the internal conflict even further. In addition, the debate expanded to what national interest the U.S. had to invade: humanitarian concern versus the securing of oil; Bellamy (2010) p. 598. From a different standpoint, sometimes the U.N. uses the argument of sovereignty in justifying standing by through arguments that military intervention could do more harm than good. Gen. Powel used this argument in Bosnia in an opinion article written for the New York Times, 1992. In contrast, John McCain recently fought against the argument of wanting to limit casualties (or lessening harm caused by not intervening) by declaring sitting by while thousands are innocently killed in Syria is just as bad, if not worse, than going in to intervene. See Anderson Cooper's interview with McCain (2012).
[32] Responsibility to Protect (synopsis) p. vii

In an effort to address the historical discussion of complexity for state independence, intervention and human rights, the term "responsibility to protect" is intended to replace "right to intervene," which the report calls "outdated and unhelpful."[33] Because the United Nations has had limited success in the past, but states it is committed to modifying and improving the legal framework, the self-appointed guardians of the international community declare we must change not only the wording, but also the protocol for intervention in times of mass atrocity.

In short, the ICISS declares there is no more appropriate body than the United Nations Security Council to call on military intervention in times of mass atrocity. How and when it should be exercised is broken down into three steps: *prevent*, *react*, and *rebuild*. Whether or not this three-step process should occur is based upon the actions of the nation in question. With such confident alterations in international law change and due to high selection made in ultimate authority, the ICISS and their mandate bring the discussion of humanitarian intervention into three avenues of interest:

1. By addressing previous mass atrocity, the *Responsibility to Protect* redefines state sovereignty. Based on this document, what are the new limits of self-autonomy?
2. The United Nations has failed in the past at reacting to unbalanced violence in a timely manner. How does the *Responsibility to Protect* address this past failure and thus redefine the procedure of goodwill intervention?
3. With regard to assigning authority, the Peace of Westphalia, the Monroe Doctrine, and the United Nations receive criticism for their bias and favoritism nature. What are the arguments for this historical tendency within the *Responsibility to Protect*?

Redefining State Sovereignty:

Listed as its first, most important principle, "state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies within the state itself." By declaring sovereignty does still matter, the report acknowledges that self-rule and determination are at times the best line of defense, dignity, and

[33] Ibid. (2.4)

independence to shape a nation's destiny.[34] Though this definition alone does not change the original ideas of state sovereignty, its second clause brings a reprieve to outspoken criticisms on outdated concepts.

Part two of the principle declares that once a state is no longer able or willing to protect its people from harm and suffering (as a result of internal war, insurgency, repression or state failure) state sovereignty and the standard of non-intervention give way to the international responsibility to protect.[35] The ICISS recognizes that international law must evolve alongside changes in the standards of human rights; therefore, the report responds by limiting what a state may or may not do. If a nation is not abiding by current, international norms of acceptable behavior, outside powers have a right to intervene, or, better defined, a responsibility to protect.[36]

The present-day definition of state sovereignty, as defined by the largest institution committed to representing the international community, declares that a state has first right in determining what its people need. However, once that government is incapable or disinterested in continuing that protection, it loses its legal right to self-autonomy. At this moment, outside powers have a legal responsibility to protect the civilians within.

Redefining How Intervention Should be Implemented:

After providing what it deems an appropriate guideline for protecting or discarding state sovereignty, the ICISS then provides a legal framework for how and when the process of intervention should take place. The plan of intended action calls for a three-step progression of: *prevent*, *react*, *rebuild*. In defense of this argument, the report uses past failures of military intervention to justify its future arrangements.

[34] Responsibility to Protect (synopsis) p. xi
[35] Ibid.
[36] Ibid. (1.32-1.35)

1. Prevent:

"The basic point of preventive efforts is of course to reduce, and hopefully eliminate, the need for intervention all together."[37]

The ICISS makes a claim of legitimacy for prevention instead of intervention on the grounds that long-term costs can be cut drastically if more timely responses occur.[38] The report argues for so called "early warnings" as a viable means to prevention, and thus protection. No longer are the days where we can pretend we do not see growing discord; the globalizing world is a communicatively connected world. As the transparency of conflict arises, a lessening of the gap between the rhetoric of support and the actual commitment to act must take form.[39]

In April of 1987, President Milošević gave a public speech to the Serbian population that would "change the face of history."[40] While mobilizing the ultranationalist Kosovar Serbs, he declared, "From now on, no one has the right to beat you!"[41] It has been argued that this rhetoric, alongside Yugoslavia's history of violence, was a blatant sign of mass violence to come. Many find it reasonable to conclude that this moment to provide preventative action fell onto the uninterested ears of the international community.[42] Perhaps because of this argument, the ICISS finds it reasonable to provide the case of Bosnia as its example for closing the gap of rhetoric and action.

A process of "waiting it out" in expectation of the conflict to blow over was a more popular plan of action than interference. As defended by the ICISS, if the protocol of *Responsibility to Protect* had been carried out in full (though it was not yet available at this time), the gamble of passivity would not have occurred. In addition, not only would preventative measures have cost financially less, but lives could have been saved, conflict

[37] Ibid. (3.4)
[38] According to the Carnegie Commission on Preventing Deadly Conflict, the international community spent roughly $200 billion in the 1990s during the wars of Bosnia and Herzegovina, Somalia, Rwanda, Haiti, the Persian Gulf, Cambodia and El Salvador. If preventative approaches had been used, $70 billion is predicted to have been the cost, Ibid. (3.7).
[39] Ibid. (3.1)
[40] Naimark p. 151
[41] Silber p. 38
[42] The general concept is addressed in all three of the following: Carmichael (2002), Bellamy (2010), Semelin (2007).

could have been limited, and the infamous failure of the United Nations would not have transpired.[43]

The report is altruistic and honest in acknowledging past failures of prevention, but is it idealistic to expect it to no longer happen in the future?[44] Because it has occurred after the publishing of the *Responsibility to Protect*, a case study of Syria (Chapter 3) will address how successful the plan of prevention—instead of intervention—has been. However, before jumping ahead to application of the law, a full synopsis of the mandate must be provided. Once mass atrocity has proven stronger than international abilities to *prevent*, foreign powers have a responsibility to *react*.

2. React:

> *"When preventative measures fail ... then interventionary measures by other members of the broader community of states may be required."*[45]

According to the report, only after prevention has been attempted, other non-violent measures have been tried, and substantial tragedy continues to take place, can the second stage of *react* follow suit. When human rights violations continue to "genuinely shock the conscience of mankind,"[46] criterion must be met in order to perform a legitimate humanitarian interference. The ICISS identifies these six classifications as: just cause, right intention, legitimate authority, extreme ration, proportionality and reasonable prospect of success.[47] As a means to define these progressive steps towards tangible and credible intervention, the international community must first agree upon their constructs.

While the simplistic naming of these concepts is likely to hold little disagreement, the interpretations of these concepts collide with a heterogeneous world of influence.[48] For example, the general theory of a *just cause* for intervention by one nation can have opposing opinions of action (or inaction) of another.[49] Similar arguments can be made to

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[43] Responsibility to Protect (3.7-3.8)
[44] Focarelli pp. 212-213
[45] Responsibility to Protect (4.1)
[46] Responsibility to Protect (4.13)
[47] Responsibility to Protect (4.16)
[48] Bellamy (2010) p. 602
[49] Advocates of the Just War tradition base their arguments on Christian theology. The problem with this theory is that theology of any sort is left open for interpretation. Thus, no unified plan of action, which is based on religion, can ever be agreed upon. For more information see: Ramsey p. 20.

the five remaining terms, and therefore the six requirements are too indeterminate and may lead to different solutions amongst the members of the United Nations. Just as the rhetoric of prevention is vulnerable to criticism for lack of staying power, so too is the rhetoric for reaction. [50]

While failing to provide a complete and unchanging cause for reply to mass atrocity, the report also ignores its failure at legitimizing who will do the reacting.[51] Though the report does not declare the UN to be the international community, it insists the Security Council within is the best body to carry out military intervention for human protection purposes—a will of the international community.[52] In defense of this argument, the report insists the UNSC does not hold power through coercive methods, but instead by its application of legitimacy.

However (once again), how can there be a will of the international community, giving legitimacy of authority to the UNSC, if the identity of the international community has yet to be determined? By failing to clarify the meaning of terms, and by failing to define the international community, the *Responsibility to Protect* dances around its own ambiguity. If the ICISS declares the United Nations Security Council is most capable of carrying out the intentions of the international system, the report essentially avoids the severity of reality that a universal system of agreement does not exist.[53]

To overcome potential barriers of a lack of cohesion, the report does provide for a plan B if the UNSC cannot reach an agreement; however, this proves fragile. Though it does not hold ultimate authority to take action, if the General Assembly (comprised of all the member states) holds a majority in favor of a response contrary to the UNSC, the report declares this may "encourage" the Security Council to "rethink its position."[54]

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[50] Focarelli pp. 197-198
[51] Evans p. 719, Bellamy (2009) p. 249
[52] Responsibility to Protect (synopsis) p. xii
[53] In slight disagreement, Bellamy argues the Responsibility to Protect doctrine deserves more credit because it brings together the five permanent powers in a unanimous decision to affirm their commitments to the document. He acknowledges that these pledges to the mandate will not "mean that governments will agree about the most appropriate and effective form of engagement with specific cases, but the principle helps define the parameters and at least means that they can no longer avoid public consideration of engagement." In other words, though the document does not end the perpetual discord of how to respond to mass violence, it does bring the powers, which are habitually and historically at odds, together in some way. Bellamy (2010) p. 605
[54] Responsibility to Protect (6.29-6.30)

This clause within the report furthers the theme of nice-sounding rhetoric, although the actual implementation of the stated plan warrants skepticism. In times of mass atrocity, "encourage" and "rethink" are not enough to legally implement action. What is vital is that the report continues to ignore the absence of a solid unit with a solid plan by giving ambiguous detours as potential solutions. In expectation that the General Assembly will be able to compete with the will of the five permanent members, the report is either delusional or dishonest.[55]

In an attempt to strengthen its legitimacy (through an additional diversion), the report offers a "code of conduct" over veto power. This restriction seeks to set limitations on the permanent powers by providing fair and equal say amongst all UN members. The regulation on using the veto prohibits the more powerful, permanent members from halting intervention if its national interests are not at stake.[56] While many fault the stipulation for being un-democratic, even the weakest nation members support its intended purpose as it serves as a safeguard to the balance of power within.[57] As implied in the text, a permanent member cannot get in the way of the will of the international community if it does not have a legitimate argument to do so. To explore why this "rethinking of positions," veto power, and code of conduct are needed, the *Responsibility to Protect* references an infamous and controversial intervention of the 20th century.

During the ethnic conflict of Kosovo, disagreement on the legitimacy of foreign intervention in the name of humanitarian response ensued.[58] Because the five permanent powers could not reach an agreement suitable to the liking of all parties, an outside, regional organization took action. NATO's bombing of Kosovo, as argued by the report, remains controversial to many because a nation outside NATO's jurisdiction fell prey to illegitimate intrusion. As interpreted by some, the state sovereignty of Kosovo was compromised on unlawful grounds.

The *Responsibility to Protect* mentions the controversy of Kosovo at least fifteen times to reiterate the importance of finding a unified plan of action in which response can

[55] For further discussion on the unequal power held by the five permanent members, see: Hankel (2010), Orakhelashvili (2005), Malone (2004) and de Wet (2004).
[56] Responsibility to Protect (6.21)
[57] Focarelli pp. 211-212.
[58] Just as some argue that humanitarian response is to be viewed as more of a threat, some argue for its success. For more on this discussion see: Ibid p. 212.

occur both timely and lawfully. The report warns that when agreement is not appropriately met, it is possible that outside parties may choose to act on their own. If those acting parties respond within the controls set out by the ICISS, their actions will be justified. In the case of Kosovo, the report insinuates NATO acted appropriately and instead, the Security Council of the UN was in the wrong for not reaching the agreement first.[59]

Because foreign entities capable of reacting to mass atrocity have rarely agreed upon a unified method of response, advocates of the international community continue to explore ways to harmonize opinions. In an effort to prevent another Kosovo, part two of *prevent, react, rebuild* succeeds at acknowledging how disagreements amongst the UN member states can affect the legitimacy of UNSC. On the other hand, the report fails to accept the perhaps inevitable problem that nations will continue to interpret situational circumstances differently.

Even though the report is unsuccessful in providing a definitive framework of international reaction, it is not without philanthropic effort. Chapter 2 will provide more detail on the logistics of intervention in Kosovo and thus explore the level of legitimacy behind NATO's invasion and the ICISS argument for its necessity. Before jumping to this discussion, a look into step 3: *rebuild,* furthers the understanding over the complexity of reaching successful and legitimate humanitarian intervention.

3. Rebuild:

"If military intervention is to be contemplated, the need for a post-intervention strategy is also of paramount importance."[60]

If prevention has failed and reaction becomes a necessity, the ICISS declares that a rebuilding of peace, credible governance, and sustainable development must follow suit. In order to implement these three essentials, a transfer of responsibility from the international actors (those who have intervened) to the local agents (those living in the midst of atrocity) must materialize. According to part 3: *rebuild*, if proper plans for the future are not addressed before the occurrence of part 2: *react*, the risk of further conflict

[59] Responsibility to Protect (6.28-6.40)
[60] Responsibility to Protect (5.3)

and mass atrocity are likely to transpire upon removal of foreign occupation.[61] Under the umbrella of *prevent, react, rebuild*, foresight is needed.

With regard to the probability rate of success for rebuilding, the ICISS and American General Colin Powell (a recipient of the Bronze Star and a Purple Heart veteran of Vietnam) are in agreement. From their point of view, it is essential that once an occupation has occurred, a rehabilitation of the region must ensue.[62] Though agreement is met on the implementation of stage three, where the two parties diverge comes much earlier in the three-part system.

Gen. Powell argued in 1992 that if intervention is to occur, an exit strategy must be pinpointed ahead of time. From his perspective, it is best to stay home if there is low probability intervention will bring more good than harm upon withdrawal of troops. In contrast, the three-year argument of UNSC neutrality to the conflict of former Yugoslavia is seen as a failure through the eyes of the ICISS.[63] Because Gen. Powell held substantial influence over the decision-making process of the U.S., and because his opinion of the time differs from the majority of present-day arguments, his perspective matters.

While in office, Gen. Powell made his decision on whether or not to intervene in foreign affairs based on levels of national interest. This key factor of state interest for interference is critical to motivating into action political members and institutions. That acknowledgement, *weight and nature of national interest*, is of supreme value in order to understand how foreign intervention—in the name of humanitarian response—affects state sovereignty during times of mass atrocity.[64] Conversely, the substantial influence of this feature is left out of the *Responsibility to Protect* doctrine.[65]

The ICISS consistently uses the reference of Bosnia as a failure to defend, while General Powell stood firm throughout the war that humanitarian missions with no vital U.S. interests were unproductive and unwarranted. If military decision makers who hold

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[61] Ibid. (5.0-5.31)
[62] Powell (1992)
[63] Responsibility to Protect (6.28- 6.40)
[64] Power p. 285-286, 304, Steinweis p. 280
[65] Focarelli calls it a nation's "exclusion of any obligation to act." He argues this concept is advocated and held with strength by individual states when coupled with past failures of the UNSC. By discrediting the council when the council calls for action, these states can justify their disinterest to intervention. Therefore, it is unlikely that the pattern of a case-by-case basis for calls to foreign intervention, which are based on national interests, will ever change, p. 212.

substantial influence over the inter-workings of the UNSC come to a disagreement with the majority of the Security Council, who has the final say? A fundamental problem with the *Responsibility to Protect* mandate is that in order to answer this question, a case-by-case analysis must be conducted. Paradoxically, that case-by-case system of interpretation is the very concern the ICISS attempts to dispel with the *Responsibility to Protect* mandate.

By looking at two cases of mass atrocity before the doctrine (Bosnia and Kosovo) and one circumstance after (Syria), an analysis can provide insight into the success of present-day international law. Not related to these specific situations, there are numerous countries which oppose the overall mandate due to general ideas of historical bias and favoritism. From this perspective, a continuation of unfair practices in international relations can be seen in current discussions.

Historical Tendencies of Bias and Favoritism:

Amongst the states which oppose the *Responsibility to Protect* doctrine are Pakistan, Tanzania, Algeria, Egypt, Colombia, Vietnam, Venezuela, Iran, Cuba, and Syria, and the Non-Aligned Movement (NAM). These countries, which in part belong to the General Assembly, continuously speak out against the doctrine by calling it unfair and asymmetric in application.[66]

As previously mentioned, the doctrine declares the UNSC is the most appropriate body to authorize military intervention for human protection purposes.[67] However, all members of the General Assembly do not agree upon this statement. Therefore, it seems incredible for the ICISS to call for UNSC intervention based on legitimacy instead of by coercive methods.[68] If no cohesive decision has been decided upon, for who is best capable to conduct military interventions, talks of international legitimacy cannot be unanimously credible.

Numerous states belonging to NAM have critiqued the doctrine for its exclusion practices and for its emphasis of military intervention. NAM argues that the *Responsibility to Protect* report is favoritism dealt to the great powers by allowing them

[66] UN doc. A/59/PV.86-.89. Taken from Focarelli, p. 203.
[67] Responsibility to Protect (synopsis) p. xii
[68] Focarelli pp. 202-203

to impose their interests and values onto the weaker states. In their view, the mandate cannot operate in an impartial manner. Instead of limiting state sovereignty on all powers, no matter their strength, NAM voices conviction that the doctrine limits sovereignty on the weaker states while providing illegitimate reason to interfere by the stronger states.[69]

Critics of the doctrine tend to agree, the *Responsibility to Protect* allows the major powers to decide how and when it will intervene based on their own national interests and values. With regard to these criticisms of bias and partiality, the *Responsibility to Protect* doctrine falls in line with past international agreements such as the Peace of Westphalia and the Monroe Doctrine.

Part III: Conclusion

Humanitarian response to mass atrocity brings into question the limits of state sovereignty and foreign interference. In the past, self-determination and self-rule were of the highest order while concerns for human rights were ignored. As a so-called "international community" grew, a sort of *social-interconnectedness* began. The present unity amongst powers insists human rights take precedence to national self-autonomy. This culture has birthed a mandate moving from "right to intervene" to a "responsibility to protect." In consistency however, just as the legal documents and historical tendencies of the past received criticism for being unfair and biased, the *Responsibility to Protect* receives the same in present-day. Its biggest criticisms can be summed up in the following:

1. While the doctrine does redefine state sovereignty in terms of humanitarian responsibility, it fails to agree upon, or ignores to define, who the international community is.
2. The doctrine fails to provide anything but a general and broad guideline. This leaves room for interpretation on a case-by-case basis. Interpretation of the law is highly vulnerable depending upon which nation does the interpreting.

[69] Ibid.

3. The doctrine continues historical bias and favoritism by placing the UNSC at the highest rank of legitimacy—a rank not agreed upon by all members of the General Assembly.
4. To detour potentialities that the permanent members may abuse their power, the doctrine declares the General Assembly can encourage the major powers to rethink their positions. Instead of legal terminology with a strict framework, the doctrine provides ambiguous rhetoric with improbable solutions.
5. The doctrine is imperialistic in that stronger states can use the vague rhetoric to either intervene or remain neutral depending on their national interests.

Because the *Responsibility to Protect* doctrine continuously refers back to the failures of the UNSC within the context of Bosnia and Kosovo, Chapter 2 explores these shortcomings in detail. Under these two humanitarian interventions, how did the permanent powers of the UN Security Council choose whether or not to intervene? What failures has the council been accused of? What accusations of illegitimate involvement did NATO receive? What national interest was publicly declared to justify military occupation? By answering these questions we can better understand the historical framework from which the ICISS was working to improve the future process of humanitarian intervention. After surveying this debate, Chapter 3 will look at the success of those adaptations.

Chapter 2:
The Lengthy Adoption and Selective Application of Genocide Law

A historical comparison of foreign intervention in Bosnia and Kosovo before the *Responsibility to Protect* doctrine was created.

The national interests of the most powerful states can take precedence over the intentions of previously written, international law. That relationship, *national interest affecting the uniformity in the application of law* during times of mass atrocity, can hinder not only the speed with which new laws are adopted, but consequently how foreign intervention will be implemented.[70]

The chapter brings forward two historical frameworks: The adoption and acceptance of genocide prevention based on U.S. standards of legitimacy, and the complexity of historical ethnic tensions within former Yugoslavia. These two studies are then directly applied within context to the evolution of U.S. diplomacy (or the management of international relations) within Bosnia and Kosovo.[71] Throughout this study, a series of questions can be asked: What national interest caused the initial rejection, but eventual acceptance of genocide prevention into the U.S. government? What role did the complex history of former Yugoslavia play in arguments for or against military interference? How can we compare the slow response to mass atrocity in Bosnia to the relatively quick response within Kosovo? By answering this multitude of sub-questions, the investigation looks to a much larger, more generalized discussion.

The present-day doctrine, *Responsibility to Protect*, repetitively refers to the past failures of the UN Security Council in regards to the mass atrocities of former Yugoslavia.[72] In referral to these past mistakes, the ICISS is persistent in making changes to better the process of humanitarian intervention in the future. Due to this targeted influence, it seems reasonable to ask: How did the UN Security Council decide whether or not to intervene before the *Responsibility to Protect* doctrine was written?

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[70] Refer back to Dunnam, Chapter One in addition to, Carey p. 72.
[71] Diplomacy as defined by Gow p. 4.
[72] Responsibility to Protect (1.2, 1.3, 1.22, 2.2, 2.25, 3.7, 5.30, 6.28, 6.30, 6.34, 6.36, 7.23, 7.24, 7.33, 7.47, 7.48, 8.14)

Part I: The Adoption of Genocide into International Law

The acknowledgement of genocide within the U.S. government was a lengthy battle beginning with the unstoppable work of a Polish Jew trained in international law.[73] Raphael Lemkin (1900-1959) spent a lifetime committed to the cause of curing what British Prime Minister Winston Churchill publicly referred to as, "a crime without a name."[74] After years of research, writing, and public appearances, Lemkin gave that crime a name with the support of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide. According to its definition, *genocide* was distinguished as any act committed with the intent to destroy, in the whole or part, a national, ethnical, racial, or religious group.[75] Under international law, if the perpetrators could be legally accused of such crime, punishment could be lawfully served by outside parties while overstepping previous notions of state sovereignty.[76]

Though the General Assembly unanimously acknowledged this overdue necessity of declaration, the U.S. Senate initially rejected the treaty's legitimacy. The arguments for rejection were limited, but consistent. Executive Director of the Carr Center for Human Rights, Samantha Power referred to the first complaint as a "numbers problem." In short, how many innocent lives would have to be killed in order to call the atrocity genocide? [77] If a prerequisite number of deaths must come before action can be taken, the intervention needed would prove invaluable, as the group targeted would be already

[73] Bloxham and Moses pp. 4-10

[74] For centuries, the killing of people based not on what they had done, but instead on who they were had taken place. Meanwhile, no universal way to recognize the circumstance had been agreed upon. In response to the tragedies occurring in Nazi Germany during August of 1941,Winston Churchill declared over a BBC broadcast, "We are in the presence of a crime without a name." For reference see: Churchill's speech (1941).

[75] Lemkin created the hybrid word, which combined the Greek derivative *geno*, meaning "race" or "tribe" with the Latin derivative *cide*, meaning "killing." For reference see: "Convention on the Prevention and Punishment of the Crime of Genocide," (1948).

[76] In agreement to Chapter 1, it can be argued that the legal declaration for limitations on state sovereignty was not necessarily new. Instead, it has always occurred and therefore the law looses partial freshness. Power addresses this argument in an interview for her book calling present-day the "mythic golden age for sovereignty." For reference see: *A conversation with Samantha Power*, (2002). p.7, Also review Charles Manning's "Santa Claus" myth: Both Santa Claus and state sovereignty are not real, but only exist because we all participate in the shared understandings that make their existence possible. For reference of Manning's theory see: Wheeler p. 22

[77] Power pp. 65-66

eliminated before interference could be legitimately conducted. In agreement to the opposition, but standing on a slightly different platform, some argued the number agreed upon was too low and should therefore be raised. In short, a consensus for defining genocide intervention based on numbers could not be reached.[78]

Another stance of resistance to the law was fought under the statement that proving the intent of committing a crime is generally hard to prove, but proving the intent of genocide is even harder. How often would those planning the use of genocide document their criminal intentions?[79] In sync with prior discussions, the ability to prove this intent would most likely come only after the materialization of intent had taken place; intervention in efforts to protect the victims could come only after the elimination had occurred.[80]

Though there were several opposing arguments made against the adoption of genocide law, there was one which was heard repetitively: "It was hard to see how it was in U.S. interest to make a state's treatment of its own citizens the legitimate object of international scrutiny."[81] If this new law were to be recognized by the government, future U.S. sovereignty would be made vulnerable to international rulings. The nation would open itself up to international interpretations on its internal affairs.[82] In other words,

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[78] For detailed discussions of the debates heard, refer to: Senate Committee on Foreign Relations (1950) with specific regard to Alfred T. Schweppe. "Certainly [the convention's definition] doesn't mean if I want to drive five Chinamen out of town, to use that invidious illustration, that I must have the intent to destroy all 400,000,000 Chinese in the world or the 250,000 within the United States." Originally taken from Power, pp. 66.

[79] To understand a continuation of this debate, Schabas (2010) speaks to the present-day troubles of identifying intent when an individual (despite whether or not the action was specifically mandated by the state) commits genocide. He concludes his analysis of the complexity by referring to a common concept used by many international criminal prosecutions in present-day. "'Joint Criminal Enterprise' recognizes that atrocities that qualify as intentional crimes, including genocide, are committed by groups and organizations, acting with a common purpose. In practice, it means that the leaders or organizers will be held responsible for the crimes committed by their associates." See also: Anton Weiss-Wendt's (2010) comparison between authors Michael Mann and Mark Levene for ways in which defining mass violence through intent with the role of the state can differentiate depending upon the interpreter, pp. 87-88.

[80] Power explores these in greater detail pp. 65-70.

[81] Ibid. p. 69

[82] The largest example used against U.S. genocide law adoption is eighteenth century treatment of Native Americans. See Churchill's (1997) detailed discussion. Also see, Orakhelashvili, "International law puts limitations on any organizations powers," p. 60.

based on its own national interest, the U.S. government saw reason to negate the law's authority.

On a more general basis of historical U.S. interests influencing the inter-workings of the Security Council, historian David M. Malone calls the U.S. an "unchallenged hyper status," who is the "key driver" of Council decisions.[83] From his perspective, it has been common throughout the Security Council's history that continual asymmetric clout leaves the Council constantly questioning whether or not it can engage the U.S., monitor its use of power, and restrain its urges. By understanding the privileged status the U.S. has held historically, alongside the continual pattern of the Security Council struggling to limit U.S. national interest, it does not seem unfounded that the U.S. would dare to object to the acceptance for interference in times of mass atrocity based on inside interests.[84]

The rejection of Lemkin's law by the U.S. Senate did not deter Lemkin from continuing the fight until his death. However after his passing, the work was furthered by Senator William Proxmire who fought with as much diligence as his predecessor.[85] With a *speech-a-day* approach, the Senator argued against isolationist groups by stating that acceptance of the international treaty disallowing genocide and permitting limitations on state sovereignty (provided ratifications were made) would prove to be within the long-term interests of the U.S. In his mind, if the most powerful country in the world had an interest in continuing its reputation as a humane nation, it had a national interest to publicly declare its support for genocide prevention. Even though this new treaty would place limitations on U.S. sovereignty, or its isolated, individual status, Proxmire argued acceptance of this agreement would communicate intolerance for potential and future perpetrators of genocide. That public declaration of commitment to humanitarian rights, though a small cost paid to state sovereignty, was in the best interest of U.S. diplomacy.[86]

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[83] Malone pp. 1-2

[84] Hankel (2010), Bellamy (2010) Powell (1992), Power (2002), Orakhelashvili (2005), Malone (2004), de Wet (2004), Focarelli (2008), Mullenbach (2005)

[85] On January 11, 1967, Proxmire gave his first genocide speech. "The Senate's failure to act has become a national shame […] I serve today that from now on I intend to speak day after day in this body to remind the Senate of our failure to act and of the necessity for prompt action." See: Proxmire's keynote address to Congress.

[86] In 1972 Proxmire declared, "The United States has for too long blithely ignored the issues of genocide;" and in 1977, "The pressures of the greatest country in the world could make a

In October 1988, a majority within the U.S. Senate accepted this line of reasoning and changed their opinion by passing the "Proxmire Act." According to U.S. law, genocide became punishable with life imprisonment and fines up to $1 million.[87] What was yet to be determined was whether or not the government and its officials would make uniform use of the new ruling.

U.S. acceptance of new limits on state sovereignty in times of genocide was a long battle resulting in legal rhetoric; however, as Power argues, the conflict for turning those good intentions into action proved to be of similar strife.[88] Just as questions have been raised over what national interests played a role in the legal defining of *genocide,* it appears reasonable to question what national interests played a role in applying the definition.[89] This question can be addressed through the specific cases of Bosnia and Kosovo. However, a brief history of the region is needed beforehand in order to understand the argumentative framework most popularly used by political elites in favor of remaining neutral.

Part II: Bosnia

A Historical Framework:

As recounted by academic historians, the Battle of Kosovo Field, fought in 1389, is the conflict in which the Turks defeated the Balkan Army by mobilizing regional and dynastic armies. Though the historical records show no sign for the involvement of an ethno-political identity, its misconstrued legacy as an ethnic and religious conflict manifested over time. While such ancient history can be of little relevance to present-day concerns, this battle holds weight of importance as it grew to represent an ideological reinterpretation for modern ideas on nation-statehood.[90] What had been a conflict of territory would later be remembered as a conflict over race and creed.

Directly after the battle of 1389, the Balkans fell under the authority of the Ottoman Empire. During the six hundred year history of foreign rule, former Yugoslavia

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potential wrongdoer think before committing genocide." All of Proxmire's quotes taken from, Power pp. 155-169

[87] Power p. 168

[88] Ibid. pp. 167-169

[89] Taken from Malone p. 2. For original see: Parson (1993) and Boyd (1971).

[90] Mann p. 361, Naimark pp. 142-144, Carmichael pp. 14-34

experienced a relatively tolerant, ethnic and religious heterogeneity. Under the Pax Ottomana, civilians living in one of the most ethnically diverse regions in the world lived a life of relative peace and security no matter their inherent characteristics. Though outsiders controlled the Balkan people, and discrimination did exist, the local peoples were not violently abused based on their ethnicity or religion.[91]

When the dominating empire fell into decline and consequentially exited the Balkans at the beginning of the 20th century, the existing natives lacked a uniform social, political or economic institution. This lack of stability led to a necessity for independent control of one's own affairs (state sovereignty). To satisfy that need, and to monopolize on political elites' desires, the use of distorted past conflict came into play. A misremembered history, paired with personal objective, influenced political leaders and their followers towards a trend of nationalism and separatism based on unwarranted ethnic and religious divisions.[92]

Following the withdrawal of Ottoman presence, the dictatorship of Josip Broz Tito (1953-1980) tried to forcefully demolish beginning patterns which Carmichael characterized as "the perpetual intolerance of cultural and ethnic diversity." As argued by some, Tito's Communist ideology was of little success and is said to have intensified future ethnic hostilities.[93] To understand the political ambitions of Tito, Naimark agrees with Carmichael and reaffirms her most basic argument—the dictator's use of force during a time of conflict for reorganization and self-identity was not unique to the region alone.[94] Though Tito was against historic separatism within the Yugoslav states, his use of force was not outside the norm.

In general, struggling governments everywhere are "in search of a common formula, a way of thought," which can neutralize recurrent national confrontations that weaken the state and threaten its future. Tito's regime was a familiar result to a familiar phenomenon. His reaction was not unusual, improbable, or, more importantly, unique, to

[91] Mann p. 361, Naimark p. 141
[92] Naimark. p. 139, 141, 151
[93] Ibid. p. 146 *Incubator Model:* By taking from some while giving to others, Tito tried to maintain a balance between the nationalities, however instead he antagonized the individuals groups which then led to resentment.
[94] Carmichael pp. 1-3, Naimark p. 145

any other region of similar circumstance.[95] This cause and effect relationship experienced in twentieth-century Eastern Europe does not stand outside of historical pattern.[96] The acceptance of this understanding will be key to unlocking the discussion used in the future by western politicians against the use of force for intervention.

Following Tito's death in 1980, the centralization of a universal power within dissolved, while a trend of separatism and nationalism took hold. Over the next coming years, the individual countries with individual political elites, groomed their governments for independence and self-identity based on ideas of separate, national interest. As these divisions multiplied, boiling discourse grew in all present-day states birthed out of former Yugoslavia, but most notably between Serbia, Croatia and Bosnia-Herzegovina.[97]

In the midst of these brewing nationalistic divergences, Milošević seized power of the Serbian government in 1987. With the help of the Socialist Party of Serbia and the Yugoslav People's Army (JNA), President Milošević imposed ethnic nationalism in a state that was fundamentally multi-ethnic. This put the nation on a path of hatred and hostility towards groups of people based not on what they had done, but on whom they inherently were.[98] Just as Tito had insisted upon the value of forceful control, President Milošević adopted that force alongside mobilizing nationalistic rhetoric.

Slovenia's declaration of independence on June 25, 1991, followed by Croatia doing the same, marked the start of the Yugoslav Wars. By the beginning of 1992, the war had moved into Bosnian territory and onto Serbian agenda. From 1992 to 1995**,** ethnic cleansing—which then bled into genocide—took place throughout the region.[99] While the outside world debated over definitions of genocide and fell prey to the misunderstanding of historical inaccuracies, hundreds of thousands of Serbs, Croats, Bosnians and Kosovar Albanians were killed, and millions were displaced.[100]

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[95] Naimark pp. 140-141, Brubaker p. 428
[96] Brubaker p. 436, 439
[97] Naimark p. 139
[98] Ibid. p. 151
[99] Naimark makes the declaration, "ethnic cleansing bleeds into genocide," pp. 3-4.
[100] Gow pp. 1-11, Semelin pp. 152-164, Bećirević pp. 480 - 499

A note on the choice of case study:

To be sure, ethnic violence can be defined as:

> *"violence perpetrated across ethnic lines, in which at least one party is not a state (or a representative of a state), and in which the putative ethnic difference is coded—by perpetrators, targets, influential third parties, or analysts—as having been integral rather than incidental to the violence that is."*[101]

By working from this definition, it can be stated that the hostility against Bosnian Muslims and Kosovar Albanians, carried out by Serbs, was not one-sided in full. As mentioned by Mann, persons of all ethnicities have committed murderous cleansing[102], and therefore the basic construct of the argument is not intended to discount the tragedy brought to all peoples involved. However, because Serbs brought the majority of the worst atrocities, and due to its focus within the *Responsibility to Protect* doctrine, this is the focus of this particular study.

In addition to a narrowed interest of research, the complex history of the overall region has been generalized and works from the assumption that the unfolding of ethnic violence in former Yugoslavia was not unique only to the specific region or time. In contradiction however, within U.S. diplomacy there was a recurring, opposing theme for denial of this notion. The popular decision to remain neutral to the violence, which took precedence for two and half years, categorized the complexity of historical, ethnic divisions to be outside foreign levels of understanding. Based on references to a long history of Yugoslavian mutual and ethnic discrimination, political campaigns mobilized by national interest had little chance of failure when put up against legal mandate. The following text explores this discussion.

Rhetoric for Inaction, Diplomacy:

In August 1992, members of the Security Council passed a resolution authorizing comprehensive necessary measures to make possible the delivery of humanitarian assistance.[103] While this conclusion should have legally mandated military intervention to Yugoslavia, it instead brought intentionally insincere reaction through diverted efforts.

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[101] Brubaker p. 428
[102] Mann p. 356
[103] Speech by Perkins (1992)

Under the American presidency of George H.W. Bush, a pattern of intervention rhetoric trumping actual response took hold.[104]

President Bush chose to skirt surfacing issues of credible intervention by sending superficial support through financial aid. Following this decision, presidential advisors stood by his side insisting upon the limit to what could be done. Defense Secretary Cheney referred to the Balkans as, "a hotbed of conflict" which had been going on for centuries.[105] Former U.S. ambassador to Yugoslavia Lawrence Eagleburger insisted Bosnia was in the midst of a "civil war" in which "all sides" were committing atrocities against each other. He stated,

> *"The tragedy is not something that can be settled from outside and it's about damn well time that everybody understood that. Until the Bosnians, Serbs, and Croats decide to stop killing each other, there is nothing the outside world can do about it."*[106]

General Powell followed suit by making further reference to the misrepresented history as a situation of, "deep ethnic and religious roots that go back a thousand years."[107] In short, instead of providing what was agreed upon within the legal opinions of the Security Council, the U.S. sent shallow backing of limited value through arguments that little could be done to squelch the centuries of ethnic animosity.

Just as conflict erupted in legally defining the word, conflict came in using the word. Two historical complexities led in part to the insufficient intervention in Bosnia: the U.S. disagreement of how to define and apply genocidal characteristics and, the misrepresented account of ethnic and religious hatreds within the region itself. Because use of the word *genocide* would implicate the moral and legal necessity to intervene militarily, it is probable the State Department misused historical inaccuracies to abstain from proper classification. By choosing instead to phrase the situation as "ethnic cleansing" based on "ancient hatreds," diplomats were able to undermine the severity of the situation thereby limiting its response.[108] Whether deliberately or naively, political

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[104] For a more detailed discussion of this topic see Sobel's Part V: "The Bosnia Case: From NonIntervention to Intervention" (2001) pp. 175-230. Also see: Steinweis p. 278.
[105] CNN interview with Cheney, 1 Aug. 1992. As quoted in Power p. 282.
[106] Taken from Power p. 282. For original see: Danner (1997).
[107] Powell p. 1
[108] Power pp. 288-289

elites in Washington wrongfully referred to what was to become *genocide* as a symmetric war fought from all sides.[109]

In addition to declaring an inability to smooth over the erupting conflict because of its complex nature, arguments were made over the lack of U.S. national interest.[110] Perhaps the loudest argument heard was the threat placed on soldiers' lives. By stirring up memories of the Vietnam War—a foreign interference remembered for its failure and extensive number of U.S. fatalities—pleas to stay out were granted. The mere mention of "Vietnam" was enough to remind the American population of everything that could go wrong if the U.S. decided to militarily engage.[111]

At the initial stages of the genocide, under the presidency of George H.W. Bush, the national interest was to remain neutral due to complicated history and memories of past U.S. failure. However as the violence intensified, the interest to remain on the sidelines moved into a yearning to invade. This process of change can most noticeably be recognized during the presidency of Bill Clinton, over the failures of Srebrenica and the media's influence on the everyday citizen.[112]

Because the diplomacy for intervention changed over the three-year period of war, and because it appears sufficient to claim national interest is involved in the decision making process, how did national interest evolve alongside developing situations on the ground and what effect did that relationship bring? So as to limit speculation, the following exploration is made only through publicly stated, national interest.

Consequences of Inaction, Srebrenica:

In April 1993, in answer to a year of ethnic cleansing leaving two million Bosnian Muslims displaced, the United Nations declared Srebrenica (along with six other areas of heavily populated Muslim territories) a 'safe area.' Inside the small town in the eastern region of the country, roughly 40,000 civilians took refuge under the guardianship of UN peacekeepers.[113] At the initial stages of the ethnic violence brought forth by Serbian

[109] Wheeler p. 250
[110] Semelin p. 162
[111] Power p. 283, Sobel (1998) p. 251
[112] Carey pp. 72-73, Malone pp. 1-12, Semelin pp. 161- 164, Steinweis p. 278
[113] Power p. 391

nationalists, representatives of the international community appeared willing and capable to provide limited, humanitarian response through protection of the victims; however, what was to be determined was the threshold of commitment outsiders would bear to ensure protection continued.

When the gravity of the situation intensified in June 1993, foreign aid was pacified, instead of increased, through legal rhetoric. Though the Council authorized 7,600 additional troops for fulfilling the needs of increased personnel on the ground, finding countries willing to volunteer for the job proved difficult.[114] As accused by Senator Joe Biden, the United States and its allies were redefining the term *collective security*.[115] Through a mutual blame of inaction, and as to have an excuse for denying protection, all outsiders were hiding together instead of standing together.[116] Though outsiders had legally declared their commitment, their actions of not following through proved otherwise. Collectively, outsiders stood secure in inaction.

This deficiency in manpower came to represent a lack of interest on behalf of the representatives of the international community. Its most dangerous result was that this disinterest did not go unnoticed by the perpetrators.[117] As the *Responsibility to Protect* doctrine declares, the gap between rhetorical support and tangible commitment was far too great.[118] As the protectors of the international community hid in a sort of collective security of inaction, Serbian nationalists interpreted the legal rhetoric to be meaningless.

When word reached Serbian Commander Ratko Mladić and General Radislav Krstić that the UN's declaration for protection was mere language, the credibility of the previously declared 'safe area' lost value.[119] The hollow threat to Serbian state sovereignty caused Bosnian Muslims to become increasingly vulnerable to mass atrocity. In July 1995, due to a lack of military support from the appointed protectors of

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[114] For reference, see Resolution 836, Chapter VII of the UN Charter. Argument taken from Gow p.144.
[115] Originally defined, collective security is the system by which states have attempted to prevent or stop wars. Under a collective security arrangement, an aggressor against any one state is considered an aggressor against all other states, which act together to repel the aggressor. It is an arrangement on the global scale. (Encyclopedia Britannica)
[116] Speech by Biden (1993), taken from Power, pp. 301-302.
[117] Gow p. 144
[118] Responsibility to Protect (3.1)
[119] Gow pp. 144-145

international humanitarian rights, Srebrenica was seized, the blue helmets were pushed out, and thousands of Muslim men, women and children fell prey to mass atrocity.[120] No longer could use of the word *genocide* be ignored.

This mass atrocity—the largest slaughter in Europe since WWII—has been referred to as a symbol of "the passivity of the international community."[121] A French diplomat bravely and honestly explained the reason of ineffective intervention was that all would have preferred to do nothing in the situation; however, public opinion was starting to take hold. Based on images throughout the media, diplomats were forced into "doing something, but something inefficient."[122] From his point of view, the world's super powers had made decisions based not on humanitarian concerns, but on a vulnerability to negative publicity. Paradoxically, when public opinion began to understand the massive failure, the opinion changed into a need for intervention, and that evolution brought a cause for concern for political elites.

Following the lead of President Bush's passivity to defend, President Clinton spent one and a half years remaining neutral to the violence. However, based in part on contributions from the media, it seems plausible to suggest that his political will of passivity was transformed into a political will to intervene. While national interest had previously been mobilized through public fears for intervention, attitude shifted into public convictions for a responsibility to protect.

Rhetoric for Action, Media's Role:

On 19 August, 1995, three American civil servants were accidentally killed near Sarajevo, Bosnia's capital. Based on theories of the *CNN effect*, it can be suggested the media modified the public, national interest by bringing the war home. American citizens could better empathize with the media's portrayal of deaths of their own than they could with the deaths of strangers. That empathy led for louder calls for action.[123] As publicly explained by Richard Holbrooke, because the American population could understand and

[120] Power p. 391
[121] Semelin p. 155
[122] Translated by Semelin p. 156
[123] Carey pp.72-82, Semelin pp. 161-164

personalize the tragedy, President Clinton felt he had the support of his people to militarily intervene.[124]

While it seems reasonable to argue the U.S. President now had support for intervention, it also seems logical to argue he had a *necessity* to intervene. One of Clinton's top advisors later recalled the severity of the situation in regards to political will, "This issue had become a cancer on our foreign policy and his administration's leadership." An approval ratings pollster for the administration referred to the conflict in Bosnia as "a metaphor for Clintonian weakness."[125] In her greatest work for the argument of national interest affecting foreign intervention, Power declares "This was the first time in the twentieth century that allowing genocide came to feel politically costly for an American president."[126] Just as national interest kept a permanent member in the Security Council disinterested in the Bosnian conflict, national interest mandated a political will to redefine the use of force.

The fall of Srebrenica humiliated UN legitimacy while the deaths of three U.S. officials made the war personal to American voters. These two separate influences on public opinion, worldwide humiliation and American personal interest, accelerated President Clinton into action.[127] What began as a political disinterest to get involved morphed into a political necessity to react. Depending upon its interest, the UN and its most powerful member, the U.S., tweaked international, legal rhetoric for justification of response.[128] By invocation of the words *state sovereignty,* the UN had legitimized remaining neutral; by invocation of the words *human rights,* it legitimized interference.

At the request of virtually all participants within the United Nations, NATO began its three-week bombing campaign in August 1995. Three months later, a peace agreement was reached. The general community, unaware of the details, determined intervention to have been a success and declared previous arguments of neutrality to have been reasonable.

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[124] Holbrooke p. 11
[125] Power pp. 436-437
[126] Power p. 422
[127] "Public opinion bears directly on the decision to intervene because presidents weigh the effects on their own political fortunes in upcoming elections," Carey p. 74.
[128] Ibid. pp. 72-80

Consequences of Action, Operation Deliberate Force and the Dayton Peace Accords:

The military intervention of NATO (Operation Deliberate Force) came only after the perpetrators had completed their mission; Srebrenica was ethnically cleansed of Bosnian Muslims before the invasion. In this case, previous arguments weakening the lawful recognition of genocide (as a means to prevent genocide) were positively reiterated. Opposition during Proxmire's call for acknowledgement of genocide had predicted the dilemma: The targeted group would be eliminated well before humanitarian intervention could successfully take hold. Because a certain number had to be killed before outsiders could call the tragedy as it was, the West's acknowledgement that genocide had occurred had little value in protecting those that it set out to acknowledge genocide for. In short, arguments pinpointing the complexity of defining genocide had been proven tragically correct.

After the military humanitarian intervention, U.S. Secretary of State Warren Christopher and U.S. negotiator Richard Holbrooke worked with the Serbs, Croats, and Bosnians to reach a diplomatic peace agreement. After twenty days of verbal combat and through coercive efforts, the Dayton Peace Accords were signed in November 1995. Signatures came from Bosnian President Alija Izetbegović, and Croatian President Franjo Tuđman, and, perhaps most notably, Serbian President Slobodan Milošević.[129] With a necessity to end the violence symbolically, U.S. diplomats chose the controversial method of negotiating with a war criminal.

In addition to leaving all parties somewhat dissatisfied, the treaty is accused of "finishing the job" of ethnic cleansing. By dividing Bosnia into three unequal parts, giving Serbians the greatest percentage of what they brutally stole through force, foreign intervention legitimized the division of land based on ethno nationalistic tendencies.[130] Just minutes after the signing, Izetbegović remarked, "It is not a just peace, but my people need peace."[131] Rather than providing justice to the victims and preventing further ethnic cleansing, the supporters of the international community compromised with

[129] Dayton Peace Agreement signed in Paris on December 14, 1995.
[130] Naimark p. 54
[131] Holbrooke's *To End a War* (1999) gives a detailed account, almost minute by minute, of what took place during the twenty days of this peace agreement held in Dayton, Ohio.

Milošević, thereby ceremoniously and logistically continuing the atrocity. It was a simplistic solution to a complicated conflict.[132]

No matter this fragile achievement, President Clinton spoke highly of the agreement to the American public while failing to mention the unfairness felt by those most drastically affected:

> *"The presidents of Bosnia, Croatia and Serbia have made a historic and heroic choice. They have heeded the will of their people. Whatever their ethnic group, the overwhelming majority of Bosnia's citizens and the citizens of Croatia and Serbia want the same thing. They want to stop the slaughter. They want to put an end to the violence and war. They want to give their children and their grandchildren the chance to lead a normal life."*[133]

In the eyes of the common man living outside the violence, the war had ended; however from the perspective of those inside the conflict, justice had not been served.[134]

While NATO's bombing and the Dayton Peace Accords can be recklessly referenced with ease to declare the victory of ending a war, Gow suggests that this instead shows the *weak performance* of outsiders capable of earlier, stronger intervention. In short, when outside political will was motivated to act, the war was abruptly over.[135] In this light, it seems logical to say the previous arguments used by Cheney, Powell, Eagleburger, Bush, and Clinton—in regards to an inability to overcome complex historical hatreds—lost legitimacy. From Gow's point of view, the absence of a will to act (no matter its platform of reasoning) is what caused the *weak performance*. The *passivity of the international community*, and the *collective security* practiced earlier in the war had not been based on fears that ethnic tensions could not be stopped, but had been based on a disinterest in getting involved. Once there was an interest, intervention proved capable thereby exposing illegitimate notions for previous neutrality.

What can stand in contradiction, or confusion, is that the use of force in Bosnia was not a "triumph" in full; U.S. and NATO interference did not discontinue or prevent future ethnic tensions.[136] From this perspective, previous platforms taken by U.S. diplomats, which stated that intervention may stop immediate and actual violence, but could not stop historical conflict, seem validated. On the other hand, even after

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[132] See Gow, Part IV
[133] Speech by Clinton (1995)
[134] For a more detailed account of the evolving public opinion, see: Sobel (1998).
[135] Gow pp. 1-11
[136] Responsibility to Protect (1.22)

interference took place, the complex historical conflict based on ethnic nationalism (no matter its artificial creation through misrepresented history) did not disappear. However, because the Dayton Peace Accords carelessly legitimized the previous asymmetric violence, thereby communicating an allowance for a continuation in ethnic divisions, Gow's argument can be used again. There was a "lack of will" on behalf of the diplomatic efforts to bring sincere prevention, reaction, and rebuilding.

Concluding Remarks:

The case study of military intervention in Bosnia does not apply to theories that suggest or deny the capabilities of foreign interference to properly harmonize historical ethnic violence and tension. Instead, it appears inapplicable because the *threshold of will* to tangibly tone down the violence was too low. If the level of interest to bring genuine change is below the level actually needed, it is misleading to apply any case of intervention to the argument of successful interference.

In her general conclusion to all cases of foreign intervention, Power succinctly states, "One of the most important conclusions I have reached is that the U.S. record is not one of failure. It is one of success. Troubling it is to acknowledge, U.S. officials worked the system and the system worked."[137] Without understanding the systematic, premeditated process of national interest and political will, the consequences of inaction in Srebrenica, and consequences of action in Operation Deliberate Force and the Dayton Peace Accords can confuse the layperson.[138]

The ethnic cleansing of Bosnia carried on for years because outsiders had little interest in interfering. Once an interest was realized, NATO's bombing limited Serbian state sovereignty, but the Dayton Peace Accords reinstituted its authority. Though general public opinion may have been convinced that the UN and the U.S. had succeeded, the reality of the situation was much different to those who did their homework. The diplomatic coercion of a peace treaty, which divided stolen land and allowed for the dangerous continuation of Milošević's rule, left those in the know under the impression that national interests (a desire to end the embarrassingly public failure of the UN,

[137] Power p. 508
[138] Refer back to the *CNN effect*, as addressed by Carey pp. 73-74 and Semelin pp. 161-165.

NATO, and the U.S) led the world's super powers to an *any means necessary* approach. For the West, this quick fix to a complex issue proved unsuccessful. Just as Milošević saw through the legal rhetoric calling for a protection of the Bosnian Muslims in Srebrenica, he questioned the sincerity of the Dayton Peace Accords. In the case of Bosnia, the perpetrators of mass atrocity were temporarily halted, but their platforms of ethnic animosity were allowed to continue. Subsequently, a spill over into neighboring areas took hold.

A comparison of Kosovo to Bosnia:

Due to ambiguities in the written law, outsiders were able to remain neutral to the initial violence within Bosnia. In contrast, the circumstances of Kosovo were categorized upon first notice of mass atrocity, and quickly after, intervention materialized despite the law previously agreed upon. When military intervention, in the name of humanitarian response, happened prior to another situation like Srebrenica was allowed to occur, on what platform did diplomats calling for the interference stand? A study of NATO's intervention in Kosovo brings answer to this question while creating a new web of controversy over legitimacy, intention, and effectiveness.

The *Responsibility to Protect* doctrine declares the conflicts within Bosnia and Kosovo to be failures of the United Nations.[139] While the former case is viewed as a collective failure, the ICISS distinguishes the later case into degrees of participatory action. In both instances, NATO was called upon to act, but the difference is found in how that action was mobilized.

By providing a brief framework, the speed of acknowledgement for the eruption of ethnic cleansing in Kosovo can be compared to that of Bosnia. After this historical overview, the text immediately jumps to the three greatest controversies of the war: national and organization interest, illegal intervention, and controversial outcomes. Based on these three arguments, what legacy has NATO's involvement brought to the supporters for the international community? If all three criticisms can be met with substantial evidence, how does the *Responsibility to Protect* doctrine legitimize the use of force experienced in Kosovo?

[139] Responsibility to Protect (1.3, 6.28)

Part III: Kosovo

A Historical Framework:

After the signing of the Dayton Peace Accords, President Milošević and his nationalistic followers were allowed to roam free throughout substantial parts of former Yugoslavia. In order to ensure his cooperation, Milošević insisted he and his cronies be immune from the UN war crimes prosecution.[140] According to Power, although influential members of the Security Council deemed him responsible for genocide, diplomats viewed his partnership essential to stabilizing the fragile region in context. Foreign, national interest to smooth over the conflict within Bosnia trumped any legal responsibility to penalize the perpetrator. However, this lack of punishment was only the beginning of the tragedy. Just as Milošević had interpreted previous legal rhetoric to be lacking in strength, he challenged the most recent limits placed on his authority.

The Albanians, making up ninety percent of the Kosovo population, had complained for years of ethnic discrimination. In intensification, after Milošević's campaign against Bosnian Muslims was cut to a halt, the discrimination he brought against the Albanians became more prominent. As Serbian nationalism narrowed in on a new target, the victims fought back in response. In March 1998, with the help of the Kosovo Liberation Army (KLA), the Albanians retaliated with force by killing several Serbian police officers.[141]

When news of the erupting conflict made its way to U.S. political elites, negotiator Richard Holbrooke tried his hand a second time at ending the violence through coercive diplomacy.[142] However, just as Milošević had disregarded the flimsy weight of legal rhetoric in previous time, he and his military forces did the same once more. Weak threats of the past led to little credibility for intimidation in the future. Resolution 1203, which called for complete cooperation of the Federal Republic of Yugoslavia to the rulings made by the UN Security Council, was ignored.[143]

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[140] Power p. 444

[141] Naimark p. 175

[142] For further discussion of the "Rambouillet Agreement," coercive diplomacy and Holbrooke's role, see: Barthe and David p. 11.

[143] UN, S/RES/1203

Throughout the following year, Milošević exercised his right to state sovereignty while disregarding international law on human rights. Over 3,000 Albanians were killed, and roughly 300,000 were removed from their place of residence.[144] The second ethnic cleansing of Eastern Europe under the command of Slobodan Milošević had begun.

In January 1999, head of the Kosovo Verification Mission, Ambassador William Walker saw first hand the ethnic violence brought against Albanian Kosovars and thereby confirmed the intent of genocidal acts to come. After publicly accusing the Serbs of committing a "crime against humanity," Walker grabbed the attention of U.S. political elites who now proved motivated to respond.[145] In March 1999, despite a lack of approval from all members within the Security Council, the U.S. and its European allies ordered the NATO air strike against the Serbs. In just three months, Milošević surrendered and the previously Serbian controlled region of Kosovo began its path to self-autonomy.[146]

Rhetoric for Action:

The conflict in Bosnia left an embarrassing stain on UN and U.S. legitimacy, but the conflict in Kosovo was a chance to regain that authenticity. Through the use of force, U.S. diplomats could redirect the memories of past inefficiency and reinstitute American credibility; however, before doing so President Clinton needed support from within. If he were to continue as a justified leader capable of stopping mass violence, but also remain mindful to not overstep his power, the American president would need to positively motivate his civic and international community.[147]

Returning back to the *CNN effect*, it can be suggested American television mobilized public opinion thereby legitimizing (in part) the political will of President Clinton.[148] The Bosnian War brought home images of dead American diplomats, but the media's coverage of Kosovo presented images of malnourished and traumatized children. Remembering the needless deaths of their own, alongside realizations of the mistreatment to innocent Albanians, the American public began to see intervention as a moral cause for

[144] Power p. 445
[145] As quoted in Power pp. 446-447
[146] UN, S/RES/1244
[147] Carey pp. 72-75
[148] Semelin p. 161, Power p. 448, Steinweis p. 281

"doing something about Milošević."[149] As it had in the past, the media played a substantial role in triggering public platforms for military-humanitarian intervention.

In ambition to uphold its own reputation, the U.S. Department of State had an interest in interrupting the violence of Kosovo. The American public, motivated by humanitarian concerns, held a moral conviction for interference. Together, the strong bond for action created an irrefutable political will in President Clinton. Regardless of its platform for stimulus, U.S. national interest at the collective and individual level matched U.S. political will. This mutual relationship—found early on—led to the speedy call for interference of ethnic cleansing in Kosovo. However, what was missing from the chain was the link of legality.[150]

While convincing the civic community was relatively simple, mobilizing the international community was a bit more complicated. By using the argument of regional organizations with inside interests, Clinton and his European allies asserted NATO authority. The general construct was that without military interference, potential war spill over and the influx of refugees was likely to occur in NATO controlled areas. On grounds of organization interest, supporters for military invasion declared Operation Allied Force legitimate; however, not all agreed with the decision to intervene militarily.[151]

Rhetoric for Inaction:

Absent from media coverage presented to the American public was the controversy over the legal right to intervene.[152] Based on the rights of *self-determination*, in Charter 1, Article 1, both Russia and China opposed the 1999 NATO air strikes.[153] Consequently, because two of the five permanent members exercised their veto power, the use of military force to limit Serbian state sovereignty was considered unlawful under the Charter.

An additional criticism to NATO's bombing, in comparison to that of Bosnia, is that military intervention would have to bomb regions in the midst of ethnic cleansing,

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[149] Carey p. 74
[150] "New Figures On Civilian Deaths in Kosovo War" (2000)
[151] The vote came to 3 in favor and 12 against. For further research, see: UN, S/PV.3989.
[152] Orakhelashvili pp. 59-88
[153] One month prior to the air strikes, China voted against, and Russia abstained from voting on the use of force in Kosovo. For further research, see: UN S/PV. 3989.

not regions where ethnic cleansing had already been completed. In this regard, by putting the lives of innocent civilians in danger, the basic humanitarian principle of "do no harm" would be broken.[154] "The oxymoron of humanitarian war," as explained by Wheeler, led many to argue against the use of force because its action would hurt the blameless victims the intervention set out to protect.[155] Regardless of whether or not intervention protected more lives in the long run, NATO's interference was seen as controversial and subsequently unlawful.

Consequences for Action:

By disregarding the international law previously agreed upon by all members of the Council, and by placing innocent civilians in harms way, the U.S. declaration for military intervention created a stir of disagreement. In consequence, the general platform fighting for universal limits on foreign intervention during times of mass atrocity remains divided. Wheeler combines these opposing opinions into *pluralist* and *realist* theories; and in rebuttal, develops the *solidarist* theory.[156] In support of his examination for opposing platforms, Wheeler explores the discussion of *selectivity* and its overall effects on the future legitimacy of international response to mass atrocity.

Due to the problem of *selectivity,* in Wheeler's words, humanitarian intervention is selective because states intervene for self-interested reasons. Subsequently, this process of individual selection weakens the call for trusted humanitarian intervention.[157] A lack of trust over the use of force has been substantiated because the law written has been selectively applied.[158]

Under the case of Kosovo, no matter that law mandated otherwise, selective processes determined the decisions of the most powerful. The lack of legality over NATO's action reaffirms a broad argument within my thesis—law written does not guarantee law universally applied. Though the military intrusion of Kosovo does not

[154] Power p. 452, Bellamy p. 598
[155] Wheeler p. 35
[156] Wheeler breaks down these categories of argument in detail. For reference, see Chapter 1 "Humanitarian Intervention and International Society," Carey pp. 21-52.
[157] "The criticism that humanitarian intervention is selective because states intervene only for self-interested reasons resonates across the political spectrum," Wheeler p. 48.
[158] Carey affirms this argument by pointing out that only five of the ninety-six civil conflicts between the years of 1989 to 1995 were met with foreign interference, p. 73.

change the tree trunk of discussion over the dependability for foreign intervention, it does add a new limb to the body.

In agreement with Wheeler, Carey argues that NATO's bombing of Kosovo, occurring without consent of the Security Council, continued the process for subjective application of the law. However, by expanding the discussion both historians confirm NATO's involvement changed the precedent for international mandate; instead of law determining action, action was determining the law.[159] A prime example of this can be viewed within Tony Blair's "The Blair Doctrine."

In a speech declaring British loyalty to America as "a great nation" with "so much to give and to teach the world", the British Prime Minster called for the developments in "new rules" that would outline conditions under which intervention could be legitimized. In short, Great Britain supported America's efforts in Kosovo, however what is key to remember is that the speech came not before NATO's invasion, but in the midst of invasion.[160] From this perspective, Blair called for the creation of new policies after new policies had already been made. By using an ideological mold, he legitimized his policies ex-post facto.

Ironically Blair stated, "[Globalization] has to be an international system based on rules. That means accepting the judgments of international organizations even when you do not like them." Because the international organization of the UN Security Council declared a judgment for the illegitimacy of invasion in Kosovo, and because the UN had been agreed upon as a legitimate body to make such judgments, if the prime minister were to take his own advice, he could not support the Kosovo War. The selectivity of the world's super powers, and a continuation of the U.S. and U.K. "special relationship" were charging straight ahead into action some considered illegal.[161]

Before NATO's invasion, Serbia stood on the platform of Russia and China in regards to a right of *self-determination*. After the war concluded, their wishes to sovereignty were ignored once more and insult was added to their injury. The UN Resolution 1244 sparked the process of Kosovo independence—a path not endorsed nor

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[159] Wheeler p. 8, Carey p. 80
[160] Speech by Blair (1999)
[161] While Britain took the lead in supporting the use of force, Russia took the lead for those against. For reference, see: UN S/PV. 3989.

acknowledged by the Serbian government. Not only did NATO's invasion limit Serbia's ability to determine the direction of its nation, the military invasion lessened the geographical size of their domain. From 1999 to present-day, Serbia does not recognize the legitimacy of Kosovo sovereignty.[162]

If powerful national interest has the muscle to ignore legal norms while mandating abrupt changes to international law, those who are not in the most influential positions have reasonable fears of those in high authority. These apprehensions of exclusive selectivity can lead to a lack of credibility or mistrust in the international organizations that are intended to protect.[163] It therefore does not seem unreasonable that as super powers redefine the law, they find it appropriate to explain their process.

Responsibility to Protect:

When placed into the context of controversy, which could threaten the credibility of an association, organizations have a substantial inside interest in accrediting the institutions and members it represents.[164] The ICISS's explanation for NATO's involvement in Kosovo—which occurred without the explicit support of the Council—is a sufficient example.

After declaring the Council the most able and appropriate body to implement military intervention, the *Responsibility to Protect* adds leeway of interference to its authority. Under Article 6.28, entitled, "When the Security Council Fails to Act," the ambiguous rhetoric of the document declares,

> *"if the Security Council expressly rejects a proposal for intervention where humanitarian or human rights issues are significantly at stake, or the Council fails to deal with such a proposal within a reasonable time, it is difficult to argue that alternative means of discharging the responsibility to protect can be entirely discounted."*[165]

Within the context of Kosovo, the "alternative means" was Operation Allied Force, and as a means to not "discount" the efforts, the doctrine refers to back to the original Charter in regards to organizations with territorial interests.

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162 For further research on the continual denial of Kosovo independence and the illegality of NATO's involvement, see: General Assembly's 22nd Meeting, *Backing Request by Serbia, General Assembly decides to seek international court of justice ruling on legality of Kosovo's independence.*

163 Focarelli p. 191, Mullenbach p. 529

164 Responsibility to Protect (6.40)

165 Responsibility to Protect (6.28)

Under the Charter, Article 52 gives considerable flexibility to regional or sub-regional organizations that neighbor the controversial states in question. From this standpoint, the Kosovo intervention stands justified because NATO held jurisdiction over territory next door. The ICISS concludes that the ad hoc coalition of U.S. and its European allies, which called for the air strike invasion into Kosovo, was acceptable because of regional interest. In addition, because Serbians were flouting "the most elementary norms of legitimate governmental behavior" the lack of unanimity in how to respond quickly by the Council put the organization as a whole into risks of illegitimacy.[166]

The *Responsibility to Protect* reinterprets the written law in the context of NATO's intervention into Serbia. NATO's use of force did not infringe on the right to state sovereignty; instead, NATO did well to take charge while the Council failed to find a common ground for action in a timely manner. In short, the Kosovo intervention was justified and necessary in the eyes of the self-proclaimed protectors of the international community; and those who called for NATO's involvement are to thank, not the Council.

Part IV: Conclusion

Though all stood firmly on grounds of national interest, the acknowledgement for, and the opposition against, genocide law was fought from different angles within the United States. Those who feared future impositions on U.S. state sovereignty had to be convinced of national interests holding greater value. Eventually, through arguments of international reputation for the refusal of crimes against humanity, supporters of the genocide law won the battle on paper.

However, adoption of a legal mandate does not promise proper use of the intended law. The use of misrepresented history based on mutually violent ethnic tensions was mobilized by political elites in both the U.S. and in former Yugoslavia. While the West justified inaction, the East moved forward with its agenda on platforms of nationalism. National interest on both ends of the spectrum led to the genocide of Bosnian Muslims, specifically in the case of a UN protected 'safe area.'

[166] Responsibility to Protect (6.39)

The situation of Srebrenica made it impossible to refer to the circumstances in Eastern Europe as anything but genocide. This reality, the deaths of American diplomats, and the humiliation Clinton felt after Milošević's disregard for coercive diplomacy, came into focus on media coverage. That exposure led to a change in public opinion. In response, President Clinton, who had previously remained neutral, moved into a position of political will for intervention.[167] Subsequently, rhetoric that stood for protections of state sovereignty morphed into rhetoric for protections of human rights. However, the decision for NATO to take action came only after ethnic cleansing and genocide had been successfully applied thereby reiterating past arguments over the difficulties of attempting to prevent the act.

When the U.S. took a stance of publicly refusing the allowance of genocide to continue by voting for NATO'S bombing in Bosnia, the Dayton Peace Accords worked in contradiction. As a means to quickly and symbolically end the war, the coercive diplomacy allowed for a continuation of ethnic cleansing. By propping up Milošević as a legitimate ruler, and by publicly declaring support for an ethnically divided region, the U.S. communicated (whether intended or not) an acceptance of state sovereignty no matter the mass atrocity. Instead of properly punishing the perpetrators and effectively harmonizing the conflict, the treaty supported and furthered nationalistic efforts.

Whether accidental or not, foreign intervention in the case of Bosnia communicated a freedom to continue mass atrocity in the future. This contradiction of stated intentions versus outcomes realized discredits the U.S. as a humane nation through its refusal to hold accountable perpetrators of crimes against humanity. Instead, the situation magnified that national interest trumps legal mandate.

The case of Kosovo complicates the matters of state sovereignty and foreign intervention. The U.S. and its allies publicly stated their interest in doing what they believed was right, no matter that there was no full support from the UN Security Council. As a result, action came to redefine the international law, instead of the law defining the action. This caused mistrust in the world's super powers. To minimize that

[167] In response to Clinton's actions, *New York Times* Abe Rosenthal wrote in 1999, "I am moved to nausea" in implications that Clinton's decision to intervene in Kosovo had been motivated by concerns of public image instead of by the concerns for Kosovar Albanians. Taken from Steinweis, p. 284.

doubt, the present-day legal document outlining the framework for military intervention seeks to explain and legitimize its support for the illegal actions taken. The *Responsibility to Protect* doctrine works to legalize illegal actions taken.

Before interference took hold, the ethnic cleansing in Bosnia went on for years. In contrast, the ethnic cleansing in Kosovo went on for only months. Bosnia is a symbol of humanitarian unresponsiveness, while Kosovo is a symbol of a humanitarian war. The conflict in Bosnia marked a hesitation to use the word genocide, but the conflict of Kosovo became an urgency to imply it. The legacy of Bosnia is a one of slow indifference. The legacy of Kosovo is of quick and controversial invasion. This contradiction in military intervention sheds light on the historical web of national ambition and its effect on the lack of a universal plan of action for times of mass atrocity.

Before the *Responsibility to Protect* was created, the gap between legal rhetoric and action remained too ambiguous for an inflexible application of the law. In the context of present-day Syria, Chapter 3 will explore how successful the redefined law has been after the interpreted failures of Bosnian-Herzegovina and Kosovo.

Chapter 3:
9,000 Dead and Counting

Distrust amongst the United Nations Security Council and its effect on present-day Syria.

The cases of Bosnia and Kosovo point to a number of common variables during times of mass atrocity: The enormous weight of national interest, the proving of intent on the perpetrator, the gap between written and applied law, and the discord felt between the permanent members within the UN Security Council. In response to this blueprint, the ICISS wrote the *Responsibility to Protect* doctrine to help limit those setbacks in the future.

Within the first few pages, the ICISS quotes previous UN Secretary General (and current Joint Special Envoy to the UN and the League of Arab Nations) Kofi Annan:

> *"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 affect every precept of our common humanity?"*[168]

Like Srebrenica, present-day Syria is a circumstance where capable and aware outsiders stand idle due to opposing conflicts over interpretations in international law. Similar to Srebrenica, the internal violence in Syria is allowed to intensify due in part to an external fight over the weight of self-autonomy versus the responsibility to preserve human rights. As the dispute continues, mass atrocity intensifies. If outside nations have substantial details concerning the deaths of innocent victims, and if the permanent members recognize the *Responsibility to Protect* doctrine as a legitimate proposal for future action with specified notice to past failures of similar circumstance, how can we understand the lack of intervention in present-day Syria?

The major obstacle to overcome while assessing this question from an academic standpoint is that interpretative secondary literature on the subject is limited, at best. Subsequently, the chapter's main method of research relies on the primary sources of the UN Security Council Resolutions and statements, eyewitness accounts amassed by Human Rights Watch, and various on-the-ground journalist articles. In order to focus the

[168] Responsibility to Protect p. vii. Originally taken from Kofi Annan's "Millennium Report," (2000).

research within an academic framework, Douglass North's theory of institutions and institutional change fits well into the analytical discussion.[169]

Part I provides a simplified framework of North's main theory. Institutions are created to ensure stability to an environment; however, human cooperation can affect how efficient that institution will run. Part II applies North's theory by looking to the contradiction of interpretations over the events of present-day Syria. These opposing frameworks then explain the limits of legal constructs. Part III dives more deeply into North's discussion of organizational mistrust amongst institution members. This suspicion against one another furthers the complexity of reaching efficient institutions. Part IV concludes by leaving the question of Syrian intervention and formally written law open to future interpretation.

Part I: Institutions and Their Frameworks

In summation of North's theory, societies' institutions connect the past, present and future through a process of creating regulations with formal rules (i.e., the US constitution) and with informal constraints (i.e., cultural values or codes of behavior). This shapes a predictable and comfortable community for human interaction. Institutions are created to diminish insecurity by providing structure to daily life; although, the mere creation of an institution does not ensure that the institution will run efficiently. Institutions are not without limits. The effectiveness of an institution is left vulnerable to the choices of human beings. The "problem of human cooperation" can affect the institution's intended functionality.

North is insistent upon clarifying the distinction: Inside institutions are organizations. As to be applied to my case study, organizations refer to political parties, the Senate, or the members with the UN Security Council (U.S., China, Russian Federation, France and Great Britain). These individuals or collective groups determine how the institution will function. Like institutions, organizations provide a structure of security, and one way of providing that security is by outlining the rules of behavior. In the guidelines of conduct, the organizers implement self-imposed restrictions in the original framework of the institution. To generate a better organization, creators of the

[169] For a more detailed introduction to North's theory, see: North pp. 3-10.

institution initially agree to self-limitations. However, due to inevitable inefficiencies found during any human interaction, the original framework agreed upon is not always followed.

Applying a sports analogy, North explains the balance of players either abiding by or ignoring the rules set forth within a game. Conceptually, the "players" are the *political entrepreneurs*, the "rules" are the *institution,* and the "game" is the organizational interaction between the political entrepreneurs within the institution.

Within any sport, there are the explicitly written rules and general codes of conduct, such as, to not intentionally hurt another player. During the game, those formal and informal frameworks will sometimes be broken based on the player's cost-analysis of punishment. The cost of rule-violation, or the severity of penalty, is an imperative component to acknowledge when studying the strategy of individual players or teams.

In order to play the game with good sportsmanship, or, in this case, to continue the "maintenance of international peace and security," the five permanent Council members initially gave up individual rights.[170] Though these freedoms yielded are numerous, the threshold of state sovereignty and restricted use of the veto are the focus of this study. As concluded in the two chapters prior, while originally surrendered rights may lead to a symbolically organized institution, rule of law agreed upon does not confirm rule of law followed.

A super power may choose to disregard the law if doing so will bring an intended benefit to the individual. If working within the UN's guidelines cannot accommodate national interests, the permanent members might sever ties with earlier commitments. This disrespect of the legal framework weakens the legitimacy of not only the individual country, but of the UN as an establishment. The ambitions of the world's super powers can jeopardize the institutional credibility of the UN by weakening the organization within.

A team's breaking of the rules can limit the security of the overall game. In addition, when the player or team breaks formal and informal norms habitually, it can weaken the reputation of the individual. No team or player has benefit in holding an

[170] United Nations. "Charter of the UN," 24 October 1945, Chapter V, Article 24.

unfavorable standing because such status would leave the team with few interested in future cooperation.

When given the option, non-permanent members within the UN may choose to side with specified permanent powers based on the super power's past history of conduct. Consequently, it does not seem improbable that the legacy of a nation's character will be considered in the equation of abiding by or ignoring previously agreed upon norms of behavior.

Intentional rule breaking and legal rewrites are not the only cause of inefficient institutions. Because complete analysis is not always available, players will sometimes be forced to make decisions with incomplete information. Subsequently, the players (or political entrepreneurs) will use their informal norms influenced through culture to interpret the ambiguous state of affairs. The complexity of an international institution gains significant momentum at this stage of development.

While the formal rules are cut and dry, informal constraints are indistinct. Cultural norms come in the form of customs, traditions, and codes of conduct, all of which remain resistant to policy modification. Whereas formal rules can transform overnight, informal constraints are not only less likely to change, but more difficult to find agreement on. The challenge of unifying informal constraints can tremendously affect the efficiency of applying a formal law.[171]

The UN is an international organization with tremendous divergence in cultural constraints. The opposing informal norms, spanning numerous members, can lead the institution into varied forms of response. This causes a case-by-case approach to law interpretation and application. Without unified collaboration on the part of the teams, an organizational framework lacks trust; without trust, the game cannot be efficiently played. The subjectivity of human cooperation, caused by intrinsic cultural behaviors, is another cause of ineffective institutions.

In the case of Bosnia, intervention did not come until a unified decision was reached. The lack of timely intervention was based on arguments over a lack of complete information. In contrast, NATO's bombing of Kosovo occurred without full consent. By

[171] For further expansion on how cultural constrains will effect the application of law, see the discussion on the terms, "just cause, right intention, legitimate authority, extreme ration, proportionality, and reasonable prospect of success," see: Dunnam, Chapter One, *React.*

severing ties with earlier commitments over universal agreement, the U.S. and its allies risked their long-term reputations and the legacy of the UN as a whole.[172] To rework that damage, the *Responsibility to Protect* mandate (2001) rewrote the formal rules; and, the Blair Doctrine (1999) sparked a modification in the informal norms. Together, these two reinterpreted the law and worked to mold the prior illegal actions into legitimacy. Depending upon who is asked, the legacy of Kosovo has become a symbol of institutional bias and disregard for legal frameworks.[173] To take the intervention inefficiency further: Though the formal, international law recognizes Kosovo as independent, the majority of Serbia does not, causing further cultural divide and potential crisis.[174]

During the international transaction of mass atrocity response, the permanent members must work together despite past reputations of questionable behavior, incomplete information of the circumstances, and opposing cultural norms. Combined, these factors bring challenge to the first step of acknowledging the current or potential state of affairs within the volatile region. In order to apply legitimate interference under current law, the five members must reach unanimous decisions over the classification of the crime. There must be a universal agreement over the proof of intent or, proof of an inability or unwillingness to protect on the part of the domestic government. Without a unified decision on these two variables, the efficiency of the United Nations is tested.

After a brief timeline based on eyewitness accounts, Part II explores the current state of affairs within Syria from the perspective of those in favor of intervention. In contrast, exploration of President al-Assad's denial identifies the platforms taken by the opposition. By investigating the roots of conversation over the proof of intent, these clashing interpretations continue to shed light on the weaknesses of legal mandate.

[172] See: Dunnam, Chapter 2, *Consequences for Action*.
[173] Wheeler (2000), Power (2002), Hankel (2010) all give detailed breakdowns of the diverging opinions.
[174] Muharremi (2008)

Part II: Contradicting Interpretations

Rhetoric for Action:

In March 2011, anti-government protests began to spread across the country of Syria causing a massive uprising of supporters. Sixteen months into the collective dissent, President Bashar al-Assad, the *mukhabarat* (security services) and the *shabeeha* (pro-government armed groups) are accused of continuing the use of force, often lethal, against the predominately peaceful demonstrators. In the midst of the intensified brutality, there are continual signs of government disregard for international norms of behavior. The Syrian government's lack of consideration for universal standards has led to a world of consequence both within and outside of Syria.[175]

Roughly 40,000 refugees have moved into neighboring Iraq, Turkey, Lebanon and Jordan—all countries previously friendly towards Syria, but now denouncing Assad's legitimacy.[176] To halt the growing emigration, pro-government supporters have tightened domestic control with landmines along the country's outer borders and with trenches around individual cities.[177] In further retaliation, communications have been cut off, checkpoints have been established and large-scale arrest campaigns continue to increase.[178]

City dwelling protestors and asylum seekers are not the only victims affected by the conflict. Farmers living in the countryside claim damages to their people, animals, houses, and water lines. The 76th brigade of the Syrian army, or as they call themselves, "the brigade of death," has been accused of the rural crimes.[179] The United Nations reports the regime-allied forces are increasingly targeting children with sexual violence and killing. As of May 5, an average of more than two per day was reported. If not murdered, some children are held captive in schools now used as detention centers.[180]

As mentioned by Üngör, genocidal acts begin to take on a form of "collective criminality," in which brutal force and murder are brought against individuals on the

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[175] "Syria" p. 1
[176] "Written Testimony of Maria McFarland to the Tom Lantos Human Rights Commission on the Human Rights Crisis in Syria" p. 6
[177] Fischer pp. 2-3
[178] "We live as in War" identifies the mass atrocity within as "arbitrary detention, torture, and enforced disappearance," pp. 25-35.
[179] "Losing Hope in Syria's Devastated Countryside" pp. 1-2
[180] Fischer p. 3

bases of their "presumed or imputed membership in a group," as opposed to their individual participation in certain activities.[181] The murdering of defenseless farmers and children, with no involvement in the conflict, exposes the escalation of violence to be moving towards collectively based aggression. The restriction of civilian movement, or the imposition of boundaries, signifies potential signs for ethnic cleansing.[182] If Üngör's "collective criminality" categorization is then combined with Naimark's statement of, "ethnic cleansing has terrifying potential for genocide,"[183] it becomes relevant to assess the Syrian situation with urgency. Though the circumstances may not currently equate to genocide status, it has begun to take on distinctive traits.

Based on eyewitness accounts compiled by credible organizations, and through academic discussion of what defines the variables leading to genocide, a future with more intensive aggression can be predicted. However, this calculation hits a roadblock when met with the opposition. Standing on the platform of President al-Assad's denial for responsibility, those calling for a respect to state sovereignty prohibit any unanimous verdict confirming systematic mass atrocity premeditated by Syrian authorities.

Rhetoric for Inaction:

In continuation of the variable found in Bosnia (before the case of Srebrenica), outside powers have no undeniable proof over the government's intent to destroy. During an interview with American journalist Barbara Walters (Dec. 2011), President al-Assad rejected UN accusations brought against him for committing crimes against humanity. By redirecting the focus on the deaths of his troops and supporters, Assad refused responsibility over civilian casualties and instead blamed the bloodshed on criminals, religious extremists and terrorists sympathetic to al Qaeda; "We don't kill our people, no government in the world kills its people, unless it's led by a crazy person." To insist upon his innocence, Assad said he has given "no command to kill or be brutal."[184]

[181] Üngör p. 32
[182] Lieberman argues ethnic cleansing is closely related to geography and can include imposing boundaries, p. 55.
[183] Naimark p. 15
[184] Interview by Walters (2011)

Despite eyewitness accounts in the more recent case of Houla,[185] Qusair,[186] Idlib and Aleppo,[187] the government continues its refusal of responsibility. After condemning the aggression, the Syrian leader declared, "This crisis is not internal. Rather it is a foreign war with internal tools."[188] Despite the sixteen months of confirmations through individual interviews with Syrian locals and UN observers, government-sanctioned violence has not been confirmed by President al-Assad.[189]

Vocalized denial by Assad is key to understanding the lack of international intervention. Nehemiah Robinson suggests in general, "Acts of destruction would not be classified as genocide unless the intent to destroy the group existed or could be proven." He goes on to say that if the destruction of the group came without such intent, the killing "would not fall under the definition."[190] Without the proof of intent, Dzemal Sokolović argues the systematic act of civilian killing is often classified as an outcome of war, not as the ultimate goal.[191] By continuing to refuse responsibility, the Syrian government limits foreign powers from quickly labeling the root of violence as one-sided. Instead, those in favor of remaining neutral categorize the mass atrocity as a form of civil combat.[192]

Without proof of specified intent, the interpretations on how to handle the situation contradict. Those contradictions can continue until a mass atrocity (with no precise number) materializes beyond universal blindness, or, until Assad and his supporters publicly declare their goals. To be sure, the latter is almost sure to never occur. In the meantime, the international discord exposes the shortfalls of legal classifications.

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[185] "Security Council Strongly Condemns Massacre of Civilians in Syria" p. 1
[186] "Syrian National Council Picks New Leader" p. 1
[187] "Syria Intensifies Shelling, Killing at Least 50 People and Wounding Hundreds" p. 1
[188] "Assad Condemns Houla Massacre, Blaming Terrorists" p. 1
[189] To be sure, I will not debate whether President al-Assad and his regime are to blame for the mass violence. Numerous reports, from differing institutions, can be studied to find the regime responsible for the violence. For additional reference, see Amnesty International's website homepage for Syria.
[190] Robinson pp. 58-59
[191] Sokolović p. 125
[192] See Russia and China's comments during the Security Council meeting, see: UN S/PV. 6711.

Limits to Legal Frameworks:

Lemkin's Law, Proxmire's Act and the *Responsibility to Protect* have all worked towards simplifying the distinction between self-autonomy and human rights. In summary, is the circumstance a moment to respect state sovereignty, or is there legitimacy for humanitarian responsibility? When this question is raised with no undeniable proof of intent, the organization within the institution must reach an agreement based on human cooperation.[193]

As argued by Bećirević, subjectivity within the legal process affects the determinations of specified intent.[194] According to North, that subjectivity is often based off of cultural constructs that can contradict with opposing cultures. In agreement, Schabas suggests, "genocide is, first and foremost, a legal construct" which leaves room for "many definitions or interpretations of the concept of genocide."[195] With no clear framework of the circumstance (which is almost always the case), human interaction furthers the gap between the humanitarian law written and that applied.

Ambiguities in the law lead to institutional inefficiency. Despite arguments ranging from morality to legality, illegitimacy will occur when the use of force is enacted with at least one veto from a permanent member.[196] With no full assembly, those insistent upon intervention could risk long-term damages to their reputation. Subsequently, instead of breaking the formal rules, pro-intervention nations would do better to convince all parties to follow their lead. On the other hand, if those pushing for non-intervention would like to cement their agendas, they must equally convince their opponents to reform their mental constructs. In regard to the long-term standing of the UN as a reputable institution, it is in the best interests of the permanent members to reach a level of collective agreement.

If all nations had an incontestable and cohesive interpretation of the Syrian conflict, the individual nations would have a more straightforward method of cooperation. In response, a high-functioning, permanent member collaboration could lessen the gap between law written and law applied. When the space between rhetorical

[193] North p. 9
[194] Bećirević p. 1
[195] Schabas p. 124
[196] Responsibility to Protect (6.21)

and tangible action is diminished, UN productivity can increase. However, due to past reputations of foul play (motivated in part by individual ambition), the members within the institution collaborate on fragile lines of trust.

The cause for the strained relationship between the permanent members can be understood through a revision of lengthy international history.[197] Its effect can be studied through the past nine months of Security Council meetings. Accusations of hypocrisy and self-interest have unfolded on all sides of the discussion. Based on this rhetoric of blame, it does not seem improbable that the validity of debate over rights to state sovereignty versus to the responsibility to protect is negatively affected by national reputations. Part III asks, what are the stated motivations calling for and against intervention and what accusations have been used by the opponent to discredit the challenger's position?

Part III: Permanent Member Relations

United: August 2011

In a statement given on August 3rd by the President of the UN Security Council, all permanent members declared unity for the refusal of acceptance over, "the widespread violations of human rights and the use of force against civilians by the Syrian authorities."[198] Responding to five months of initial violence, the world's super powers stood in *collective security* for insistence that Syrian authorities abide by international law.[199] In its early stages of Syrian response, the institution of the UN appeared reliable. However, because we know the violence has yet to cease, overall UN credibility is called into question.[200]

Just as the Dayton Peace Accords and Resolution 1203 (Kosovo) held no significant weight of intimidation, neither did the weak warning placed on Syrian authorities. Assad and his regime continued the exposure of weakness to the non-threatening, coercive diplomacy. In consequence, a divide amongst the five permanent

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[197] See: Dunnam, Chapter one

[198] UN S/PV. 6598

[199] To be sure, collective security as originally defined, not as redefined by Senator Biden during the Bosnian conflict. See: Dunnam, Chapter two, *Consequences of Inaction, Srebrenica*.

[200] Individual nations such as the U.S. and Guatemala have used the concerns over UN credibility in arguments for a timely intervention. See: UN S/PV. 6627, UN S/PV. 6711 and, "UN Credibility In Doubt."

members proceeded. Just two months after relative harmony was fashioned, the increasingly complex situation caused a divergence of opinions on how to get involved.

Divided: October 2011, February 2012

As a means to respond to Syria's blatant indifference to the UN Resolution, the U.S. and its allies called for stronger protection measures through the October 4th and February 4th draft resolutions.[201] In summary, the two resolutions would have demanded for the Syrian powers to immediately halt force against civilians, allow for the freedom of expression, peaceful assembly, and the release of all political prisoners and passive demonstrators. If the corrupt powers did not comply, the resolutions intended to send in military reinforcements.[202]

On grounds of respecting "internal affairs" in regard to state sovereignty, independence, and territorial integrity, China, the Russian Federation, and their supporters twice prevented the motions put forth.[203] Though Russian representative Vitaly Churkin stated, "We're not advocates of the Assad regime," he warned that removal of President Assad and his government could destabilize the region, provoke further conflict, and create a destructive impact on the Middle East. Using arguments discussed habitually in terms of causing more harm than good, or the Hippocratic principle (i.e. Gen. Powell over Bosnian intervention, and R2P's "Responsibility to Rebuild") the Russian Federation took a platform not outside international norms of behavior.[204]

In defense of the February veto, the same opponents called the resolution "unbalanced." Representing Russia's point of view, Churkin argued the draft resolution did not "accurately reflect the situation there" because fighting by the opposition had not been addressed.[205] Following Russia's lead, all campaigns calling for the justification of veto stood on a unified ground originally mobilized by President al-Assad. The fire of

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[201] The allies include France, Portugal, UK, Colombia, Bosnia and Herzegovina, Morocco, Portugal, Guatemala, and Germany.
[202] UN S/PV. 6627 and UN S/PV. 6711
[203] In addition to China and Russia's veto, India, South Africa, Brazil and Lebanon did not support the resolution.
[204] Responsibility to Protect (4.12)
[205] UN S/PV. 6711

internal violence was not caused by crimes of the Syrian government, but through "armed terrorist gangs, foreign interferences and the misleading media campaigns."[206] With no undeniable proof of Assad's intent, China and Russia opposed military intervention.

In backlash to the two permanent member vetoes, the powers pushing for intervention accused China and Russia of legitimizing Syria's continuing abuses, and for paving the way to future and further repression. In more direct condemnation, U.S. representative Susan Rice charged Russia (in both October and February) with holding greater national interest in continuing its $5 billion arms selling trade with Syria over that of protecting civilians.[207]

Continuing the battle over national interest, Syrian representative Bashar Ja'afari accused the Council of trying to "lead the world into a new era of colonialism." In an effort to highlight the contradictions of permanent member accusations, Ja'afari sighted past vetoes used by the US and their allies to protect other countries in their times of systematic mass violence.[208] By highlighting the rule-breaking methods of previous play, Ja'afari sought to limit U.S. credibility by exposing their negative behaviors of the past.

During February's meeting, Ja'afari accused the UN of becoming an "instrument of war" motivated by national interests. In his mind, the rule makers had "manufactured" a Syrian crisis while giving money, weapons and media coverage to the armed terrorists groups responsible for the mass atrocity.[209] Before taking his seat (in both October and February), the Syrian representative thanked his supporters and insisted his country was ready to engage in international dialogue and reform. In both discussions, Ja'afari stood convicted on the credibility of his nation to properly respond to the conflict.

There are several moments worth noting during the discussions had in August, October and February. To begin, (1) Syria's lack of respect for explicit, international mandate sparked the historical divergence of the short-lived international community. Declaring an international and communal agreement continuously falls short.

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[206] "We Live As In War" p. 50
[207] Rosoboronexport serves as Syria's main weapon supplier making up 78% of Syria's imports of major conventional weapons. For a more detailed account, see: "Letter to Rosoboronexport of Syrian Weapon Supplies."
[208] In this case, Ja'afari was referring to the Israeli/Palestinian conflict.
[209] UN S/PV. 6711

(2) Russia used an argumentative tactic not outside the norms of general UN conduct. Depending upon the situation, applying the Hippocratic principle is a method taken by all permanent members. The case-by-case application and interpretation of "do no harm" is a universal technique of subjectivity.

(2.1) Subjectivity leading to selective and circumstantial interpretations expands to additional categories. At the time of the Serbian conflict, President Milošević was not initially considered to be the supreme culprit of mass violence (now known to be true amongst the general majority). Due to combat and animosity from all sides, U.S. stood convicted Serbian state sovereignty was not to be limited. The respect given to President al-Assad by China and Russia in the twenty-first century does not fall outside the norms of previous policy taken by the U.S. in the 1990s.

(3) The U.S. holds distrust in the reasons for Russia's platform of Syrian neutrality. Paradoxically, Syria calls for distrust in the U.S. over similar accusations of individual ambition. At one time or another, all permanent members have been accused of using their veto power based on national interests. Because all powers have controversial pasts, all lack comprehensive legitimacy in the present. These past reputations can be used to limit their future credibility.

(3.1) Ja'afari's attack on the overall functionality of the UN exposes a continuation of distrust. Concerns over the historical probability of selective favoritism and subjectivity to applications of the law are reoccurring themes in international relations.[210] By targeting the influence powerful political entrepreneurs have over the application of formal rules within the UN, Syria pinpoints apprehensions over the misuse of authority.[211]

(4) The Syrian government twice publicly confirmed its commitment to engage in dialogue towards ensuring the protection of its citizens. Under this agreement, the nation made a stated commitment to the newest terms of state sovereignty—a requirement for the ability and willingness to protect.[212] Superficial language, with no tangible

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[210] For academic literature on the discussion, return to Dunnam, Chapter one, *What is the International Community?* and Dunnam, Chapter two, Part one.
[211] North pp. 4-5
[212] Responsibility to Protect (synopsis xi) "Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling

commitment to follow through, is a variable not limited solely to the world's super powers. The gap between law written and law applied occurs in nations and institutions of all sizes and strength.

United: April 2012

Though the Syrian conflict began in a secular nation, some have suggested the disagreement has grown into a sectarian divide between the Sunni Muslims (many of whom support the protest movement) and the Alawites (who in large part back the current government).[213] As this separation increases, so, too, does the bloodshed. According to Human Rights Watch, the Free Syrian Army, who is responsible for the majority of the forceful opposition, has shown signs for a lack of respect to human rights. Though limited in accounts, and far less in comparison to that of pro-Assad supporters, an intensified aggression from the previously peaceful opposition has grown. This piece of the puzzle becomes invaluable to the evolving discussion over foreign intervention.

Because the originally non-violent protestors have morphed (in part) into violent aggressors, powers like China and Russia continue to categorize the assault as mutually aggressive. The difficulty in compartmentalizing the violence (or separating the victims from the perpetrators) creates challenges in humanitarian response. Are the circumstances of Syria to be defined as mass atrocity or as civil war? A question of how to define the hostility, causing a divide in the Council, continues the lack of institutional efficiency.

To halt the repetition of no response, the Council reached a unanimous decision on the 14th of April. With Resolution 2042, allowances were made for the deployment of thirty unarmed military observers "to liaise with the parties and to begin to report on the implementation of a full cessation of armed violence in all its forms by all parties."[214] From the rhetoric written, it appears compromise was found through the addition of the words "all parties." In an effort to include the armed opposition in accusations of human rights violations, the UN recognized that violence was occurring from all sides. If the

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or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."

[213] "We live as in war" p. 13, "Losing Hope in Syria's Devastated Countryside" p. 1, and "Written testimony" p. 4.

[214] UN S/PV. 6751

U.S. and its allies were to gain support of Russia and China, an acknowledgement of mutual violence had to be made. *Collective security* was found through compromise.

Resolution 2042 set forth a "Six-Point Plan Proposal" championed by Kofi Annan, the Joint Special Envoy of the United Nations and the League of Arab States. In order to prove his commitment to protecting Syrian citizens, thereby continuing his right to sovereign rule, President al-Assad was obliged to sign the memo. This preventative step, mobilized through non-violent coercive measures, falls in line with the most recent international norms of conduct.

According to the legal mandate of the *Responsibility to Protect,* under the synopsis framework entitled "last resort," methods of intervention must first come in the form of non-violent means. Only after verbal agreements have been exhausted can military intervention be used.

Because we know the violence in Syria has not ceased, and due to Assad's publicly declared promise to halt the violence, we can assume that Syria is either unable or unwilling to independently control the conflict. As discussed by international and human rights attorney James P. Rudolph, foreigners can now "assume the responsibility that Syria has so flagrantly forfeited."[215] When outside intervention first comes in the form of non-violent means, but then proves inefficient, the use of force becomes legally justified. The concluding question thus becomes: If non-violent measures have been tried and if Assad has proven his inability or disinterest in providing protection, then why has the legal mandate for military intervention not taken hold?

Part IV: Conclusion

It is either difficult or outside national interest to prove the intent of mass atrocity. Without that proof, there is a perpetuation of disagreement amongst the largest decision makers publicly committed to providing international protection. These conflicting positions for action can be based, in part, on a distrust of one another's past decisions. In times when no clear explanation can be provided for the volatile situation, a lack of trust amongst the permanent members can limit the ability of the Council to perform its

[215] Rudolph, p. 2

intended function. In consequence, the gap between the law written and the law applied unfolds. Until this gap is eliminated, the inefficiency of legal institutions will continue.

Kofi Annan's Six-Point Plan has attempted step one of the three-step process for *prevent, react, rebuild;* therefore, it does not seem reasonable to totally discredit the *Responsibility to Protect* mandate. Now that non-violent means have been applied and proven inefficient, if step two (*react)* comes with a sense of urgency, while not failing to adopt a framework for step three (*rebuild)*, the doctrine will not lose all legitimacy. In short, until the conflict has concluded, the validity of the new law cannot be properly assessed.

The conflict of Syria evolves with each passing day and, therefore, predicting the outcome is not of interest to this discussion. What is paramount, however, is focusing on the inter-workings of the UN and its organizational members. As uncovered in the Security Council statements during the debates over Syrian intervention, all permanent members of the Council have acted in the past on behalf of national interest. These selfish acts create a lack of legitimacy and trust between the permanent members. Human cooperation affects the efficiency of formally defined laws and institutions.

Without mutual confidence within their partnerships, rhetoric for opposing action handicaps the speed with which law written can become law applied. Until that rhetoric can reach an agreement (Bosnia), or until national interest influences an individual nation to act on its own (Kosovo), no military intervention in the name of humanitarian response will affect the state sovereignty of Syria. In greater pessimism, one can only speculate how much worse the violence will advance, how great the divide between the Sunnis and Alawites will cultivate, and how many more lives will be lost. Or perhaps, how many non-violent protestors, farmers and children could have been saved had interference come at the first signs of violence a year prior.[216]

The case of Syria confirms the absence of a lasting or unchanging international community capable of applying a one-size-fits-all solution to the repetitive occurrence of mass atrocity. Opposing national interest prevents this idealistic construct. Humanitarian intervention, affects state sovereignty only when the reward to national interest for

[216] Though the question is not specifically posed to the case of Syrian, Wheeler asks a similar question in his discussion of Bosnia, pp.281-284.

intervention is greater than the value of remaining neutral, or, when the price of remaining neutral is more expensive than the cost of interfering; and, until that equation can be measured, innocent lives (of no specific number) will continue to be lost.

Conclusion:

In its original form, the notion of state sovereignty allowed nations to rule themselves and those within without interference from outsiders. In contrast, as the idea of human rights came into the forefront of international discussions, platforms to change the old legal frameworks spoke loudly. As a result, there are now two championing sides of the discussion: Upholding state sovereignty versus the responsibility to protect. While the disagreement on how to respond to mass atrocity is predictable, the tangible act of reaction is not.

Humanitarian intervention comes on a case-by-case basis. In consequence, there is no rule of thumb for the aftermath brought to a nation vulnerable to being temporarily or permanently stripped of its right to self-determination. What is consistent, however, is that the process of international response to mass violence is continuously mobilized by national interest.

National interest can come in many forms, but does fall under the wide umbrella of social, economic and political influence. These factors, dependent upon the circumstance, determine what platform those capable of intervention will take. No matter what the factors are, political elites will work the system in their favor (some proving more successful than others). Those most powerful can mold and interpret the state of affairs of an outside region to justify action most beneficial for the intervening country. These behaviors can not only contradict what a nation has done in the past, but can also deceitfully stand against the platform of an opposing nation taking a different path in the same circumstance. In other words, all nations make the decision to intervene or remain neutral within situational frameworks, and those platforms taken have all been utilized by other powers at different times. The five Security Council permanent powers are all guilty of using national interest to make decisions and have hypocritically accused the other of doing the same.

The most influential countries use a method of *selectivity* for determining action taken during times of mass atrocity. If the desire to intervene does not fall within a previously agreed upon law, it is not impossible for the world's super powers to write new law ex-post facto. Because international mandate is constantly vulnerable to change

based on asymmetric divisions of power, and is consistently left open to interpretation on a global scale, there is no one-size-fits-all progression of humanitarian intervention.

With no consistent, unwavering legal framework, individuals must interpret situations and discuss their findings. This process allows room for subjectivity, which inevitably opens the door to distrust amongst all members of the United Nations. Put into a theoretical framework: Because institutions are run by human cooperation (and that cooperation is mobilized by cultural norms, traditions and individual ambition) a uniform institution set out to protect the global world cannot function in a habitually productive manner.

Even though an international community does not exist, and there is no promise that this variable will change in the near future, the United Nations was created to provide stability and efficiency in international relationships. Its primary goal is to promote peace throughout the world, but instead, it has shed light on the inevitability of violence, the struggle to end it, and the shortcomings of institutions and their legal mandates. As long as opinion is allowed into the interpretation of law, there will continue to be opposition; and, when disagreement unfolds, the ineffectiveness of institutions is unavoidable. The lack of success by the UN in the specific cases of Bosnia, Kosovo and Syria point to the certainty of failure found when numerous parties attempt to work together to create a universal society of communal constructs.

The reoccurring distrust found throughout the research—a lack of faith in institutions to run on stated interests of good will (whether true or misleading)—places an urgency and value on the importance of searching for preventative methods to preclude mass atrocity. Amongst genocide studies literature, there has been minimal past discussion on preventative measures; however, the mention of its absence has grown tremendously in more recent years.[217] Thomas Cushman suggests, "Perhaps the central purpose of genocide studies is to try prevent it"; and Wheeler, "Prevention is always better than a cure."[218] Because international players have predominately proven unreliable in reacting and rebuilding for those in need, concentration on prevention is a must for the new standards of genocidal studies.

[217] Kuperman p. 191, Jones p.6
[218] Cushman p. 541, Wheeler p. 281

Philosophers Richard Rorty and Jonathan Glover have addressed the ideas of sentimental and moral education as a preventative means to end ethnic hostility.[219] In their view, educations which promote empathy of the 'other', while calling for more tolerant societies can have the possible effect of breaking the cycles of hatred, revenge and other destructive societal tendencies. However, as a former schoolteacher in Bulgaria (a country immersed in historical ethnic tensions), breaking racism in the minds of individuals is a task in which I failed. Before the minds of children can be changed, the minds of those that tailor them—their teachers and parents—must first be influenced. Though not impossible, this task is a monumental feat. No matter how great an outsider's intention is to end ethnic tensions causing hatred and racism, the process of breaking a country's complex history is more complicated than writing a lesson plan based on philosophical altruism.[220]

As if this were not enough to the great challenge of overcoming the pessimism in how to end future mass atrocity, the way in which good willed humanitarians most commonly reach those they wish to help is through the process of joining institutions. In the U.S., the most common (and arguably, the most credible) is the Peace Corps.[221] However, a quick academic investigation will provide the researcher with a consistent discussion over the institution's understated ambition: To communicate to the developing world its commitment and interest in humanitarian concerns. Though members of the organization may have charitable purposes, the institution itself was created just as most national projects are—with substantial weight to national interest.[222] However, as Wheeler argues, even though humanitarian aid may be mobilized by national ambition, that selfish motivation will not necessarily prevent goodwill from materializing. As a

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[219] Taken from Carmichael p. 111.

[220] Because using personal experience can be viewed as frivolous, too personal, or lacking in analytical value, a more general discussion over the inefficiency of the individual with altruistic aims while working within the Peace Corps can be studied under: Maren, pp. 1-12. In short, Maren spent his time as a volunteer raising money for his African village while watching the money be stolen, used for unstated purposes, or causing increased discord amongst the civilians. His general conclusion is that it without significant study beforehand, it would be better for outsiders to stay outside.

[221] Founded in 1960, the Peace Corps was created as a means to promote peace and friendship through the process of educating American volunteers and those they come into contact with. For a more comprehensive understanding, see: www.peacecorps.gov.

[222] Rothmeyer p. 9, Hall p. 56, Cobbs pp. 79-80

result, humanitarian aid through institutions should not be totally discredited.[223] Organizations like the Peace Corps may have underlining motivations, but if those working for the institution can understand these hidden agendas, the volunteer may reach intended goals, however small.

To conclude, Auguste Comte provides a simplified way of understanding the cause and effect relationship of mass atrocity prevention, education, international understanding, and the value of their potential; "If one cannot understand causation, one cannot anticipate; if one cannot anticipate, one cannot prevent."[224] Just as we study the cause of mass atrocity, we must study the development of intervention. As a result to these revisions, the conversation will inevitably transform. Only through dialogue can those desiring true humanitarian response work toward a better solution for all those involved. In order to work in a positive direction of limiting both the inevitable pattern of mass atrocity and countries whose intervention brings more harm than good, all we can do is bring a little due diligence before we embark on our own involvement. We must educate ourselves on the conversation, spread that knowledge, and hope to have a modest influence on those around us. Though perhaps, I have worked my way back into my own wishful thinking.

[223] Wheeler pp. 285-310
[224] Taken from Semelin p. 367

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