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**Humanitarian Intervention and the Failure to Protect:
Sham Compliance and the Limitations of the Norm Life Cycle Model**

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Humanitarian Intervention and the Failure to Protect:

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Norm Life Cycle Model**

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This thesis examines the norm of humanitarian intervention and argues that Finnemore and Sikkink's norm life cycle model is an insufficient explanation of the norm, due to its inability to take into account the potential for sham compliance. It demonstrates how three main instruments of codification – the UN Charter, the Genocide Convention, and the Responsibility to Protect Doctrine – have been interpreted to permit states to fake compliance. The analysis of six cases of intervention – Somalia, Bosnia pre-Srebrenica, Rwanda, Bosnia post-Srebrenica, Kosovo and Darfur – reveal that states will look for ways to interpret legal instruments to fake compliance in cases where the norm conflicts with state interests and/or when there is a high potential for casualties. A refinement of the norm life cycle model suggests the need for an intermediary stage between the stages of norm cascade and internalization in order to account for slow or partial behavioural change.

Table of Contents

Introduction.....4

Chapter 1

Understandings of Humanitarian Intervention.....20

Introduction, 20

Rationalist and Constructivist Understandings of Norms, 21

The Humanitarian Intervention Debate, 28

Conclusion, 41

Chapter 2

Sham Compliance: A Desirable Option?.....43

Introduction, 43

Somalia: Background of the Conflict, 44

 Desirability of Sham Compliance, 47

Bosnia pre-Srebrenica: Background of the Conflict, 51

 Desirability of Sham Compliance, 54

Rwanda: Background of the Conflict, 57

 Desirability of Sham Compliance, 59

Bosnia post-Srebrenica: Background of the Conflict, 63

 Desirability of Sham Compliance, 66

Kosovo: Background of the Conflict, 69

 Desirability of Sham Compliance, 70

Darfur: Background of the Conflict, 74

 Desirability of Sham Compliance, 76

Conclusion, 79

Chapter 3

Sham Compliance: Keeping Up Appearances.....81

Introduction, 81

Bosnia Pre-Srebrenica and the UN Charter, 82

Rwanda and the Genocide Convention, 90

Darfur and R2P, 95

Conclusion, 101

Conclusion.....103
Bibliography.....118

Introduction

*"The heresy of one age becomes the orthodoxy of the next."*¹ – Helen Keller

Up until the end of the Cold War in 1989, humanitarian intervention seemed unthinkable; today, it has become the *ordre du jour* in resolving international crises. The heresy of one age, as mentioned in the epigraph above, has indeed become the orthodoxy of the next. Throughout the Cold War, humanitarian intervention was prevented from being accepted as a norm by a competing and more entrenched norm, that of non-intervention. The norm of non-intervention was first developed in 1648 with the signing of the Treaty of Westphalia which ended the Thirty Years War.² By the 20th century, it had become a cornerstone of international relations and was enshrined in the Charter of the United Nations (UN).

Only two exceptions permitted the violation of sovereignty. The first was Chapter VII of the UN Charter, which permitted the use of force to maintain or restore international peace and security in circumstances where threats to the peace, breaches of the peace, and acts of aggression had been determined.³ Although Chapter VII is now used to permit humanitarian interventions, this was not the case until the end of the Cold War, as it was viewed as a violation of sovereignty and interference in domestic affairs. Humanitarian interventions were avoided to such an extent that intervening states avoided using the humanitarian rationale as a justification for intervention, even under

¹ Quote by Helen Keller, accessed at *Wisdom Quotes: Change/Growth Quotes*
http://www.wisdomquotes.com/cat_changegrowth.html (October 27, 2007)

² Treaty of Westphalia, Munster, October 24, 1648 accessed at
<http://fletcher.tufts.edu/multi/texts/historical/westphalia.txt> (October 28, 2007); Stephen D. Krasner, (1995/96), "Compromising Westphalia," *International Security*, Vol. 20, No. 3, Winter, 115.

³ Charter of the United Nations. *We the Peoples of the United Nations...United for a Better World*, Chapter VII.

circumstances where there was a clear humanitarian outcome.⁴ This stands in stark contrast to today, where it would be unthinkable for a liberal democratic state to intervene in another state *without* using a humanitarian rationale.⁵ The second exception which permits the use of force is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) signed following the Holocaust of the Second World War.⁶ However, the Convention was never once invoked throughout the 20th century.

By the early 1990s, the end of the Cold War brought with it what George H. W. Bush called a 'new world order'.⁷ This 'new world order' signified the end of an era during which competition between the United States of America (US) and the Soviet Union, both of whom were among the five veto-wielding members of the United Nations Security Council (UNSC), prevented action in the face of mass atrocities. It was meant to usher in a new era of optimism, where members of the United Nations would come together to prevent human rights abuses. The 'new world order' signalled the erosion of the norm of non-intervention in favour of that of humanitarian intervention. For a brief moment in the early 1990s, human rights took precedence over state rights. However, it was not long before this new resolve was to be tested. The early 1990s saw conflict after conflict, first with famine and conflict in Somalia in 1991, then with ethnic cleansing in Bosnia in 1992, followed by genocide in Rwanda in 1994. The atrocities committed

⁴ Mohammed Ayoob, 2002. "Humanitarian Intervention and State Sovereignty," *The International Journal of Human Rights*, Vol. 6, Iss. 1, 86.

⁵ David Rieff, quoted in MacFarlane, Neil; Carolin Theilking; Thomas Weiss, (2004), "The Responsibility to Protect: is anyone interested in humanitarian intervention?" *Third World Quarterly*, Vol. 25, no. 25, July, 984.

⁶ *Convention on the Prevention and Punishment of the Crime of Genocide*, Office of the High Commissioner for Human Rights, http://www.unhchr.ch/html/menu3/b/p_genoci.htm (Nov. 18, 2006).

⁷ Address Before a Joint Session of the Congress on the Persian Gulf Crisis and the Federal Budget Deficit. September 11, 1990.

seemed to worsen with each conflict, with a UN response that became increasingly feeble over time.

Strong intervention in Somalia was followed by feeble half-measures in a peacekeeping mission in Bosnia, and a reduction in the existing peacekeeping force in Rwanda in the midst of genocide.⁸ Yet these successive failures did not signify the demise of the new norm of intervention. In 1999, in a sudden display of military strength, the North Atlantic Treaty Organization (NATO) defied the United Nations by intervening without UNSC authorization to prevent ethnic cleansing in Kosovo, the now independent state, which was then a semi-autonomous region of Serbia.⁹ However, successive failures in Somalia and Bosnia, inaction in Rwanda, and unauthorized, arguably illegal, action in Kosovo, demonstrated the need to clarify the circumstances under which an intervention can and should take place. Thus, in April 2000, then Secretary-General of the United Nations, Kofi Annan, challenged the international community in his Millennium Report to the General Assembly by asking: “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”¹⁰ In September 2000, the Government of Canada responded to the Secretary-General’s challenge by announcing the establishment of the independent International Commission on Intervention and State Sovereignty (ICISS) with the

⁸ Jocelyn Coulon, *Soldiers of Diplomacy: The United Nations, Peacekeeping, and the New World Order*. Trans. By Phyllis Aronoff and Howard Scott. (Toronto: University of Toronto Press, 1998), 131; Edward N. Luttwak, “Give War a Chance,” *Foreign Affairs*, July/August 1999, 38; Allison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, (New York: Human Rights Watch, 1999), 632.

⁹ Robert O. Keohane, “Introduction,” in ed. J.L. Holzgrefe and Robert O. Keohane, (2003), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press), 7.

¹⁰ Kofi Annan quoted in *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty. (Ottawa: International Development Research Centre, 2001), 2; Kofi Annan, (2000), *We the Peoples: The Role of the United Nations in the 21st Century*, Millenium Report of the Secretary-General of the United Nations to the General Assembly, 48.

purpose of building consensus around the issue of how to reconcile intervention for human protection and sovereignty.¹¹ One year later, in September 2001, the ICISS released a report entitled Responsibility to Protect (R2P). The report effectively stated that sovereignty was no longer sacrosanct but that it was a responsibility. Part of that responsibility was for a state to protect its own people. However, when a state was unable or unwilling to protect its citizens, this responsibility to protect then fell to the international community. The report was endorsed by the UN General Assembly (GA) at the World Summit in 2005.¹² However, the impact of R2P is not clear. As recently as 2003, the international community failed to protect civilians in the Darfur region of Sudan, after the government unleashed Janjaweed militias to attack civilians in response to a rebellion by certain marginalised groups in the region.¹³ Although, the conflict began before the concept of R2P was endorsed, it was not until 31 July, 2007 – two years after the concept was endorsed – that a UN peacekeeping mission was authorized to replace a weak, under-resourced African Union force.¹⁴ This is despite the fact that the government of the United States invoked the Genocide Convention for the very first time in 2004.¹⁵ The international response came four years too late for many civilians, and has yet to deploy to its full capacity.

¹¹ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty. (Ottawa: International Development Research Centre, 2001)

¹² *Ibid.*; *2005 World Summit Outcome*, 15 September, art. 138-140. Accessed at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement> (May 15, 2007)

¹³ “Crisis in Darfur,” *Responsibility to Protect: Engaging Civil Society* Accessed at <http://www.responsibilitytoprotect.org/index.php/pages/6>

¹⁴ S/RES/1769 (2007), *United Nations Security Council Resolution*, adopted by the Security Council at its 5727th meeting on 31 July 2007.

¹⁵ Secretary Colin L. Powell, Testimony Before the Senate Foreign Relations Committee, Washington, DC, September 9, 2004. Accessed at <http://www.state.gov/secretary/former/powell/remarks/36042.htm> (Aug. 6, 2007); Jim VandeHei, “In Break With U.N., Bush Calls Sudan Killings Genocide,” *Washington Post*, Thursday, June 2, 2005, A19; Gerard Prunier, “Sudan: Genocide in Darfur”, *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007).

The norm of humanitarian intervention has evolved dramatically over the past decade. While during the Cold War, violating sovereignty for humanitarian purposes was unthinkable, it has now become the norm. In every instance of massacres, ethnic cleansing or genocide, the public clamours for an international response to put an end to the suffering. Some sort of intervention, weak or robust, seems the only viable option, that is, once the decision has been made to 'do something'. Yet while in theory, humanitarian interventions have become the accepted way of responding to mass atrocities, in practice this is not the case. There is broad acceptance that when ethnic cleansing, genocide or crimes against humanity occur, an intervention is the appropriate response. However, the nature of this intervention is often so watered down, with weak mandates, insufficient resources, and insufficient troops, that no intervention at all would almost be a better response. It appears that while states technically seem to be complying with the norm by having some sort of international presence, the reality is that they are doing very little of what the norm is meant to do - protecting civilians. If humanitarian intervention is indeed a norm – as this thesis argues it is – then why and under what circumstances do states do so little of what the norm prescribes, making their compliance with the norm a sham?

In their article, "International Norm Dynamics and Political Change," Martha Finnemore and Kathryn Sikkink argue that state compliance with international norms depends on how far along the norm is on what they call the norm's 'life cycle.' Finnemore and Sikkink argue that norms go through three stages: norm emergence, norm cascade, and norm internalization. Norm emergence occurs when the norm is promoted by 'norm entrepreneurs' who persuade states to accept it. The norm cascades after a

tipping point at which a significant number of relevant states (usually about one third) adopt the norm.¹⁶ This stage is characterized by imitation, as norm leaders attempt to socialize other states to become norm followers. As the norm progresses, it ultimately goes through the third stage of internalization, whereby the norm is so entrenched that states no longer consider any alternative courses of action, and instead automatically act in accordance with the norm.¹⁷

Finnemore and Sikkink go a long way in explaining state compliance with the norm of humanitarian intervention. Norm entrepreneurs have been promoting humanitarian intervention since the end of the Second World War, when Raphael Lemkin, coined the term 'genocide' to describe the extermination or attempted extermination of a group of people, and helped draft the Genocide Convention in an effort to prevent and punish the crime of genocide. Lemkin's constant and relentless lobbying was instrumental in the international community's acceptance of the Genocide Convention.¹⁸ Norm entrepreneurship can also be exemplified by the efforts of individuals like UN Secretary-General Kofi Annan and states like Canada to promote the concept of R2P and encourage its acceptance by the international community. However, this is one of the problems associated with the norm of humanitarian intervention. Both the Genocide Convention and R2P are legal instruments that permit humanitarian interventions. One could argue that the norm of humanitarian intervention began over 50 years ago with the acceptance of the Genocide Convention. Conversely, one could also argue that the norm only cascaded three years ago with the endorsement of R2P in 2005. Whether the norm

¹⁶ Martha Finnemore and Kathryn Sikkink, 1998, "International Norm Dynamics and Political Change," *International Organization*, 52, 4, Autumn, 901.

¹⁷ *Ibid.*, 895.

¹⁸ Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Perennial Harper Collins Publishers, 2002), 29.

has cascaded or not, could very well depend on which legal instrument one views as essential to the norm. However, as both have now been accepted by well over one third of relevant states, whether we are speaking of the Genocide Convention, R2P or a more general norm of humanitarian intervention which encompasses both, we can now say that the norm is in the second stage of the life cycle. It has 'cascaded'. However, as mentioned earlier, the automatic reaction of states is that the way to respond to crimes against humanity is some form of intervention, weak or robust. In this sense it could even be said to have internalized or be close to internalization, and thus having entered the third stage of the life cycle, if we are speaking merely of what is the accepted norm. However, given that the application of the norm itself is rather inconsistent and prone to selectivity, we can say with more certainty that the norm of humanitarian intervention has passed the tipping point and is in the second stage of the life cycle.

However, there are several problems which would make the life cycle model insufficient as an explanation of state compliance with the norm of humanitarian intervention. Many of the examples of norms used by Finnemore and Sikkink are norms which are clearly institutionalized, with very little ambiguity. The norms are indeed legal obligations. The examples of the prohibition of slavery and women's suffrage, used by Finnemore and Sikkink cannot be applied selectively. Rights cannot be given to some women, or some slaves, and not others. The definitions of women and slaves, and what slavery consists of and what women's suffrage consists of are quite clear. Either men are free or they are not, either women have the right to vote, or they do not. There is very little ambiguity or room for interpretation. This is hardly the case with humanitarian intervention. Each case of humanitarian intervention is different. Although it may be

clear that there is an ongoing conflict and civilians are being attacked, it is not always clear whether what is occurring can be considered an instance of genocide, ethnic cleansing, or merely a civil war with some civilians caught in the cross-fire. The numbers involved, and how many civilians must die for a massacre to be considered 'large-scale' is unclear. Even the term 'humanitarian intervention' or 'peacekeeping' and what precisely it consists of is not so easily defined. Must an intervention be military to be humanitarian? Can peacekeeping be limited to the facilitation of the provision of aid, or is it limited to monitoring and observing, or does it involve enforcement?

Humanitarian intervention lends itself to interpretation in ways that the banning of slavery or women's suffrage does not. How the nature of the conflict is perceived and defined by the international community makes a difference as to how it will respond. Furthermore, if states do not take action to prevent genocide or other crimes against humanity, there are no consequences for them. These conventions are not legally binding. Although Chapter VII of the UN Charter permits the use of force, it is only permissive. It is not an obligation. While the Genocide Convention obliges states to take action, it does not specify what this 'action' is. While R2P outlines the necessary conditions for an intervention, there is still room for interpretation with regards to what consists of ethnic cleansing, and how many people need to die for massacres to be considered 'largescale'. The norm is extremely ambiguous, and is sufficiently so as to permit interpretation, and consequently the potential for sham compliance.

Sham compliance occurs when a state appears to be complying with the norm, but is in fact doing little of what the norm actually prescribes. For example, the norm of humanitarian intervention prescribes taking all necessary action to prevent human rights

abuses. While states may know that what is necessary, in a given situation, is military action, they are still technically complying by merely sending humanitarian aid, as they are 'taking action' to prevent human rights abuses. While states know that a peacekeeping force would require a strong mandate and sufficient resources and troops to prevent genocide and ethnic cleansing, they are still complying when they send troops with a weak mandate. While states may know that genocide may be occurring; by denying the existence of genocide, and merely calling it a civil war, they are technically still complying with the Genocide Convention. Therefore, by twisting the truth, or by sending forces which have little real capacity to prevent crimes against humanity, a state can appear to be complying, when in reality such compliance is a sham.

Although Finnemore and Sikkink are able to explain how and why norms are adopted, they leave several questions unanswered. At one point in the article, they discuss the fact that the US government's need to explain their use of land mines in South Korea demonstrates that they acknowledge the norm against the use of land mines. Here they point out "that we separate norm existence or strength from actual behavioural change in our operationalization."¹⁹ However, this separation is nowhere else noted in the entire article. Therefore, it is not clear, whether reaching the tipping point or becoming a 'successful' norm necessarily implies operationalization. In fact their definition of a 'successful' or 'influential' norm is not at all clear. In the article they note that in most cases, "for an emergent norm to reach a threshold and move toward the second stage, it must become institutionalized in specific sets of international rules and organizations."²⁰ Yet when they describe characteristics of norms that are likely to be

¹⁹ Finnemore and Sikkink, "Norm Dynamics and Political Change," 892.

²⁰ Ibid., 900.

successful or influential, they describe the fact that when a norm is clear it is more likely to be successful.²¹ This implies that mere norm adoption is not enough, that it must furthermore be lacking in ambiguity. Therefore, while for a norm to cascade, it is usually necessary to be institutionalized, if such institutionalization is ambiguous, then it may not be successful. This in turn implies that 'norm cascade' does not imply norm success. Yet again, what precisely is 'success' is not clear. Is a norm only successful when it internalizes? When it internalizes does it imply behavioural change? Finnemore and Sikkink also make the argument that universal norms, such as those preventing bodily harm, are more likely to be successful.²² Yet while humanitarian intervention is just such a norm, it is also ambiguous. Will a universal norm still be a success when it lacks clarity? They also mention that not all norms reach the tipping point, yet they say nothing about whether all norms once having reached the tipping point necessarily internalize. If the norm of humanitarian intervention has cascaded, will it eventually internalize? Or is it possible that it will remain in the second stage for the remainder of its 'life'.

The norm life cycle lacks a significant degree of clarity. While it is able to explain norms that are operationalized once adopted, and which are legally obliged, it seems unable to sufficiently explain those norms that are more ambiguous, and that are only permissive. The norm life cycle model is an insufficient explanation of the norm of humanitarian intervention, as it is unable to account for the potential for sham compliance.

This thesis uses the example of humanitarian intervention to demonstrate that norm adoption does not necessarily imply norm operationalization and that norm operationalization can in turn be faked. This thesis seeks to explore the potential for

²¹ Ibid., 906.

²² Ibid., 907.

sham compliance within the example of the norm of humanitarian intervention and to examine the conditions under which sham compliance is more likely. The central research question of this thesis is: How and under what conditions is sham compliance most likely to occur? With the secondary research question being: What can be learned from the likelihood of sham compliance that might lead us to amend the norm life cycle model? I argue that when there are no competing interests that conflict with the norm, genuine norm compliance is likely. However, a variety of domestic as well as international considerations often take place when a state is considering whether to intervene. Norm compliance is just one of these competing interests.

The thesis will begin with a chapter concerning the theoretical framework of the thesis. It will review some of the main arguments and opposing views regarding norm compliance, the various institutionalized aspects of the norm of humanitarian intervention, the concept of sham compliance, as well as the costs and benefits of humanitarian interventions. The second chapter will examine the cost-benefit analysis that takes place in six cases of humanitarian intervention, in order to determine whether sham compliance would be a desirable option. A third chapter will then examine the situation at hand and the ambiguity of the institutionalized aspects of the norm in cases where sham compliance was seen as desirable in order to determine how sham compliance was made possible. The conclusion will, based on the results of the previous two chapters, demonstrate the conditions under which sham compliance is most likely to occur, as well as how it was made possible.

The six cases that will be examined include, in chronological order, Somalia, Bosnia pre-Srebrenica, Rwanda, Bosnia post-Srebrenica, Kosovo, and Darfur. These

particular cases were chosen for several reasons. They include some of the most important and most publicized cases of intervention. They also span a decade of cases, and therefore cover a significant time period in terms of norm development. The cases are also geographically varied with three African cases and three European. While each case includes some level of intervention, three of the cases are examples of more robust intervention, and three of them are examples of weak intervention. The former are more concrete examples of peace enforcement, undertaken under Chapter VII of the Charter with a mandate and sufficient resources to protect civilians, while the latter includes examples that are more commensurate with traditional peacekeeping, usually undertaken under Chapter VI of the Charter with the consent of the host state and the ability to use force only in self-defence. The examples of weak intervention are, I argue, examples of sham compliance, where there is only the appearance of action. In these cases, the intervention is extremely limited with regards to resources, mandates and/or troops. Therefore, while there is an appearance of action through some limited form of intervention, this intervention does very little to protect civilians from attack. Conversely, the more robust interventions are examples of genuine norm compliance designed to protect civilians.

This thesis will use the definition of 'humanitarian intervention' adopted by the International Commission on Intervention and State Sovereignty in the Responsibility to Protect Report: "action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective."²³ The report focuses largely on the most controversial aspect of intervention, which is military intervention; however, it also includes preventive measures as well as coercive intervention measures,

²³ *The Responsibility to Protect*, 8.

such as sanctions and criminal prosecutions, which fall short of armed intervention.²⁴

This thesis will mainly discuss humanitarian intervention in military terms; however, it will also look at measures that fall short of a military intervention, for example US humanitarian assistance in Darfur, and initial peacekeeping efforts in Bosnia and Rwanda.

A broader definition allows for a focus on any kind of action that has been taken by the international community with an aim to prevent crimes against humanity. Such a definition goes beyond intervention permitted by the Genocide Convention, thus avoiding debates around the semantics of whether to call certain human rights abuses 'genocide' or whether it amounts to 'ethnic cleansing' or atrocities committed within the context of a civil war. It focuses on more larger-scale atrocities that target civilians, whether this is in the context of a civil war or a failed state, or ethnic cleansing or genocide which often occur during a war.

The verification strategy is two-fold. The first part will involve examining the costs and benefits of intervention in each case to determine whether sham compliance would be a desirable outcome. This will be accomplished through examining statements, and speeches of state leaders, as well as books and articles concerning specific interventions and the rationale behind the action or inaction. It will involve looking at a variety of aspects that may impact the relevant intervening states (permanent five members of the UN Security Council, and in the case of intervention in Kosovo and Darfur, the members of NATO and the African Union respectively). These may include factors such as economic costs, the potential for casualties, strategic interests, domestic constituencies and public opinion, regional proximity, strategic allies, international reputation, as well as normative concerns.

²⁴ Ibid., 8.

The second part of the verification strategy will involve an examination of codified legal instruments and the situation at hand in cases where sham compliance was seen to be desirable, in order to determine how sham compliance was made possible. This will require looking at the specific situation to verify whether it had the potential to be interpreted according to state interests as outlined in the previous section, as well as whether there was a discrepancy between rhetoric and reality, what states say versus what they do. This can be demonstrated by examining statements made and comparing them with what was actually done. It will also entail a comparison of the wording and original meaning of codified texts and how it was interpreted in cases where sham compliance was desirable.

The combination of looking at state interests and presenting a cost-benefit analysis, with an examination of the clarity of the norm and the situation at hand will provide us with a good indication of whether: 1) States have a rational reason to engage in sham compliance (motive); and 2) States have the ability to commit sham compliance given the specific situation and the norm itself (means); and 3) States do or do not commit sham compliance given the presence of the previous two conditions.

The findings of this research will have important implications for both the study of norm compliance, as well as future humanitarian interventions. By acknowledging that sham compliance does take place and by understanding the conditions under which it is likely to occur, perhaps future research can be undertaken to determine whether greater codification can decrease the potential for sham compliance, and whether this will in turn lead to the internalization of the norm. Further research may also lead to greater clarification of the norm life cycle model, to define what constitutes a 'successful' or

'influential' norm, or to sufficiently define at what point of the norm life cycle model we can expect behavioural changes rather than mere norm adoption. The research could, moreover, have implications for sham compliance. Does sham compliance only occur with the example of humanitarian intervention, or can the concept be extended to any norm which lacks clarity? It may also demonstrate that norm adoption does not necessarily signify genuine norm compliance, and that norm compliance is dependent on the existence of certain other factors. It may be that states will only agree to codify norms if the language lacks clarity, and thus does not force true compliance. By examining these factors, perhaps we can learn more about how to prevent sham compliance. This is particularly relevant for the example of humanitarian intervention. If the potential for sham compliance can be eliminated, then perhaps we can move from a humanitarian impulse to a humanitarian imperative.

The findings of the research may also clarify how norms pass from the second to the third stage. It is currently unclear whether permissive norms which permit sham compliance, move beyond the second stage of the life cycle into the third stage of internalization or whether they are more likely to remain in the second stage? The results of the research may determine a need for a new stage in the norm life cycle, another tipping point between norm cascade and norm internalization which would indicate the point where the norm is practiced. Or perhaps it would indicate that the norm life cycle model in its current form can only sufficiently explain norms that lack ambiguity and are accompanied by legal obligations. This in turn, may pave the way for a modified norm life cycle model, which could address more ambiguous norms. By moving towards a more internalized norm of humanitarian intervention, one that moves beyond norm

adoption to norm operationalization, perhaps we could move one step closer to making 'never again' a reality rather than a sham.

Chapter 1: Understandings of Humanitarian Intervention

Introduction

Finnemore and Sikkink's norm life cycle model explains to a significant degree how norms evolve. However, the model leaves unanswered the question of what point in the life cycle we can expect behavioural change. The ambiguity of codified norms makes sham compliance both desirable and possible, and it is this potential for sham compliance which is ignored by the norm life cycle model. Although sham compliance may play a significant role in explaining state compliance with the norm of humanitarian intervention, there has been very little discussion of the concept of sham compliance in both the norms literature and the humanitarian intervention literature. The norms literature has been largely divided into rationalists and constructivists, both of which focus more on how norms develop, and why states comply, ignoring the question of how states may fake compliance. The literature regarding humanitarian intervention also focuses more on why states comply and why the international community failed to do more. However, there has been little in-depth analysis on how states interpret the various legal instruments pertaining to humanitarian intervention to give an appearance of compliance, while avoiding action to protect civilians. This chapter examines the literature of both the rationalist and constructivist perspectives of norms as well as the various understandings of humanitarian intervention, in an attempt to demonstrate the gaps in the literature, and the theoretical contribution of this thesis.

Rationalist and Constructivist Understandings of Norms

Although norms have always figured, to a certain extent, in the study of international politics, it was the constructivists who brought norms to the centre of the discipline in the 1990s.²⁵ Up until then, international relations scholars were more interested in phenomena that were more easily modeled, through methods such as ‘utility maximization’, the ‘prisoner’s dilemma’, and the ‘stag hunt’.²⁶ Robert Axelrod defined norms as existing, “in a given social setting to the extent that individuals usually act in a certain way and are often punished when seen not to be acting in this way.”²⁷ In contrast, Peter Katzenstein does not equate the existence of a norm with punishment for deviation. Instead, Katzenstein defines norms as, “collective expectations for the proper behaviour of actors within a given identity.”²⁸ Norms have also been quite prominent in regime literature. For instance, Stephen D. Krasner has argued that norms are part of what makes a regime, as changes in norms lead to changes in the regime. When norms are inconsistent, it weakens the regime.²⁹ While there is some debate about the precise definition of a norm, there is consensus around the fact that norms help define legitimate and illegitimate behaviour while defining responsibilities and obligations in rather general terms.³⁰

The major disagreement in the norms debate lies not so much in its definition, but in its effects. There is disagreement on how and why norms develop, how and why they

²⁵ Vaughn P. Shannon, (2000) “Norms Are What States Make of Them: The Political Psychology of Norm Violation,” *International Studies Quarterly*, Vol. 44, Issue 2, June, 293.

²⁶ Finnemore and Sikkink, “Norm Dynamics and Political Change,” 889.

²⁷ Robert Axelrod, (1986) “An Evolutionary Approach to Norms,” *The American Political Science Review*, Vol. 80, No. 4, December, 1097.

²⁸ Peter J. Katzenstein, (1996), *The Culture of National Security*, New York: Columbia University Press, 5.

²⁹ Stephen D. Krasner, (1983), in ed. Krasner, *International Regimes*, Ithaca and London: Cornell University Press, 2-5.

³⁰ Robert Keohane, (1984), *After Hegemony*, Princeton: Princeton University Press, 58.

change, whether and to what degree they shape behaviour, and what factors determines norm compliance. The literature is divided mainly into rationalists and constructivists. The rationalists (composed of realists and liberals) believe that states comply with norms when it is in their interests to do so, and cease to comply when it goes against their interests.³¹ The rationalist perspective tends to emphasize coercion, cost/benefit calculations, and material incentives.³² For realists, the anarchical and competitive nature of international society will always lead to a situation where state interests will trump norms when the two conflict. According to realists, norms have very little independent ability to influence state behaviour.³³ States will only comply when the costs of compliance are lower than the costs of non-compliance. Therefore, it is not the norm itself which determines state behaviour but the consequences of following that norm in any given situation. Classic realist, Hans J. Morgenthau gave great importance, and in fact advocated such behaviour in the form of what he called ‘prudence’ – the weighing of the consequences of alternative political actions.³⁴

However, while the realist focus on the costs and benefits of actions is able to explain non-compliance, they have difficulty in explaining situations where states comply with norms despite the associated costs. Some scholars have used aspects of rational choice theory to explain this discrepancy. Duncan Snidal and Oran Young are among those who have used rational choice theory to demonstrate that states follow not only short-term interests but also long-term interests. Therefore, it is possible that states may

³¹ Shannon, “Norms Are What States Make of Them,” 293.

³² Jeffrey T. Checkel, (2001) “Why Comply? Social Learning and European Identity Change,” *International Organization*, Vol. 55, No. 3, Summer, 553.

³³ Shannon, “Norms Are What States Make of Them,” 296.

³⁴ Hans J. Morgenthau, (1978), *Politics Among Nations*, 5th ed., rev. New York: Knopf.

obey international law in order to achieve long-term goals, even if this requires them to forego short-term interests.³⁵

Liberal institutionalists have also taken a position similar to many rational choice theorists. They begin, like realists, with the assumption that the international society is anarchical and that this leads states to behave according to national interest. Where they differ from realists is in their belief that norms and institutions can constrain state behaviour.³⁶ For liberal institutionalists, norms act to prevent states from pursuing short-term interests in an effort to attain long-term goals. Andrew Moravcsik and Anne-Marie Slaughter have both argued that it is the domestic structure which determines norm compliance. They both assert that liberal states are more likely to comply than illiberal states. It is the democratic norms and institutions instilled within liberal societies which lead them to place greater value on the rule of law.³⁷ Beth A. Simmons argues that it is not so much the domestic structure, but rather reputational concerns which determine compliance. She explains that states are more likely to comply when others in the region do so.³⁸

However, while liberal institutionalists and rational choice theorists are able to explain why states comply, they have greater difficulty in explaining non-compliance, despite the promotion of long-term interests. While realists view norms as lacking any causal force, liberal institutionalists view norms as having significant influence in certain

³⁵ Harold Hongju Koh, (1997), "Review Article: Why Do Nations Obey International Law?" *The Yale Law Journal*, Vol. 106, No. 8, June, 2632; Duncan Snidal, (1985), "Coordination Versus Prisoners' Dilemma: Implications for International Cooperation and Regimes," *The American Political Science Review*, Vol. 79, No. 4, December, 923; Kenneth W. Abbott and Duncan Snidal, (1998), "Why States Act through Formal International Organizations," *The Journal of Conflict Resolution*, Vol. 42, No. 1, February, 29.

³⁶ Shannon, "Norms Are What States Make of Them," 296; Keohane, *After Hegemony*; John J. Mearsheimer, (1995), "The False Promise of International Institutions," *International Security*, Vol. 19, No. 3, Winter, 18.

³⁷ Koh, "Why Do Nations Obey International Law?" 2633.

³⁸ Beth A. Simmons, (2000), "International Law and State Behaviour: Commitment and Compliance in International Monetary Affairs," *The American Political Science Review*, Vol. 94, No. 4, December, 832.

issue-areas. However, for liberal institutionalists, norms and institutions are still structures created by agents (states) to maximize utility by helping them to achieve their interests.³⁹ They also neglect the fact that sometimes the costs of foregoing short-term interests are greater than the costs of foregoing long-term interests. It may therefore be preferable at times to deviate from the norm.

Although realists and liberals differ in their explanations, they both operate according to, what James March and Johan Olsen call, the “logic of expected consequences.”⁴⁰ This rationalist perspective has been criticized by the reflectivist or constructivist perspective for its lack of attention to the shared values and interests promoted by norms. Realists and liberals also typically disagree on whether cooperation is possible due to considerations of absolute versus relative gains. Liberals believe cooperation is possible because states are concerned with absolute gains (a win-win situation); however realists disagree arguing that states are concerned not with absolute gains, but rather how much they gain relative to the other state, thus making cooperation difficult. Yet despite these differences, both operate under the assumption that states are the dominant actors in the international system, and they define security in “self-interested” terms.⁴¹ According to constructivists, rationalism fails to account for how international relations and states came to acquire their identity and interests. Rationalism treats interests as a given. It also excludes consideration of how specific identities of states, shapes their interests. It is increasingly difficult for rationalists to account for the

³⁹ Jeffrey T. Checkel, (1998), “Review Article: The Constructivist Turn in International Relations Theory,” *World Politics*, Vol. 50, January, 327.

⁴⁰ James March and Johan Olsen, (1998), “The Institutional Dynamics of International Political Orders,” *International Organization*, Vol. 52, Iss. 4, Autumn, 949.

⁴¹ Alexander Wendt, (1992), “Anarchy is what states make of it: the social construction of power politics,” *International Organization*, Vol. 46, Iss. 2, Spring, 392.

growing evidence that norms are shaping states' identities and behaviour.⁴² Not only is the rationalist perspective empirically challenged, by examples of humanitarian interventions or sanctions in the absence of material interests, the cost-benefit analysis which occurs is also underspecified. Rationalists have difficulty assessing *a priori*, whether and at what point the scales tip against calculations of interest, in favour of norms.⁴³

Constructivism follows what March and Olsen alternatively term, the "logic of appropriateness." Under the logic of appropriateness, actions are seen as rule-based.⁴⁴ It is concerned more with identity than with interest. While rationalists believe that norms are a reflection of fixed preferences of the most powerful states, constructivists believe that norms help to determine these preferences. Constructivists believe that state interests and preferences are socially constructed and that what is perceived as being in a state's interests is learned through shared norms and values.⁴⁵ Norms are therefore, a central part of the constructivist theory. Norms are not, as with the rationalist theories, an exogenous variable. Instead, norms have an independent impact on state behaviour by determining who the actors are and what rules states must follow.⁴⁶ Through shared principles and identities, states learn what is considered 'appropriate' behaviour. Non-compliance is therefore not a frequent occurrence, dependent on whether the norm conforms to state interests. Non-compliance is, in fact, the deviant. States comply not

⁴² John Gerard Ruggie, (1998), "What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge," *International Organization*, Vol. 52, Iss. 4, Autumn, 863-864.

⁴³ Shannon, "Norms Are What States Make of Them," 293 and 296.

⁴⁴ March and Olsen, "The Institutional Dynamics of International Political Orders," 951.

⁴⁵ Ann Florini, (1996), "The Evolution of International Norms," *International Studies Quarterly*, Vol. 40, No. 3, 365-367; Peter J. Katzenstein, Robert O. Keohane, and Stephen D. Krasner, (1998) "International Organization and the Study of World Politics," *International Organization*, Vol. 52, No. 4, Autumn, 648; Luke Glanville, (2006), "Norms, Interests, and Humanitarian Intervention," *Global Change, Peace & Security*, Vol. 18, No. 3, October, 154.

⁴⁶ Koh, "Why Do Nations Obey International Law," 2633-2634.

because the norm conforms to state interests, but because norms shapes state interests so that compliance comes to be valued.⁴⁷

However, while constructivists often criticize rationalists for focusing on one unit of analysis – the agent (states, decision makers), the same criticism can be made of constructivists. Constructivists have essentially reduced one unit of analysis – agents – to another – structures (norms).⁴⁸ According to Jeffrey Checkel, the result of this reduction is a failure to explore the relation between agency and norm adoption and evolution.⁴⁹

While Martha Finnemore and Kathryn Sikkink attempt to account for how norms arise and evolve over time through their ‘norm life cycle model,’⁵⁰ their analysis is still largely devoid of agency. Finnemore and Sikkink succeed in demonstrating the different stages of norms, but they fail to sufficiently demonstrate whether and at what point these stages necessarily result in any behavioural change. They also fail to sufficiently explain instances of non-compliance. Vaughn P. Shannon uses a political psychology approach to explain instances of non-compliance with the norm of non-intervention in the case of the US invasion of Panama. He argues that non-compliance occurs when states face a moral dilemma between personal desires and social constraints. States resolve this moral dilemma by interpreting norms and situations in such a way where it permits them to violate the norm.⁵¹ However, Shannon’s admitted weakness is that his study is limited to a single case and a single norm.⁵² Yet, his political psychology approach succeeds in explaining much of what the rationalist and constructivist perspectives fail to do.

⁴⁷ Ibid., 2634.

⁴⁸ Checkel, “Constructivist Turn in IR Theory,” 340.

⁴⁹ Ibid., 340.

⁵⁰ See Finnemore and Sikkink, “Norm Dynamics and Political Change.”

⁵¹ See Shannon, “Norms Are What States Make of Them.”

⁵² Ibid., 312.

Shannon's focus on interpretation manages to explain both when and why states fail to comply. However, Shannon neglects the fact that in interpreting norms, rules and situations, states are not justifying non-compliance, but rather faking compliance.

This thesis builds on much of Shannon's work on interpretation of norms but uses it to examine the norm of humanitarian intervention and, more specifically, to explain the concept of sham compliance – whereby states essentially fake norm compliance by interpreting norms and situations in such a way where they appear to be acting in accordance with the norm, when in reality doing very little of what the norm actually prescribes. The concept of sham compliance brings together both the rationalist perspective of cost-benefit analysis, as well as the constructivist focus on the impact of norms. However, sham compliance has received surprisingly scant attention, not only in the study of norms or humanitarian interventions, but of international relations more broadly. Some observers have acknowledged that humanitarian aid is often used as a substitute for political will or to hide political failure; however, their focus has been more on how to create the necessary political will.⁵³ The analysis has not been on how the ambiguity of the norms and the situation itself has lended itself to this kind of interpretation. Both Vaughn Shannon and Luke Glanville argue that norm violation is made socially acceptable through their interpretation.⁵⁴ However, they neglect the fact that, in many cases, states do in fact comply, yet this compliance is so weak with regards to the norm of humanitarian intervention that the intervention is often as bad if not worse

⁵³ See Flora MacDonald, (2001), "Why is Humanitarian Action Often a Substitute for a Lack of Political Will?" *International Migration Review*, Vol. 35, Iss. 1; Mark Duffield and Joe Stork, (1994), "Bosnia is the Classic Case of Using Humanitarian Aid as a Smokescreen to Hide Political Failure," *Middle East Report*, No. 187/188, Intervention and North-South Politics in the 90's March – June, 23.

⁵⁴ Shannon, "Norms Are What States Make of Them," 300; Glanville, "Norms, Interests and Humanitarian Intervention," 164.

than no intervention at all. The study of sham compliance is an area of the norms literature that is under-analyzed and requires greater attention.

The Humanitarian Intervention Debate

Humanitarian intervention is an issue which has stirred controversy among international legal scholars and scholars of international relations alike. The debate has unfolded on two fronts: theoretical and legal. The theoretical debate has taken place between rationalists and constructivists. The rationalists attribute the occurrence of humanitarian interventions to calculations of strategic interest, cost-benefit analyses, and a convergence of norms and interest.⁵⁵ However, they argue that when norms and interest conflict, state interests will always take precedence.⁵⁶ Rationalists are able to explain the selectivity with which intervention occurs. What they have difficulty explaining is why humanitarian interventions take place at all. If norms have so little to do with the decision-making process, then it becomes difficult to explain situations where there is seemingly little interest at stake. While rationalists can, for example, explain the US withdrawal from Somalia rather easily, it is far more difficult to explain why they intervened in the first place, without taking normative concerns into account. Explaining humanitarian interventions solely on the basis of considerations of material interests is insufficient in explaining their occurrence.⁵⁷

Constructivists are better able, through their emphasis on the causal impact of norms, to explain the occurrence of interventions. However, their focus on socially

⁵⁵ Glanville, "Norms, interests and humanitarian intervention," 162.

⁵⁶ Mohammed Ayoob, (2002), "Humanitarian Intervention and State Sovereignty," *The International Journal of Human Rights*, Vol. 6, Iss. 1, 85.

⁵⁷ Martha Finnemore, (2003), *The Purpose of Intervention: Changing Beliefs About the Use of Force*, Ithaca and London: Cornell University Press, 52.

constructed identities and norms neglects the important role of state interests. It is impossible to explain the selectivity with which interventions occur, without taking into account state interests, or a lack thereof. Constructivists have difficulty in explaining why robust interventions occurred in Bosnia and not Rwanda, in Kosovo and not Darfur. Martha Finnemore and Kathryn Sikkink note that arguments about whether state behaviour is norm-based or interest-based “misses the point that norm conformance can often be self-interested...”⁵⁸ Jepperson, Wendt and Katzenstein argue further that there is no necessary relationship between rationalism and constructivism and that calculations of self-interest and norms need not always be competing explanations for state behaviour.⁵⁹ Although it is clear that norms can become part of the cost-benefit calculations, it is not clear at what point, if ever, the norm of intervention trumps strategic interests when the two conflict. It is this aspect which neither theoretical perspective is sufficiently able to explain.

It is, moreover, unclear what specific norm-based or interest-based factors are considered when determining the costs and benefits of an intervention. Some scholars have attributed decisions to intervene to the media and public opinion.⁶⁰ Others have argued that interventions are unlikely to occur without the presence of strategic interests

⁵⁸ Finnemore and Sikkink, “Norm Dynamics and Political Change,” 912.

⁵⁹ Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, (1996), “Norms, Identity and Culture in National Security,” in Katzenstein, *The Culture of National Security*, New York: Columbia University Press, 68.

⁶⁰ See Robert I. Rotberg and Thomas G. Weiss, (1996), *From Massacres to Genocide: The Media, Public Policy, and Humanitarian Crises*, Washington D.C. and Cambridge, Massachusetts: The Brookings Institution and the World Peace Foundation; Jonathon Mermin, (1997), “Television News and American Intervention in Somalia: The Myth of a Media-Driven Foreign Policy,” *Political Science Quarterly*, Vol. 112, No. 3, Autumn; Jon Western, (2002), “Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia,” *International Security*, Vol. 26, No. 4, Spring, 114.

and that when they do occur, they are often half-hearted.⁶¹ However, they fail to explain why such a half-hearted intervention would occur in the first place. The probability of success and the length of the mission as well as domestic considerations are also more than likely to play a role in influencing the decision to intervene. However, what consists of interest or even, for that matter, what consists of a norm is not entirely clear. Public opinion, for example, can be either a cost or a benefit of intervention, and can be either an interest-based influencing factor, or a norm-based influencing factor. No example better demonstrates this duality than Somalia, where public opinion first helped influence intervention and then helped influence the subsequent withdrawal and President Clinton's Presidential Decision Directive 25 (PDD25) which stated that all future interventions must be based on considerations of US national interest.⁶²

As noted earlier, the debates surrounding the issue of humanitarian intervention have been not only theoretical but also legal. The legal debate falls between classicists and legal realists. Classicists believe that the original intention of the parties to a treaty can be ascertained primarily through textual analysis, and that this original intention must be respected until the treaty has expired or has been replaced.⁶³ The legal realist position, in contrast, looks to formal texts as only one among a large number of means for determining original intention. For legal realists, the legal status of humanitarian intervention depends on the attitude of the contemporary international community

⁶¹ Ayoob, "Humanitarian Intervention and State Sovereignty," 85-86; Michael Wesley, (2005), "Toward a realist ethics of intervention," *Ethics & International Affairs*, Vol. 19, Iss. 2, Spring, 58.

⁶² Allison Des Forges, (1998), *Leave None to Tell the Story: Genocide in Rwanda*, New York: Human Rights Watch, 625.

⁶³ J.L. Holzgrefe, (2003), "The humanitarian intervention debate," in ed. J.L Holzgrefe and Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press, 38.

towards it.⁶⁴ Legal realists therefore, also look at custom to determine legitimacy. There are three main legal texts which are used to determine the legality of humanitarian intervention. These are the 1948 Genocide Convention, the Responsibility to Protect doctrine, and the UN Charter.

While the Genocide Convention is legally binding, it does not specify what taking “such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III,” entails.⁶⁵ Moreover, few examples of mass killings meet the requirements of Article II of the Convention. Article II defines genocide as, “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”⁶⁶ Although the Convention addresses racial and religious groups, it ignores political and cultural groups.⁶⁷ Political groups were excluded due to the fact that the Russians wanted the conception of genocide to reflect Nazi crimes only.⁶⁸ Other issues include the inclusion of ‘part’ of a group. This definition has often been viewed as being too broad and includes a huge range of cases. The US had, in fact, included an understanding that the term ‘intent to destroy in whole or in part’ means the specific intent to destroy “in whole

⁶⁴ Ibid., 38-39.

⁶⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, Article VIII.

⁶⁶ Ibid., Article II.

⁶⁷ Stuart D. Stein, “Conceptions and terms: templates for the analysis of holocausts and genocides,” *Journal of Genocide Research*, Vol. 7, Iss. 2, 2005, 182-183; Morton and Singh, “The international legal regime on genocide,” 56; Matthew Lippman, “A road map to the 1948 Convention on the Prevention and Punishment of the Crime Genocide,” *Journal of Genocide Research*, Vol. 4, Iss. 2, 2002, 188; David Moshman, “Conceptual constraints on thinking about genocide,” *Journal of Genocide Research*, Vol. 3, Iss. 3, 2001, 437; Makino, “Final solution, crimes against mankind: on the genesis and criticisms of the concept of genocide,” 56.

⁶⁸ Makino, “Final solution, crimes against mankind: on the genesis and criticisms of the concept of genocide,” 56.

or *substantial part*” (emphasis added).⁶⁹ According to Scott Strauss, the broad nature of the word ‘part’ has prevented enforceability.⁷⁰ This often leads to discussions of a numerical threshold. How many people have to die before ‘part’ of a group has been killed? Is it only a few individuals or as in the American understanding a more ‘substantial’ number?⁷¹ The Convention has also been criticised for its focus on killing as a means of genocide. Starvation, forced religious conversion, population transfers and other means may also be used.⁷² Martha Finnemore points to the Genocide Convention as an example of how the norm of humanitarian intervention does more than just ‘allow’ intervention, it obliges it.⁷³ However, as will be demonstrated in Chapter 3, the fact that the Genocide Convention has been used to fake compliance places into doubt whether the norm does indeed do more than allow intervention.

R2P, while specifically addressing humanitarian interventions, is a doctrine which is not legally binding. R2P merely serves to clarify the criteria permitting intervention. The criteria are just cause, right intention, last resort, right authority, proportional means, and reasonable prospects. Just cause determines the grounds under which humanitarian interventions may occur. The ICISS identified genocide and large-scale ethnic cleansing, actual or imminent. Right intention prohibits intervention for the sake of regime change or other national interests. The intervention must be solely based on humanitarian motives. The last resort criterion determines that all non-military means of conflict

⁶⁹ United Nations Treaty Collection [As of 9 October 2001] 1. *Convention on the Prevention and Punishment of the Crime of Genocide, New York 9 December 1948*, “Declarations and Reservations,” <http://www.unhchr.ch/html/menu3/b/treaty1gen.htm> (July 31, 2007).

⁷⁰ Scott Strauss, (2001). “Contested meanings and conflicting imperatives: a conceptual analysis of genocide,” *Journal of Genocide Research*, Vol. 3, Iss. 3, 362.

⁷¹ *Ibid.*, 362 and 367.

⁷² *Ibid.*, 364; Lippman, “A road map to the 1948 Convention on the Prevention and Punishment of the Crime Genocide,” 189.

⁷³ Finnemore, *The Purpose of Intervention*, 79.

prevention must be exhausted before relying on the use of military force. The right authority criterion clarifies that while the UN Security Council is the primary vehicle for authorising intervention, it may also, in the case of UNSC paralysis, be authorised by regional organisations such as NATO, the European Union, or the African Union.

Proportional means is the idea that the scale, duration, and planned military intervention are the minimum of what is necessary to secure the defined objective. This assures the country in which the intervention is taking place that the intervention is merely temporary and that sovereignty will be returned in the shortest time possible. The final criterion; reasonable prospects, is perhaps the most important. It is the idea that an intervention will only take place if the consequences of such action will not be worse than doing nothing.⁷⁴ However, like all legal conventions, R2P is subject to interpretation. There is nothing in R2P which prevents states from arguing that the just cause threshold has not been crossed or that the responsibility to protect lies with the host state and not the international community.⁷⁵ It is stated within the R2P report that it is a pro-sovereignty doctrine, and that the responsibility to protect lies first with the state and then with the international community.⁷⁶

Given that R2P is not legally binding, and that the Genocide Convention does not specify what action is necessary to prevent genocide, the UN Charter becomes the most legally binding and most authoritative source regarding the use of force. However, nowhere in the Charter are the words 'humanitarian intervention' ever mentioned. The

⁷⁴ Matt Deutscher, "The Responsibility to Protect," *Medicine, Conflict and Survival*, vol.21, no.1, Jan-Mar 2005, 30-31.

⁷⁵ Alex J. Bellamy, (2006), "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," *Ethics & International Affairs*, Vol. 20, Iss. 2, 148.

⁷⁶ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty. (Ottawa: International Development Research Centre, 2001),13.

Charter is essentially non-interventionist.⁷⁷ Article 2(4) declares that states must, “refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the purpose of the United Nations,” and Article 2(7) prohibits states from interfering in the domestic affairs of any state.⁷⁸ However, while the general meaning of Article 2(4) is clear, there is some debate over whether the phrase “or in any other manner inconsistent with the purpose of the United Nations,” qualifies or supplements the prohibition on the use of force. Legal realists argue that it is qualified, that it permits humanitarian interventions when the Security Council fails to reach one of its central purposes – the protection of human rights. However, classicists insist that it is supplementary – that the use of force is banned against the territorial integrity and political independence *as well as* any other manner inconsistent with the purpose of the UN Charter.⁷⁹ Legal realists also contend that intervention is legal on the basis that, according to them, Article 2(4) only forbids the use of force when directed against territorial integrity or political independence. Humanitarian intervention does not violate the territorial integrity as it does not result in territorial conquest. However, classicists contest this, arguing that it is a stretch of the imagination to find humanitarian intervention not in violation of territorial integrity.⁸⁰ Legal realists also attempt to legitimize intervention through their interpretation of Article 39 which states that the Security Council may authorize the use of force in response to any “threat to the peace, breach of the peace or act of

⁷⁷ Cristina G. Badescu, (2007), “Authorizing Humanitarian Intervention: Hard Choices in Saving Strangers,” *Canadian Journal of Political Science*, Vol. 40, Iss.1, March, 58.

⁷⁸ *The Charter of the United Nations*, Articles 2(4) and 2(7); Holzgrefe, “The humanitarian intervention debate,” 37.

⁷⁹ Holzgrefe, “The humanitarian intervention debate,” 39-40; Alex de Waal and Rakiya Omaar, (1994), “Can Military Intervention be ‘Humanitarian?’” *Middle East Report*, No. 187/188, Mar.-Jun., 4.

⁸⁰ Holzgrefe, “The humanitarian intervention debate,” 37-38.

aggression.”⁸¹ They contend that the use of the word “the peace” rather than “international peace” signifies that the Charter permits a violation of sovereignty to prevent massive human rights violations.⁸²

When the international community does undertake a humanitarian intervention, it usually does so under one of the two exceptions to Article 2(4) of the Charter - Article 51 which permits the use of force in self-defence, or Chapter VII which permits states to respond to threats to international peace and security.⁸³ However, legal realists argue that the basis for intervention does not lie solely with legal texts, but also with customary international law.⁸⁴ They contend that state practice in the nineteenth and early twentieth centuries established a right of humanitarian intervention. This is highly contested by classicists who argue that a handful of pre-Charter humanitarian interventions are insufficient in establishing a customary right of humanitarian intervention.⁸⁵ Classicists further maintain that such a right was not even invoked in some of the worst tragedies of the pre-Charter era, including the massacre of 1 million Armenians by the Turks (1914-19); the forced starvation of 4 million Ukrainians by the Soviets (1930s); the massacre of hundreds of thousands of Chinese by the Japanese (1931-45); and the extermination of 6

⁸¹ Ibid., 40; *The Charter of the United Nations*, Article 39.

⁸² Holzgrefe, “The humanitarian intervention debate,” 40.

⁸³ *The Charter of the United Nations*. Article 51 and Chapter. VII.

⁸⁴ Holzgrefe, “The humanitarian intervention debate,” 44-45; International Commission on Intervention and State Sovereignty, (2001b), *The Responsibility to Protect*. Supplementary Volume. Ottawa: International Development Research Council, 156; Antonio Cassese, (1999), “Ex iniuria ius oritur: *Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*,” *European Journal of International Law*, Vol. 10, Iss. 1, 26; Jean-Pierre L. Fonteyne, (1974), “The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter,” *California Western International Law Journal*, Vol. 4, 232.

⁸⁵ Pre-Charter humanitarian interventions include, the intervention of Britain, France and Russia in Greece from 1827-1830; France in Syria 1860-61; Russia in Bosnia-Herzegovina and Bulgaria in 1877-78; United States in Cuba in 1898; and Greece, Bulgaria, and Serbia in Macedonia in 1903-08 and 1912-13. For further information see: Holzgrefe, “The humanitarian intervention debate,” 45; Fonteyne, “The Customary International Law Doctrine of Humanitarian Intervention,” 207-213; Finnemore, *The Purpose of Intervention*, 58-62; de Waal and Omaar, “Can Military Intervention Be ‘Humanitarian’?”, 4.

million Jews by the Nazis (1939-45).⁸⁶ Moreover, when interventions were undertaken after the drafting of the Charter, by India, Tanzania, and Vietnam in East Pakistan, Uganda and Cambodia respectively, humanitarian justifications were not claimed, despite clear humanitarian outcomes.⁸⁷ Critics of humanitarian intervention argue that the doctrine of humanitarian intervention in customary law was so abused that it had become worthless.⁸⁸ Human rights abuses were used as a pretext to intervene for self-interested purposes, and were ignored when intervention did not suit their interests.

When the international community does intervene, it is often under Chapter VI, or even worse, an ill-conceived mix of Chapter VI and Chapter VII. While Chapter VII authorizes the use of force to respond to threats to international peace, Chapter VI authorizes the peaceful settlement of disputes. Chapter VI is most often associated with peacekeeping – a concept developed by Canadian Lester B. Pearson to respond to inter-state conflict by positioning lightly-armed neutral troops along the border of two states with the consent of the host states. Peacekeeping is nowhere mentioned in Chapter VI or anywhere else in the Charter. Due to both the military and consensual nature of peacekeeping, it has often been referred to as Chapter VI and a half.⁸⁹ However, while traditional peacekeeping has been relatively successful in inter-state conflicts, it has been more difficult in intra-state conflicts, where there has often been no functioning

⁸⁶ Holzgrefe, “The humanitarian intervention debate,” 45.

⁸⁷ Finnemore, *The Purpose of Intervention*, 73; Ayoob, “Humanitarian Intervention and State Sovereignty,” 86; Richard Caplan, (2000), “Humanitarian Intervention: Which Way Forward?” *Ethics & International Affairs*, Vol. 14, Iss. 1, 26.

⁸⁸ De Waal and Omaar, “Can Military Intervention be ‘Humanitarian?’” 4.

⁸⁹ Terrence Lyons and Ahmed I. Samatar, (1995), *Somalia, State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*, Washington, D.C.: The Brookings Institution, 4; Edward Mortimer, (1998), “Under What Circumstances Should the UN Intervene Militarily in a ‘Domestic’ Crisis?” in ed. Olara Otunnu and Michael W. Doyle, *Peacemaking and Peacekeeping for the New Century*, Lanham, New York, Boulder, Oxford: Rowman & Littlefield Publishers, Inc., 123; Allen G. Sens, (2004), “From Peace-Keeping to Peace-Building: The United Nations and the Challenge of Intrastate War,” in eds. Richard M. Price and Mark W. Zacher, *The United Nations and Global Security*, New York: Palgrave, 142-143.

government from which to obtain consent, where there have been no borders to monitor and where lightly armed troops have not been enough to protect peacekeepers, much less those they were sent to protect.⁹⁰ The confusion of using a Chapter VII mandate and operating under Chapter VI principles and guidelines has often led to disastrous consequences. In Bosnia where such a mix of a Chapter VII mandate and Chapter VI principles were attempted, peacekeepers feared using force to protect civilians because it would go against the principles of impartiality and neutrality. Peacekeepers were instructed to use force only in self-defence, in accordance with Chapter VI principles; therefore, they could defend themselves against an attack from the Serbs, but not the Bosnian Muslims they were there to protect.⁹¹ This created a false sense of hope as civilians felt they would be safe in a UN protected area.⁹² In reality, the UN safe areas were among the least safe areas of Bosnia.⁹³

Concerns of legality have also been extended to whether interventions occurring unilaterally or by regional organizations require UNSC authorization. The issue was raised in particular after NATO intervened without UNSC authorization in Kosovo in 1999. Most have concluded that although it was technically an illegal intervention, it was justified under the circumstances.⁹⁴ Debates have raged as to whether this represents a new precedent or whether this should be considered an exceptional case.

The questionable legality of humanitarian intervention combined with concerns of when sovereignty can and should be violated, whether consent is necessary, and how

⁹⁰ Sens, "From Peace-Keeping to Peace-Building," 143.

⁹¹ Jocelyn Coulon, (1998), *Soldiers of Diplomacy: The United Nations, Peacekeeping, and the New World Order*, trans. By Phyllis Aronoff and Howard Scott, Toronto: University of Toronto Press, 125.

⁹² Edward N. Luttwak, (1999), "Give War a Chance," *Foreign Affairs*, July/August, 38.

⁹³ Thomas G. Weiss, David P. Forsythe, and Roger A. Coate, (2001), *The United Nations and Changing World Politics*, third ed., Boulder, Oxford: Westview Press, 89.

⁹⁴ Allen Buchanan, "Reforming the international law of humanitarian intervention," in eds. Holzgrefe and Keohane, *Humanitarian Intervention*, 131-132.

much force is permitted, has led to confusion as to the circumstances under which intervention should be undertaken. This can be demonstrated by the inaction in Rwanda in 1994, and what many consider to be illegal action by NATO's unauthorized intervention in Kosovo in 1999. Although the UN Charter permits regional organizations to intervene, through Chapter VIII, such action must be authorized by the UNSC. The Responsibility to Protect doctrine was meant to address the confusion as to when and by whom intervention should be undertaken.⁹⁵ As noted earlier, R2P states that right authority lies with the UNSC but in the case of paralysis, this should not preclude intervention by a regional organization.⁹⁶ Some activists and academics have argued that R2P has the potential to shame states into action; however, Alex Bellamy argues that this view overlooks the problem of indeterminacy and is based on unproven assumptions that external pressure can persuade states to act in a humanitarian crisis.⁹⁷ In fact, all three legal instruments permitting intervention have been sufficiently ambiguous in their codification as to allow interpretation, and thus sham compliance. Whether greater codification is needed to enforce compliance with the intervention norm is a matter of great debate. Jane Stromseth argues that codification would not only be difficult due to disagreement among states, it would also be counterproductive, as states who might otherwise support intervention on a case-by-case basis, would be against any formal codification.⁹⁸ Furthermore, F. Honig argues that codification should not be attempted of subjects which are likely to provoke dissention.⁹⁹

⁹⁵ *The Responsibility to Protect*, 2.

⁹⁶ *Ibid.*, 53-54.

⁹⁷ Bellamy, "Whither the Responsibility to Protect," 149-150.

⁹⁸ Jane Stromseth, "Rethinking humanitarian intervention: the case for incremental change," ed. Holzgrefe and Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, 259-260.

⁹⁹ F. Honig, (1960), "Progress in the Codification of International Law," *International Affairs*, Vol. 36, No. 1, January, 63

Proponents of greater codification argue that it would help safeguard the rights of civilians. The current Charter, they argue fails to meet the needs of civilians due to the non-intervention norm enshrined within the Charter. Humanitarian intervention should therefore be institutionalized within a new security framework.¹⁰⁰ While it may not eliminate abuse entirely, proponents argue that it might help limit the scope for abuse through shared norms.¹⁰¹ Opponents of greater intervention argue on the contrary that it would be a pretext for abuse.¹⁰² Such a framework would be dominated by western states, which could then undermine the sovereignty of non-western states.¹⁰³

Mohammed Ayoob argues that institutionalizing a right of intervention or a 'responsibility to protect' would lead to the creation of 'standards of civilization,' where only those countries that have reached a certain standard of civilized behaviour have the right to attain sovereign status.¹⁰⁴ Ayoob also fears that a codified right of humanitarian intervention has the potential to be used as a tool by strong states.¹⁰⁵ Neil MacFarlane, Carolin Theilking and Thomas G. Weiss have also noted that it is the most powerful states which decide whose human rights justify departure from the principle of non-intervention.¹⁰⁶ Indeed, the current record of humanitarian intervention demonstrates the selectivity with which the norm has been applied, with interventions in Somalia and Kosovo, but not in Rwanda or Darfur. Ayoob has argued strongly that it is impossible to

¹⁰⁰ David Chandler, (2004), "The Responsibility to Protect? Imposing the 'Liberal Peace'" *International Peacekeeping*, Vol. 11, Iss. 1, 59-60.

¹⁰¹ Caplan, "Humanitarian Intervention: Which Way Forward," 32.

¹⁰² *Ibid.*, 32.

¹⁰³ *Ibid.*, 60.

¹⁰⁴ Ayoob, "Humanitarian Intervention and State Sovereignty," 85.

¹⁰⁵ *Ibid.*, 92.

¹⁰⁶ Neil MacFarlane, Carolin Theilking, Thomas G. Weiss, (2004), "The Responsibility to Protect: is anyone interested in humanitarian intervention?" *Third World Quarterly*, Vol. 25, No. 25, July, 979.

discern whether an intervention is being undertaken for altruistic reasons or reasons of self-interest.¹⁰⁷

The controversy provoked by R2P further demonstrates the difficulties in codification. On the one hand, the non-aligned have rejected the concept, fearing the potential for abuse; on the other hand, the US rejects it on the grounds that it cannot agree to the use of military forces where there are no national interests and to criteria that would constrain its right to decide when and where to intervene. Russia and China meanwhile refuse to consent to a concept which permits the use of force without UNSC approval.¹⁰⁸ While there is little disputing the great moral strength of efforts at creating a workable doctrine of humanitarian intervention through R2P, and potentially greater codification in the future, the controversy makes it difficult to attain agreement. The result is often a lack of clarity. This can be seen not only in R2P but also certain aspects of the Genocide Convention and the UN Charter. While several scholars, including Martha Finnemore and Kathryn Sikkink, have noted that norm clarity makes norm compliance more likely,¹⁰⁹ it is unclear whether further codification and greater clarity is truly desirable in the case of humanitarian intervention, and to what extent it would impact state behaviour. Given the difficulty of distinguishing between genocide, ethnic cleansing, large-scale killing, and civil wars, it may be difficult to prevent interpretation according to state interests, even with further codification. Further codification may also have the effect of restricting the conditions under which intervention is permitted, thereby

¹⁰⁷ Ayooob, "Humanitarian Intervention and State Sovereignty," 85.

¹⁰⁸ Bellamy, "Whither the Responsibility to Protect," 151-152.

¹⁰⁹ Finnemore and Sikkink, "Norm Dynamics and Political Change," 906-907; Abram Chayes and Antonia Handler Chayes, (1993), "On Compliance," *International Organization*, Vol. 47, No. 2, Spring, 188; Jeffrey W. Legro, (1997), "Which Norms Matter? Revisiting the "Failure" of Internationalism," *International Organization*, Vol. 51, No. 1, Winter, 34.

preventing those who would like to intervene for humanitarian purposes from doing so. However, what is clear is that without greater codification, there remains great potential for sham compliance – an area of the humanitarian intervention debate which has received very little attention. This thesis attempts to bridge this gap and advance the debate regarding humanitarian intervention as well as the codification of norms by examining, in six cases of humanitarian intervention, the various interests which influence state decisions to intervene or to fake compliance, and how the ambiguity of legal conventions makes sham compliance possible.

Conclusion

The issue of compliance with the norm of humanitarian intervention is highly controversial. The implications are far-reaching with consequences affecting individuals, state practice, and the codification of law. Although there exists a rather rich literature advanced by scholars of international law and international relations alike, gaps in the literature have been identified. Neither rationalists nor constructivists are sufficiently able to explain why states comply with norms. Rationalists have difficulty in explaining compliance when it goes against state interests, and constructivists have difficulty explaining non-compliance. Although the norm life cycle model is able to explain how norms evolve, it neglects the issue of behavioural change. Both theoretical perspectives as well as the norm life cycle model neglect the potential for states to fake compliance. This thesis attempts to bridge these gaps by addressing the specific issue of sham compliance, which has received very little attention in the norms literature. Many scholars have mentioned it in passing when discussing intervention; however, the

literature has been largely devoid of any serious analysis regarding whether, how and why states engage in sham compliance. Without taking into account the potential for sham compliance, the norm life cycle model remains incomplete, as it becomes unclear at what point, if ever, norms lead to any behavioural change, and if norms are truly anything more than laws which lead to compliance only when state interests are aligned with the goals of the norm. In examining the desirability and the feasibility of sham compliance in six cases of humanitarian intervention, this thesis aims to bridge the gap in the norms literature by determining at what point behavioural change is likely to occur, as well as the extent to which norms can influence state decisions, and whether further codification can ultimately lead to greater compliance. The results may lead to a modified norm life cycle which can account for the potential for sham compliance.

Chapter 2

Sham Compliance: A desirable option?

Introduction

Chapter 2 examines the desirability of sham compliance in six different cases of intervention, in chronological order: Somalia; Bosnia pre-Srebrenica; Rwanda; Bosnia post-Srebrenica; Kosovo; and Darfur. Three of the cases (Bosnia pre-Srebrenica, Rwanda, and Darfur) are examples of weak intervention, and the other three (Somalia, Bosnia post-Srebrenica, and Kosovo) are examples of robust intervention. Each case study begins with the background of the conflict, followed by an analysis of the interests and motives of the intervening states (usually the P5 of the UNSC or NATO). The chapter seeks to demonstrate that in cases where there are strategic interests that compete with the humanitarian norm, intervention has been weak, thereby making sham compliance desirable. However, in cases of more robust intervention, there have often been interests that were aligned with the humanitarian norm; although, even in such cases, the desire to intervene was based on the perception of an easy mission with minimal casualties. The combination of interests aligned with the humanitarian norm and/or low costs of intervention made compliance desirable and sham compliance unnecessary. This brings to light an element of the norm life cycle that Finnemore and Sikkink do not consider: the fact that states only comply with the humanitarian norm in cases where there are no competing interests *and* when the mission is relatively cost-free in terms of casualties and difficulty of the mission. When these conditions are not fulfilled, states look for ways to fake compliance.

Somalia

Background of the Conflict

The crisis in Somalia began in 1991 after the collapse of the government forced the country's leader Mohammed Siad Barre to flee, thus leading the country down a path of anarchy and civil war.¹¹⁰ Barre ruled by manipulating the various different clans and sub-clans in Somalia as well as through terror and repression.¹¹¹ This manipulation eventually backfired, culminating in an uprising by the Issk clan which then spread throughout the country, forcing Barre to flee. However, the forces which collaborated in the ousting of Barre, were now unable to cooperate.¹¹² The country thus descended into civil war. The civil war in turn, led to food shortages which were compounded by heavy droughts. In January 1992, UN Security Council Resolution 733 called for a cease-fire to allow for the distribution of food aid.¹¹³ Just before the US Republican Convention in August of that year, President Bush announced an airlift of emergency food. The announcement was well-timed, as it came shortly after Senator Nancy Kassebaum's visit to Somalia and her subsequent calls for US action in the country. The announcement was an attempt to stem the criticism from Presidential Candidate Bill Clinton of the Bush administration's inaction in Somalia.¹¹⁴ Months later, just before Thanksgiving, the Bush

¹¹⁰ Patrick Gilkes, (1993), "From Peacekeeping to Peace Enforcement: The Somalia Precedent," *Middle East Report*, November-December, 21; John L. Hirsch, and Robert B. Oakley, (1995), *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping*, Washington: Institute of Peace Press, 13; Nicholas J. Wheeler, (2002), *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford University Press, 174.

¹¹¹ Wheeler, *Saving Strangers*, 174; ; Terrence Lyons and Ahmed I. Samatar, (1995), *Somalia: State Collapse, Multilateral Intervention and Strategies for Political Reconstruction*, Washington, D.C.: The Brookings Institute, 14-15.

¹¹² Wheeler, *Saving Strangers*, 174.

¹¹³ Gilkes, "From Peacekeeping to Peace Enforcement," 21; Hirsch and Oakley, *Somalia and Operation Restore Hope*, 20; Wheeler, *Saving Strangers*, 175.

¹¹⁴ Gilkes, (1993), "From Peacekeeping to Peace Enforcement: The Somalia Precedent," *Middle East Report*, November-December, 21-22.

administration announced the decision for a military intervention to facilitate food distribution by preventing banditry and theft of aid supplies. Although this decision came too late to influence US election results as Clinton had already won the elections, it did fit with Bush's 'New World Order' which encouraged US intervention.¹¹⁵ This military intervention was precedent-setting in several respects. For the first time, a UN authorized mission – Unified Task Force (UNITAF) – was not under UN control but rather US control.¹¹⁶ This was one of the conditions set by the Americans before announcing a decision to intervene. The US was given complete freedom of action in the mission. UNITAF was also precedent-setting in its mandate. With Resolution 837, peacekeeping became peace enforcement under Chapter VII.¹¹⁷ It was the first time that a humanitarian crisis was designated as a threat to international peace and security, thus justifying enforcement measures.¹¹⁸ Also for the first time, UN-mandated forces intervened in a country without consent of the host state, although, this was due more to the fact that there was no government in Somalia.¹¹⁹ The state had effectively collapsed; attaining consent was, therefore, technically impossible.

While the mission was initially a success, it eventually went beyond the original mandate of providing security for food aid, and instead revolved around the pursuance of warlords – General Muhammad Farah Aideed, in particular. General Aideed's forces had

¹¹⁵ Gilkes, (1993), "From Peacekeeping to Peace Enforcement: The Somalia Precedent," *Middle East Report*, November-December, 21-22.

¹¹⁶ Ibid., 22; Hirsch and Oakley, *Somalia and Operation Restore Hope*, 45. According to Adam Roberts, (1993), "Humanitarian War: Military Intervention and Human Rights," *International Affairs*, Vol. 69, No. 3, July, 441; it was the third time in UN history that military action taken in an acute emergency was delegated to the US.

¹¹⁷ Gilkes, "From Peacekeeping to Peace Enforcement," 22.

¹¹⁸ Ioan Lewis and James Mayall, (1996), "Somalia" in ed. James Mayall, *The New Interventionism 1991-1994: United Nations Experience in Cambodia, former Yugoslavia and Somalia*, Cambridge: Cambridge University Press, 94.

¹¹⁹ Ibid., 94; Roberts, "Humanitarian War," 440; Robert Weil, (1993), "Somalia in Perspective: When the Saints Come Marching In," *Review of African Political Economy*, No. 57, The Politics of Reconstruction: South Africa, Mozambique & the Horn, July, 103.

killed 24 Pakistani peacekeepers. In retaliation, Pakistani troops killed 14-20 Somali civilians and US gunships shelled Mogadishu. Shortly thereafter, the US posted wanted posters of General Aideed all over the capital and dropped leaflets from helicopters telling people that the fight was not against them but against Aideed.¹²⁰ Pursuing this objective had disastrous consequences. Aideed's forces shot down a US helicopter, killing 18 American rangers, and dragged the mangled body of a dead US Marine through the streets of Mogadishu. This bloody image showed up on the television screens of thousands of American viewers in the US.¹²¹ As a result, an American public, which had been largely in favour of intervention in Somalia, was now outraged by the images and clamoured for withdrawal. Newly elected President Bill Clinton subsequently announced the withdrawal of US forces from Somalia, and exchanged America's 'assertive multilateralism' for Presidential Decision Directive 25 (PDD25), which stated that no interventions would be undertaken by the US unless it was under US command, and US strategic interests were at stake.¹²² The US withdrawal in March 1994 was followed by an attempt by the UN to takeover where the failed US mission had left off. Resolution 897 scaled back the United Nations Operation in Somalia's (UNOSOM) mandate from peace enforcement to peacekeeping. However, no real progress was made towards disarmament or the division of power in an interim Somali administration. Inter-clan violence increased once more, and the UN announced the end of the mission in September 1994.¹²³

¹²⁰ Waltraud Queiser Morales, (1994), "US intervention and the New World Order: lessons from Cold War and post-Cold War cases," *Third World Quarterly*, Vol. 15, No. 1, 89.

¹²¹ *Ibid.*, 89; Wheeler, *Saving Strangers*, 198; Lewis and Mayall, "Somalia," 117.

¹²² *Ibid.*, 89.

¹²³ Lewis and Mayall, "Somalia," 119-120.

Desirability of Sham Compliance

Although both the UN and the US played a role in the intervention in Somalia, this analysis will focus mainly on the US intervention, as it was this intervention which was more robust and which had important implications for subsequent peacekeeping missions. The US intervention in Somalia was not only a precedent-setting case, but it has also been viewed by some as one of the only cases of intervention with truly humanitarian motives.¹²⁴ Moreover, it demonstrates a discrepancy between expected and actual results, both of which were important factors in the decisions to intervene and to withdraw. Martha Finnemore has touted Somalia as a case which realists are unable to explain, as it is a case which is largely devoid of strategic interests.¹²⁵ However, Michael Desch has responded that realists do not have difficulty in explaining humanitarian actions when there are no interests at stake. What they have difficulty explaining is interventions which would compromise state interests.¹²⁶ Given the US withdrawal following the images of dead US marines being dragged through the streets, this would seem to be an accurate assessment.

In the case of Somalia, intervention would have been seen as desirable by the Bush administration for several reasons. First of all, it was seen as a relatively quick and easy mission.¹²⁷ Indeed, the US was already discussing handing the mission over to the UN before it had even begun.¹²⁸ It was meant to be an easy mission to stabilize the situation, hand over to the UN, and withdraw. There would be limited casualties, and a

¹²⁴ Weil, "Somalia in Perspective," 103.

¹²⁵ Martha Finnemore, (2003), *The Purpose of Intervention*, Ithaca and London: Cornell University Press, 55-56; quoted in Wheeler, *Saving Strangers*, 201-202.

¹²⁶ Michael Desch, (1998), "Culture Clash: Assessing the importance of ideas in Security Studies," *International Security*, Vol. 23, No. 1. 144; quoted in Wheeler, *Saving Strangers*, 201-202.

¹²⁷ Roberts, "Humanitarian War," 441; Wheeler, *Saving Strangers*, 180.

¹²⁸ Roberts, "Humanitarian War," 441.

limited timeframe. Bush was determined that there should be a UN takeover. Without such assurance in the form of Resolution 794, the US would not have launched Operation Restore Hope.¹²⁹ Secondly, President Bush was ending his first term in office and had lost the elections. The Clinton administration had already expressed a desire to send troops to Somalia. It was therefore a way of deflecting Clinton's criticism of Bush's policy.¹³⁰ It was also complementary to Bush's 'New World Order' in which intervention can and should be more frequent.¹³¹ Moreover, the intervention was expected to be a foreign policy success and would have left a more positive legacy for President Bush as he ended his term in office. Thirdly, the intervention had great moral force, and had overwhelming public support. Fourth, it was viewed by the Bush administration as a much easier alternative to the crisis boiling over in the Balkans. President Bush did not want to send troops to the Balkans where the situation was far more complex. The conflict in the Balkans was perceived as an insoluble conflict that was due to ancient ethnic hatreds. The US felt that any American engagement in the Balkans would be long and drawn-out, entailing an unacceptable number of American casualties. Conversely, Somalia was viewed as an easy mission where American troops would merely facilitate the provision of aid. The US was already under pressure from the international community for not sending troops to Bosnia.¹³² UN Secretary-General Boutros Boutros-Ghali had himself lashed out at the international community in July 1992 for its preoccupation with the 'rich man's war' in Bosnia at the expense of

¹²⁹ Wheeler, *Saving Strangers*, 181 and 201-203.

¹³⁰ Gilkes, "From Peacekeeping to Peace Enforcement," 22.

¹³¹ Gilkes, "From Peacekeeping to Peace Enforcement," 22; Wheeler, *Saving Strangers*, 181.

¹³² Morales, "US intervention and the New World Order," 90; Wheeler, *Saving Strangers*, 181; David D. Laitin, (2004), "Somalia: Intervention in Internal Conflict," in ed. William J. Lahneman, *Military Intervention: Cases in Context for the Twenty-First Century*, Lanham: Rowman and Littlefield Publishers, Inc., 39.

thousands of starving Somalis in Africa.¹³³ The intervention was also a way of muting criticism from Muslim nations and the Third World that the US was refusing to intervene in Bosnia due to the victims' Muslim faith.¹³⁴ Somalia was, therefore, a way of appeasing the critics without significantly compromising state interests. Fifth, although no case was ever publicly made that strategic interests were at stake in Somalia, this is not entirely accurate. It is not often discussed by the US; however, there was a favourable potential of natural oil deposits in the Ethiopian Ogaden and northern Somalia, which made Somalia a strategic location for the US, given its reliance on Middle Eastern oil resources.¹³⁵ The Horn of Africa was also an important strategic point for the Suez Canal and Red Sea with an access point to the Gulf of Aden, Indian Ocean and Persian Gulf. Furthermore, there was the potential threat of radical and anti-Western Islamic fundamentalist movements in nearby Sudan, Egypt, and Saudi Arabia.¹³⁶ In fact, the main Islamist proponent in Somalia, al-Itahad al-Islami had links to Sudan – a country that was on the US list of states sponsoring terrorism. The US feared that this influence would be spread into Kenya where there has been considerable growth of Islam, and Ethiopia where the Islamic Unity Party is known to have close links with al-Itahad and Sudan's Hassan Turabi.¹³⁷ Moreover, Somalia can be viewed as a test-case for democracy in the region, with important implications for the entire region.¹³⁸ While the intervention was justified in humanitarian terms, this does not mean that no strategic interests existed. It may have been the first time, but it would not be the last time that a

¹³³ Morales, "US Intervention and the New World Order," 88; Lyons and Samatar, *Somalia*, 32.

¹³⁴ Hirsch and Oakley, *Somalia and Operation Restore Hope*, 42; Power, "A Problem from Hell", 293.

¹³⁵ Morales, "US intervention and the New World Order," 89-90.

¹³⁶ *Ibid.*, 90.

¹³⁷ Gilkes, "From Peacekeeping to Peace Enforcement," 22.

¹³⁸ Morales, "US intervention and the New World Order," 90.

humanitarian rationale was used to justify an intervention which also had the potential to address the interests of the intervening state.¹³⁹

Even when there is no presence of strategic interests which conflict with the possibility of intervention, many states are still reluctant to intervene. This is largely due to the potential for casualties, the uncertainty concerning the length of time troops must remain in the host country, as well as public opinion. Somalia was no exception. However, many if not all of these issues appeared to be resolved at the time the US decided to intervene. As mentioned earlier, UNITAF was meant to be a quick and easy mission. It was not expected to be the source of significant numbers of casualties, nor was there an expected long-term US commitment. US troops meant to hand the mission over to the UN as soon as the situation was more stable. Chasing after Aideed, and the horrible consequences this entailed, was an unexpected occurrence. Had the US known that the mission would result in the death of 18 US Rangers, and that these deaths would play out right in front of the eyes of the American public, watching from home on their television screens, they likely would not have intervened. The subsequent withdrawal and PDD25 can be seen as proof of this. In fact, many scholars have argued that the media's role in publicizing the conflict and mobilizing support played a central role in persuading decision-makers to intervene.¹⁴⁰ Although there was a backlash of public

¹³⁹ Morales "US intervention and the New World Order," 90, discusses the fact that neither the Bush nor the Clinton administrations portrayed the US presence in Somalia in terms of national interests, but that Clinton and his liberal advisors preferred the humanitarian umbrella, "either for ideological reasons or because policy directions were unsure."

¹⁴⁰ Jonathon Mermin, "Television News and American Intervention in Somalia: The Myth of a Media-Driven Foreign Policy," *Political Science Quarterly*, 385; Robert I. Rotberg and Thomas G. Weiss, (1996), "Introduction," in ed. Robert I. Rotberg and Thomas G. Weiss, *From Massacres to Genocide: The Media, Public Policy, and Humanitarian Crises*, Cambridge, Washington, D.C. and Cambridge Massachusetts: The Brookings Institution and The World Peace Foundation, 4; Jon Western, (2002), "Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia," *International Security*, Vol. 26, No. 4, Spring, 114.

opinion in the aftermath of the very public deaths of the 18 US Rangers, this was unforeseeable, given the overwhelming support only months earlier.

Although UNITAF ended in failure, such an outcome was not anticipated when the Bush administration decided to intervene. When taking into account the expected easy-in/easy-out mission, the established framework for handing the mission over to the UN in a fairly rapid timeframe, and the geopolitical interests at stake, combined with Bush's 'New World Order,' the overwhelming public support, and the substitution of Somalia for Bosnia, there appeared to be little reason not to intervene. Contrary to popular belief this was not a purely humanitarian mission; it was in fact a very political act. The benefits of humanitarian intervention clearly outweighed the expected costs in Somalia. The result was a convergence of state interests and the humanitarian norm which made sham compliance unnecessary and undesirable. Humanitarian intervention was an option which fulfilled geopolitical needs, public opinion, and the norm itself. This resulted in no moral dilemma and therefore, no need to fake compliance.

Bosnia Pre-Srebrenica

Background of the Conflict

The conflict in Bosnia began in 1992 shortly after the end of the Cold War when the region decided to separate from Yugoslavia. This multiethnic state, composed of a 44% plurality of Bosnian Muslims, followed by 31% Serbs and 17% Croats, had previously been held together by Tito's constitutional arrangements which guaranteed the

political, linguistic and religious rights of all ethnic peoples within the republics.¹⁴¹ This arrangement managed to remain intact after Tito's death; however, it would not be strong enough to survive the collapse of the Soviet Union.¹⁴² As the international order, which helped hold the country together came crumbling down, so too did the guarantees of rights and freedoms that each ethnic group received under the law. Without Tito's leadership, the weaknesses of the system he created became apparent. What remained was a loose federal system of government which was not strong enough to curtail the growing nationalism and power of the six republics. Years of accumulated foreign debt, exacerbated by worldwide recession affected each republic differently. Each republic responded with policies that benefited them, but not necessarily 'Yugoslavia'. As each republic gained power and became increasingly nationalistic, the federal government decreased in importance, and the guarantees of rights and freedoms that each group received under the Constitution ceased to be respected.¹⁴³ As a result, the various ethnic groups in Yugoslavia began feeling threatened by the Serb majority. This culminated in the separation of first Slovenia, followed by Croatia and then Bosnia from what remained of the Serb dominated rump Yugoslavia, with each war bloodier than the last. While Slovenia, with only a small Serb minority separated relatively peacefully, fighting only a small and short-lived war; Croatia separated only after a bloody war which led to the establishment of the UN Protection Force (UNPROFOR) in Croatia. Finally Bosnia, which contained a sizeable Serb minority, separated. The Bosnian Serbs who wanted to

¹⁴¹ *Washington Post.com* "Balkans Special Report: Bosnia and Herzegovina," Last updated: October 1998, <http://www.washingtonpost.com/wp-srv/inatl/longterm/balkans/overview/bosnia.htm> (July 24, 2007); Samantha Power, *"A Problem from Hell": America and the Age of Genocide*, (New York: Perennial Harper Collins Publishers, 2002), 440.

¹⁴² Spyros Economides and Paul Taylor, "Former Yugoslavia," in ed. Mayall, *The New Interventionism 1991-1994*, 59 and 62.

¹⁴³ Joyce Kaufman, (2002), *NATO and the Former Yugoslavia: Crisis, Conflict and the Atlantic Alliance*, Lanham, Boulder, New York, Oxford: Rowman, and Littlefield Publishers, 63-65.

separate from Bosnia and join Serbia proper, would not let go without a fight, leading to the bloodiest war of them all.¹⁴⁴

A referendum on Bosnian independence from Yugoslavia was held in Bosnia-Herzegovina on 1 March, 1992. The Bosnian Serbs boycotted the referendum, and a majority of the population voted in favour of independence. The Bosnian Serbs, wanting to join Serbia, rejected an independent Bosnian state. The chances of violence were escalated by recognition of Bosnia-Herzegovina by some European states, led by Germany.¹⁴⁵ This was a situation the Serbs were not prepared to accept. It was not long before the Bosnian Serbs, backed by Serbia, began shelling the Bosnian capital, Sarajevo.¹⁴⁶ Thus began the war in Bosnia. A series of atrocities and reports of ethnic cleansing and concentration camps mounted pressure on states to 'do something.'

International involvement in Bosnia began when the UN placed an arms embargo on the entire Yugoslav state on 25 September 1991, with Security Council Resolution 713. This was intended to maintain the frontiers of the state of Yugoslavia.¹⁴⁷ However, given that the Serbs held weapons from the former Yugoslav National Army, the arms embargo only served to give the Serbs an advantage over the relatively defenceless Bosnian Muslims.¹⁴⁸ By May 1992, the international community had dropped the pretense that it was dealing with a Yugoslav state, and asked the former Yugoslav state to withdraw the Yugoslav National Army (JNA) from all republics other than Serbia and

¹⁴⁴ Economides and Taylor, "Former Yugoslavia," 62.

¹⁴⁵ Ibid., 62; Rosalyn Higgins, (1993), "The New United Nations and Former Yugoslavia," *International Affairs*, Vol. 69, No. 3, July, 470.

¹⁴⁶ Vaughn P. Shannon, "Judge and executioner: the politics of responding to ethnic cleansing in the Balkans," *Journal of Genocide Research* Vol. 7, No. 1, March 2005, 53.

¹⁴⁷ Economides and Taylor, "Former Yugoslavia," 66.

¹⁴⁸ Thomas G. Weiss, "Collective Spinelessness: U.N. Actions in the Former Yugoslavia," in Ed. Richard H. Ullman, *The World and Yugoslavia's Wars* (New York: Council on Foreign Relations Press, 1996), 16.

Montenegro, and for a cessation of operations by Croatian forces in Bosnia.¹⁴⁹ In August 1992, the international role expanded further placing the UN Protection Force (UNPROFOR) which was previously in Croatia, into Bosnia in order to ensure the security and functioning of the airport in Sarajevo. This became known as UNPROFOR II. UNPROFOR's mandate was again enlarged in September 1992 to support efforts by the UN High Commissioner for Refugees (UNHCR) to deliver humanitarian relief throughout Bosnia-Herzegovina and to protect convoys of released civilian detainees if the International Committee of the Red Cross so requested. In addition, UNPROFOR was to monitor a 'no-fly zone' banning all military flights, and six UN 'safe areas' established by the Security Council in 1993 in the Bosnian cities of Sarajevo, Bihac, Tuzla, Srebrenica, Gorazde, and Zepa.¹⁵⁰

Desirability of Sham Compliance

From the outset, the Bosnian conflict held a very high potential for sham compliance. Reports of ethnic cleansing in Europe's backyard could not be ignored. Yet very few states were interested in the kind of large-scale intervention necessary to put an end to the atrocities. The US, which had just intervened militarily in the Gulf War, initially supported a united Yugoslavia, and was disinclined to get involved in another far-off war which held little strategic value. They felt it was a problem for the Europeans to resolve.¹⁵¹ The Russians, in contrast, openly supported the Serbs.¹⁵² They threatened

¹⁴⁹ Economides and Taylor, "Former Yugoslavia," 67.

¹⁵⁰ Ibid., 54; "Former Yugoslavia – UNPROFOR: profile" prepared by the *Department of Public Information, United Nations*, http://www.un.org/Depts/dpko/dpko/co_mission/unprof_p.htm (July 26, 2007); Weiss, "Collective Spinelessness," 16; Andreatta, "The Bosnian War and the New World Order," 30-31; Jocelyn Coulon, *Soldiers of Diplomacy*, 122; S/RES/836 (4 June 1993).

¹⁵¹ Economides and Taylor, "Former Yugoslavia," 65.

the use of the Security Council veto to prevent any military action. Not only was the Russian population sympathetic to the Serbs, but President Yeltsin was fearful of the implications of separation in the Balkans on the former Soviet states in the Commonwealth for Independent States (CIS). Moreover, the Russians were also unable to make a significant military contribution, as the Russian economy was close to collapse.¹⁵³ China was neutral and supported a peaceful, and thus non-military, resolution of the conflict.¹⁵⁴ It was only the Europeans that were in favour of some limited form of intervention. They viewed this as an opportunity to test the newly created foreign policy mechanisms of the EC/EU.¹⁵⁵ The Europeans also supported the independence of Bosnia and the other former Yugoslavian states, and were the first to recognize the newly independent state of Bosnia.¹⁵⁶ Despite the European willingness to intervene, the P5 was, on the whole, not inclined to take international action under UN auspices, due to the perception that the conflict would not end quickly and the unwillingness to take robust military action.¹⁵⁷

The international community was also reluctant to intervene, as the conflict worsened, due to the debacle in Somalia. They did not want to repeat the blunders of Somalia, where orders were explicitly to find General Aideed and bring him to justice. This had had disastrous consequences in Somalia where General Aideed had attacked US and UN soldiers in retaliation.¹⁵⁸ Karadzic was threatening to do the same in Bosnia.

¹⁵² Shannon, "Judge and Executioner," 53 and 56; Coulon, *Soldiers of Diplomacy*, 121.

¹⁵³ Shannon, "Judge and Executioner," 65.

¹⁵⁴ *Ibid.*, 54-55; Coulon, *Soldiers of Diplomacy*, 121.

¹⁵⁵ Shannon, "Judge and Executioner," 65; Power, "A Problem from Hell", 258-259.

¹⁵⁶ Power, "A Problem from Hell", 249; Higgins, "The New United Nations and Former Yugoslavia," 470.

¹⁵⁷ Steven Burg, (2004), "Intervention in Internal Conflict: The Case of Bosnia," in ed. William J.

Lahneman, *Military Intervention: Cases in Context for the Twenty-First Century*, Lanham, Boulder, New York, Toronto, and Oxford: Rowman & Littlefield Publishers, Inc., 53-54.

¹⁵⁸ Coulon, *Soldiers of Diplomacy*, 129.

The prospect of this happening once more in Bosnia made UN members extremely reluctant to take action that went beyond neutrality. Bosnian civilians ultimately suffered at the mercy of a US policy of non-intervention in the absence of national interest.¹⁵⁹ However, as claims of ethnic cleansing and other atrocities came to light, the UN began to feel public pressure to take action.

Although the Europeans felt obligated to take action, they limited their options the moment they characterized the Bosnian conflict as a civil war, rather than the international war that it was due to the recognition of Bosnia by member states. Framing the conflict as a civil war meant that it was not a threat to international peace and security and thus did not justify enforcement measures. Although UN troops were in Bosnia under a Chapter VII mandate, they were operating according to Chapter VI principles of neutrality, impartiality and the use of force only in self-defence. The presence of lightly armed peacekeepers made enforcement action increasingly difficult and undesirable. As the conflict progressed, the US began advocating the 'lift and strike' approach which would see the arms embargo against the Bosnian Muslims lifted, and replaced with NATO air strikes.¹⁶⁰ This was a desirable option for the US, as it would put an end to the conflict without requiring US ground troops, thereby limiting US casualties; although even this limited action had only shallow support in the Clinton administration.¹⁶¹ However, the Europeans opposed this option as it would put their own ground troops in harm's way.¹⁶² Bosnian Serb leader Radovan Karadzic had already warned that any

¹⁵⁹ Power, *"A Problem from Hell"*, 310-311.

¹⁶⁰ *Ibid.*, 302; Western, "Sources of Humanitarian Intervention," 128.

¹⁶¹ Power, *"A Problem from Hell"*, 302.

¹⁶² *Ibid.*, 284; Thomas G. Weiss, David P. Forsythe and Roger A. Coate, (2001), *The United Nations and Changing World Politics*, 3rd ed., Boulder: Westview Press, 88-89; Shannon, "Judge and Executioner," 54-55; Filippo Andreatta, (1997), "The Bosnian War and the New World Order: Failure and Success of

NATO air strikes would result in Serb retaliation against UN peacekeepers.¹⁶³

Karadzic's threats proved not to be empty, as the Serbs took 200 UN personnel hostage and chained them to NATO targets using them as human shields in retaliation for NATO air strikes in 1994.¹⁶⁴

The international community was facing a dilemma. It could not appear to be doing nothing in a highly-publicized conflict in Europe's backyard. However, an American policy of zero casualties and non-intervention in the absence of strategic interests, and the threat of the Russian veto made the UNSC unwilling to risk the lives of a few peacekeepers to save thousands of Bosnian Muslim civilians. The resulting moral dilemma made sham compliance highly desirable. Sham compliance would provide an appearance of action, thus relieving some of the public pressure to take action, while avoiding the American refusal to supply ground troops. Minimal, neutral action in the face of ethnic cleansing also avoided the potential of Russia resorting to the Security Council veto.

Rwanda

Background of the Conflict

The genocide in Rwanda began on 6 April 1994 after the plane of Rwandan President Juvenal Habyarimana was shot down and killing him. Immediately after the plane was shot down, an order went out for Hutus to exterminate all Tutsis and moderate

International Intervention," *The European Union Institute for Security Studies*, Occasional Papers, October, 18; Coulon, *Soldieres of Diplomacy*, 129.

¹⁶³ Power, "A Problem from Hell", 284.

¹⁶⁴ John F. Hillen III, *Killing with Kindness: The UN Peacekeeping Mission in Bosnia*, The Cato Institute, Foreign Policy Briefing, No. 34, June 30, 1995; Weiss, "Collective Spinlessness," 14-15; Andreatta, "The Bosnian War and the New World Order," 30.

Hutus. The Rwanda Armed Forces (FAR) and the Interahamwe (Hutu militias) set up roadblocks throughout Kigali and went door to door with hit lists prepared in advance.¹⁶⁵ Massacres occurred throughout the country, in what was the fastest genocide in recorded history, with 800,000 deaths in 100 days.¹⁶⁶ The United Nations Assistance Mission in Rwanda (UNAMIR), was already in Rwanda at the time of the genocide, to monitor a ceasefire between the mainly Tutsi rebels, the Rwanda Patriotic Front (RPF) and government forces which had been engaged in a civil war since 1990.¹⁶⁷ However, despite the presence of peacekeepers, their ‘monitoring’ mandate and their lack of equipment, troops and resources prevented them from taking more forceful action.¹⁶⁸ Shortly after the massacres began, ten Belgian UNAMIR soldiers were murdered. One week later, Belgium removed its troops.¹⁶⁹ The UN preferring neither to withdraw completely, nor to authorize enforcement measures, decided to reduce UNAMIR’s troops

¹⁶⁵ Lyn Graybill, (2002) “ ‘Responsible...by Omission’: The United States and Genocide in Rwanda,” *Seton Hall Journal of Diplomacy and International Relations*, Winter/Spring, 88; Power, “*A Problem from Hell*,” 333.

¹⁶⁶ Michael Barnett (2003). “Bureaucratizing the Duty to Aid: The United Nations and Rwandan Genocide,” in ed. Anthony F. Lang Jr., *Just Intervention*, Washington, D.C.: Georgetown University Press, 174;

United Nations, “Rwanda – UNAMIR Background”

http://www.un.org/Depts/dpko/dpko/co_mission/unamirFT.htm#APRIL (Nov. 18, 2006); *United Nations, Security Council, S/1999/1257*, “Letter dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council – Enclosure: Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda,” 3.

(According to Barnett and the Independent Inquiry into the actions of the UN during the 1994 genocide in Rwanda, between April 6, and July 19, roughly 800,000 individuals were murdered. However, according to the UN’s *Rwanda – UNAMIR Background*, the genocide claimed the lives of between 500,000 and one million victims).

¹⁶⁷ *Ibid.*, 88; Linda Melvern, (2006), “Rwanda and Darfur: The Media and the Security Council,” *International Relations*, Vol. 20, Iss. 1, 94.

¹⁶⁸ Graybill, “Responsible...by Omission,” 88; Gilbert M. Khadiagala, “Intervention in Internal Conflict: The Case of Rwanda,” in ed. William J. Lahneman, (2004), *Military Intervention: Cases in Context for the Twenty-First Century*, Lanham: Rowman, Littlefield Publishers, Inc., 80.

¹⁶⁹ *Ibid.*, Allison Des Forges, (1999), *Leave None to Tell the Story: Genocide in Rwanda*, New York: Human Rights Watch, 619.

from 2,548 to a token force of 270.¹⁷⁰ In May 1994, at the height of the genocide, the UNSC reversed its decision to reduce troops, and authorized UNAMIR II, a force of 5,500 troops. However, by the end of July UNAMIR II had less than 500 troops and 124 military observers on the ground. Furthermore, the role continued to be humanitarian rather than forceful.¹⁷¹ France launched Operation Turquoise on 23 June 1994. The humanitarian mission was meant to secure and protect displaced persons and civilians; however, by that time, the genocide was nearly over, as the RPF had captured Kigali, forcing the government troops to retreat.¹⁷² Operation Turquoise was also controversial as it did not stop the killing of Tutsis and instead protected the fleeing Hutu.¹⁷³ Although UNAMIR I and II succeeded in saving lives, very little was done to actively put an end to the genocide. At the end, none of the peacekeeping missions were successful in preventing genocide.¹⁷⁴

Desirability of Sham Compliance

In the case of Rwanda, sham compliance was highly desirable. The matter of precisely when UN and US officials knew that genocide was occurring and whether troops would even get there fast enough to make a difference, has been a matter of debate,

¹⁷⁰ Graybill, "Responsible...by Omission," 89; Des Forges, *Leave None to Tell the Story*, 632; "Rwanda UNAMIR background" accessed at http://www.un.org/Depts/dpko/dpko/co_mission/unamirS.htm (Jan. 25, 2008); Khadiagala, "Intervention in Internal Conflict: The Case of Rwanda," 80; Power, "A Problem from Hell", 369.

¹⁷¹ Khadiagala, "Intervention in Internal Conflict: The Case of Rwanda," 82-83.

¹⁷² *Ibid.*, 84.

¹⁷³ *Ibid.*, 86.

¹⁷⁴ Michael Barnett "Bureaucratizing the Duty to Aid: The United Nations and Rwandan Genocide," in ed. Anthony F. Lang Jr., *Just Intervention* (Washington, D.C.: Georgetown University Press, 2003), 174; *United Nations*, "Rwanda – UNAMIR Background" http://www.un.org/Depts/dpko/dpko/co_mission/unamirFT.htm#APRIL (Nov. 18, 2006); *United Nations Security Council, S/1999/1257*, "Letter dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council – Enclosure: Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda," 3.

with Alan Kuperman arguing that US officials found out too late and that there was little that could be done to stop the genocide.¹⁷⁵ However, whether they knew or not, whether it was possible to save a significant number of lives or not, one thing is clear - most P5 members, particularly the United States, had no desire to intervene. This became a problem, given their international obligation, through the Genocide Convention, “to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.”¹⁷⁶

The United States had, only months earlier, withdrawn troops from Somalia. The debacle in Somalia left the United States weary of committing troops in any country where there was no national interest at stake.¹⁷⁷ In the aftermath of Somalia, the US viewed Rwanda as one more failed state which would require a large-scale and costly intervention that may or may not have a measurable impact.¹⁷⁸ In May 1994, Presidential Decision Directive 25 (PDD 25) dismissed any hope of intervention in Rwanda. PDD 25 was created largely in response to the failure in Somalia.¹⁷⁹ While President Clinton had won the presidency on a platform of humanitarianism and international action to protect civilians, he now sought to reduce the number and cost of peacekeeping missions.¹⁸⁰ PDD 25 stated a number of conditions which must be fulfilled before the US would contribute to UN peacekeeping missions. These included the advancement of national interest, firm sources of funding and troops, clearly defined goals, a fixed date of

¹⁷⁵ Alan J. Kuperman, “Rwanda in Retrospect,” *Foreign Affairs*, Vol. 79, No. 1, 2000, 94 and 113.

¹⁷⁶ *Convention on the Prevention and Punishment of the Crime of Genocide*, article 8.

¹⁷⁷ Des Forges, *Leave None to Tell the Story*, 624; Alain Destexhe, (1994-1995) “The Third Genocide,” *Foreign Policy*, No. 97, Winter, 10.

¹⁷⁸ Des Forges, *Leave None to Tell the Story*, 624.

¹⁷⁹ *Ibid.*, 625; Destexhe, “The Third Genocide,” 10.

¹⁸⁰ Des Forges, *Leave None to Tell the Story*, 625.

completion, and domestic and congressional support.¹⁸¹ The crisis in Rwanda had not provoked any strong lobbying for action. Even the Congressional Black Caucus had demonstrated very little support for action.¹⁸² Without American support, the international community was unlikely to take action. Very few international interventions have taken place in recent years without US support.¹⁸³ The US is also the only country in the world with the military, political and economic strength to lead an intervention.¹⁸⁴ Before the war in Iraq, Washington was spending more on its military than the next 15-25 countries; since then it has been spending more than the rest of the world combined.¹⁸⁵ The US decision not to intervene, therefore, had a devastating impact on the hope for an international intervention.

The other Security Council Members had shown no more interest in preventing genocide in Rwanda than did the US. Belgium which already had troops present, decided, following the death of 10 Belgian soldiers, that it would withdraw its troops unless the mandate was broadened and with more troops from other countries. However, neither the US, nor the UK nor France was prepared to broaden the mandate.¹⁸⁶ The Belgian troops therefore withdrew, as did most of the remaining troops from other countries in the following weeks.¹⁸⁷ France too was not prepared to intervene, although it later did with Operation Turquoise. The French did have some interest in Rwanda, and for this reason

¹⁸¹ Ibid., 625; Power, *"A Problem from Hell,"* 342.

¹⁸² Des Forges, *Leave None to Tell the Story*, 624; Power, *"A Problem from Hell,"* 376.

¹⁸³ Destexhe, "The Third Genocide," 10.

¹⁸⁴ Ibid., 10-11.

¹⁸⁵ Thomas G. Weiss, (2004), "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era," *Security Dialogue*, Vol. 35, Iss. 2, 140.

¹⁸⁶ Des Forges, *Leave None to Tell the Story*, 618.

¹⁸⁷ Graybill, "Responsible...by Omission," 89; Des Forges, *Leave None to Tell the Story*, 632; "Rwanda UNAMIR background" accessed at http://www.un.org/Depts/dpko/dpko/co_mission/unamirS.htm (Jan. 25, 2008); Khadiagala, "Intervention in Internal Conflict: The Case of Rwanda," 80; Power, *"A Problem from Hell,"* 369.

was not prepared to prevent the genocide. France was concerned with maintaining its zone of Francophone influence and protecting its client – the Hutu government in power.¹⁸⁸ The French government had close relations with and supported the government forces against the RPF during the civil war. The French government was also more inclined to support the French-speaking government forces than the Anglophone Uganda-based RPF members. By supporting the French-speaking Hutus, France was hoping to keep Rwanda within a French sphere of influence.¹⁸⁹

The interests of the French government, combined with the loss of 10 Belgian peacekeepers, and the US unwillingness to intervene only months after the debacle in Somalia, made the prospect of intervention to prevent genocide in Rwanda unlikely. Not one of the P5 was willing to intervene. The US position in particular combined with British and French unwillingness to intervene destroyed any hopes the Belgian government may have had to broaden UNAMIR's mandate. The interests of the P5 were in serious conflict with their international obligation to prevent genocide. Given the lack of political will to protect civilians in Rwanda, sham compliance was a highly desirable solution. Sham compliance would permit all states to appear to be complying with the norm of intervention without actually committing the necessary troops, or providing them with the necessary mandate or equipment.

¹⁸⁸ Des Forges, *Leave None to Tell the Story*, 595.

¹⁸⁹ Destexhe, "The Third Genocide," 11.

Bosnia Post-Srebrenica

Background of the Conflict

The Srebrenica enclave was home to 40,000 Muslims and was declared a UN safe area in the spring of 1993, shortly after the Clinton administration abandoned its 'lift and strike' policy.¹⁹⁰ Clinton had adopted the 'lift and strike' policy as a result of both domestic and international pressure, but abandoned it almost as quickly as he had adopted it due to fears of a quagmire. US Secretary of State Warren Christopher had been sent to Europe to 'sell' the new American policy to the Europeans but reportedly invited the Europeans to reject the idea, citing the disadvantages of the policy rather than the advantages. Christopher came back to the US with a European policy. The compromise between 'lift and strike' and doing nothing, was the creation of safe areas.¹⁹¹ Srebrenica was one of six UN protected safe areas that were heavily populated by Muslims.¹⁹² The UN hoped that a significant number of peacekeepers would be deployed in order to deter Serb attacks. However, the United States refused to contribute ground troops to Bosnia, and the Europeans had already contributed 5,000 peacekeeping troops and were reluctant to deploy more.¹⁹³ As a result, in July only 600 Dutch peacekeepers were protecting the safe area of Srebrenica.¹⁹⁴ The Bosnian Serbs knew that Dutch peacekeepers could do very little without NATO air strikes. Although UN peacekeepers in Bosnia could appeal for 'close air support' if they themselves were facing Serb attack, they could not ask for

¹⁹⁰ Power, "A Problem from Hell", 391.

¹⁹¹ Ibid., 302-303.

¹⁹² Ibid., 391.

¹⁹³ Vincent Rigby, (1994) *Bosnia-Herzegovina: The International Response*, Government of Canada: Political and Social Affairs Division, January.

¹⁹⁴ Power, "A Problem from Hell," 391-392.

support if civilians in the safe areas were attacked.¹⁹⁵ Moreover, the process for authorizing NATO support was cumbersome. The UN and NATO had agreed to a 'dual-key arrangement', whereby the civilian head of the UN mission, Yasushi Akashi had to turn the first key, and only then could NATO commanders turn the second key.¹⁹⁶ This process made receiving NATO air assistance difficult, as it was often stalled at the first stage. Most UN personnel believed that the use of NATO air strikes would worsen the situation, by leading to Serb retaliation causing them to take UN peacekeepers hostage as they had done in November 1994 and May 1995.¹⁹⁷

The Bosnian Serbs called the international community's bluff when they attacked Srebrenica in July 1995. The Bosnian Serb leaders proceeded to separate the men and boys of Srebrenica from the women. The men were taken out into fields and were executed. Some who resisted had their throats slit.¹⁹⁸ Seven thousand Muslim men and boys were massacred in Srebrenica.¹⁹⁹ The women were taken on buses on a two and a half hour journey from Potocari to just outside Tuzla, another Muslim-held safe area, and were frequently raped on the roadside on the way to the destination.²⁰⁰ The Serbs either killed or expelled the entire population of 40,000 Bosnian Muslims in Srebrenica.²⁰¹

Although initially US policy continued as before, with weak statements issued that Serb gunmen would be held accountable for their actions, the fall of Srebrenica

¹⁹⁵ Ibid., 392; Coulon, *Soldiers of Diplomacy*, 128 and 130.

¹⁹⁶ Power, *"A Problem from Hell"*, 392; Economides and Taylor, "Former Yugoslavia," 80; Weiss, "Collective Spinelessness," 16; Shannon, "Judge and Executioner," 56.

¹⁹⁷ Power, *"A Problem from Hell"*, 392; Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 89; Shannon, "Judge and Executioner," 54.

¹⁹⁸ Power, *"A Problem from Hell"*, 392 and 402; Edward Luttwak, (1999), "Give War a Chance," *Foreign Affairs*, Spring/Summer, 38.

¹⁹⁹ Power, *"A Problem from Hell"*, 392; Andreotti, "The Bosnian War and the New World Order," 30.

²⁰⁰ Power, *"A Problem from Hell"*, 403-404.

²⁰¹ Andreotti, "The Bosnian War and the New World Order," 30.

strengthened the lobby for intervention in the US.²⁰² The lobby was led by Senator Bob Dole who was criticizing Clinton's policy on Bosnia. Dole worked with a number of State Department dissenters as well as philanthropist George Soros. Together they formed the Action Council on Peace in the Balkans. The Council built a grassroots and elite lobby for intervention in Bosnia.²⁰³ The fall of Srebrenica and the lobbying ultimately led to a policy change which ended the dual key arrangement and left the decision to use NATO air power solely in the hands of NATO.²⁰⁴ Therefore, when the Bosnian Serbs attacked again on August 28, 1995, this time in Sarajevo killing 37 civilians and wounding 88, NATO began Operation Deliberate Force – a bombing campaign against the Serbs which lasted three weeks, and ultimately ended the war.²⁰⁵ NATO planes flew 3,400 sorties and 750 attack missions against 56 targets.²⁰⁶ At the same time, Croatia, parts of which were occupied by rebel Serbs, began a major offensive and regained territory, forcing the Serbs to retreat.²⁰⁷ The Croatian offensive combined with the NATO air strikes ultimately brought the war to an end. In November 1995, the Clinton administration brokered a peace deal in Dayton, Ohio, leaving the Bosnian Serbs (31% of the population) with 49% of the land, the Croats (17% of the population) with 25% of the land, and the Muslims (44% of the population) with only 25% of the land. Three more or less ethnically pure territories were created with a weak central government.²⁰⁸

²⁰² Power, *"A Problem from Hell"*, 392-393.

²⁰³ *Ibid.*, 428.

²⁰⁴ Kaufman, *NATO and the Former Yugoslavia*, 119,

²⁰⁵ *Ibid.*, 118.

²⁰⁶ Power, *"A Problem from Hell"*, 440.

²⁰⁷ *Ibid.*, 438; Kaufman, *NATO and the Former Yugoslavia*, 120; Andreotti, "The Bosnian War and the New World Order," 30.

²⁰⁸ Power, *"A Problem from Hell"*, 440.

Desirability of Sham Compliance

Sham compliance was originally desirable in the conflict in Bosnia, and even initially after the Srebrenica massacre. However, Srebrenica represented a turning point, after which the American refusal to intervene was no longer a tenable position. A combination of domestic lobbying for intervention, NATO credibility, tense relations with Europe, and the perception that America was weak together made the cost of non-intervention higher than the cost of intervention.

After the fall of Srebrenica, the Europeans were in favour of the use of force to put an end to what some considered genocide in Bosnia. France in particular was in support of intervention. French President Jacques Chirac had called for the reestablishment of safe areas by force. Chirac wanted to make use of US helicopters in order to ferry French troops into the enclave to recapture Srebrenica. However, the US and UN officials dismissed the idea as unfeasible.²⁰⁹ In describing the massacres in Srebrenica, Chirac made reference to World War II and the Holocaust.²¹⁰ This European position made it difficult for Clinton to continue blaming the Europeans for the inaction.²¹¹ Chirac made it very clear to Clinton that if the Americans did not get more involved in the war, the Europeans were getting out.²¹² This was precisely what the Americans feared most. Clinton had promised the Europeans that if they withdrew, the Americans would send upwards of 20,000 ground troops to assist in the withdrawal.²¹³ This promise came to be known as *OpPlan 40-104*. It was part of a NATO-approved

²⁰⁹ Ibid., 407.

²¹⁰ Ibid., 407.

²¹¹ Ibid., 436.

²¹² Ibid., 436.

²¹³ Ibid., 436.

order. If Clinton refused to send ground troops, it could have meant the end of NATO as a military alliance.²¹⁴

Clinton's opponent in the 1996 US presidential elections, Senator Bob Dole, was also a strong advocate of intervention in the Balkans. After the fall of Srebrenica, Dole who had long criticized Clinton's policy on the Balkans, found in Srebrenica an excellent occasion to begin lobbying for action. In January 1995, Dole teamed up with Senator Biden to introduce a bill to the US Senate calling for the lifting of the arms embargo. Clinton feared that if the bill was passed, he would be forced to send ground troops, due to Op-Plan 40-104, as the Europeans were threatening to withdraw if the arms embargo was lifted.²¹⁵ On July 11 of that year, Dole focused exclusively on getting his bill passed, and spoke on the Senate floor six times, making television appearances.²¹⁶ Up until then, Clinton had been arguing that if UN forces were withdrawn, it would result in a humanitarian disaster. However, Srebrenica was that disaster. It happened on the UN's watch, thus weakening Clinton's argument against the removal of the arms embargo.²¹⁷ Given that Clinton's defence of his policies on Bosnia was proving more and more difficult to maintain as the war escalated, Clinton became more and more inclined to end the war in Bosnia before the elections. This would not only eliminate the criticism of his policies but it would lead to a foreign policy victory.²¹⁸

In addition to pressure from Congress to lift the embargo, Clinton was also feeling pressure from the media and NGOs. Although many observers had criticized Clinton's policy on the Balkans throughout the war, it was after the 'safe area' of Srebrenica fell

²¹⁴ Kaufman, *NATO and the Former Yugoslavia*, 119.

²¹⁵ Power, *"A Problem from Hell"*, 423.

²¹⁶ *Ibid.*, 425.

²¹⁷ *Ibid.*, 425-426.

²¹⁸ Kaufman, *NATO and the Former Yugoslavia*, 121.

that a wave of opposition had been mobilized. The criticism both domestically and from the Europeans made America look weak. It was feared that the failure in Bosnia would have disastrous consequences not only on American foreign policy but also domestically.²¹⁹ The war was also having adverse effects on NATO. The UN was making consistent threats of NATO air strikes, yet refused to take action, even when UN protected safe areas were bombed, and 7,000 Bosnian Muslim men and boys were massacred. This greatly hurt NATO's credibility. Furthermore, President Clinton was also leading the initiative on NATO enlargement. Such enlargement required a NATO which was strong, credible and cohesive. The war in Bosnia was having a damaging impact on NATO not only in terms of credibility but also on the transatlantic relationship. The Atlantic alliance was the main pillar of US foreign policy since the end of World War II. Bosnia was straining the ability of the Alliance to develop common policies in other foreign policy areas.²²⁰

Although sham compliance was originally desirable in the conflict in Bosnia, the combination of the strain in the transatlantic relationship, NATO credibility, upcoming US elections, domestic lobbying, and the growing perception of American actions as being 'weak', ultimately made non-intervention more costly than intervention. Although it came too late for 7,000 Bosnian Muslims, these factors coalesced, eliminating the need for sham compliance.

²¹⁹ Power, *"A Problem from Hell"*, 436-437.

²²⁰ Kaufman, *NATO and the Former Yugoslavia*, 121.

Kosovo

Background of the Conflict

The Kosovo region of the former Yugoslavia has long been inhabited by ethnic Albanians. As the end of the Cold War brought about the dissolution of the multiethnic state of Yugoslavia, and consequently, the Constitution guaranteeing religious, political and linguistic rights and freedoms to all ethnic groups, the Albanians began clamoring for independence. A combination of repressive measures from Belgrade and non-violent resistance from the Kosovars held the region together as part of Yugoslavia, throughout the Balkan wars in Slovenia, Croatia and Bosnia.²²¹ However, this changed in February 1998, when Serbian President Slobodan Milosevic launched the first of a series of large-scale offensives against the Kosovo Liberation Army (KLA), an armed separatist group comprised of ethnic Albanians, and thousands of civilians, leaving some 400 dead, and forcing thousands from their homes.²²² After threats from NATO, Serbian forces withdrew their forces. However, in March 1999, Serb forces launched another attack, sending thousands of Albanian Kosovars fleeing into neighbouring countries, with stories of summary executions and forced expulsions.²²³ On March 24, 1999, following a failure of negotiations in Rambouillet, France, NATO took action unauthorized by the UN, and thus illegal under international law, against the Serbs, bombing Serbian targets for 11 weeks, until Milosevic surrendered and ordered the withdrawal of Serb forces on June 3, 1999.²²⁴

²²¹ Richard Caplan, (1998) "International Diplomacy and the Crisis in Kosovo," *International Affairs*, Vol. 74, No. 4, (October), 745.

²²² *Ibid.*, 745.

²²³ Roland Paris, (2002) "Kosovo and the Metaphor War," *Political Science Quarterly*, Vol. 117, No. 3. (Autumn), 424.

²²⁴ *Ibid.*, 424.

Desirability of Sham Compliance

In the case of Kosovo, sham compliance was not desirable. The international community had learned from the devastating consequences of inaction in the previous Balkan war in Bosnia and did not wish to repeat the mistakes of the past.²²⁵ However, not only had the international community learned from the past, but Kosovo was, in fact, very different from Bosnia in several respects, making intervention more likely. First, the Europeans did not have ground troops present in Kosovo, thus they were more open to the possibility of NATO air strikes, whereas, the presence of ground troops had constituted a key obstacle preventing NATO air strikes in Bosnia.²²⁶ Second, Kosovo was viewed as different from Bosnia, in that it had greater potential to unleash violence throughout the rest of the Balkans.²²⁷ Violence in Kosovo had not only the potential to shatter the fragile peace in Bosnia, but also to destabilize neighbouring Macedonia which has a significant Albanian minority. The Europeans were also reluctant to accept large numbers of refugees on a permanent basis.²²⁸ The international community therefore had greater incentive in containing the conflict in Kosovo, than in Bosnia.

However, several UN members, including France, were concerned about the possible ramifications of violating Serbian sovereignty. France was fearful of the possible message they would be sending to Russia who could then send troops into a former Soviet state.²²⁹ This led Germany to reject any use of force by NATO without

²²⁵ Adam Roberts, (2000), "NATO's 'humanitarian' war over Kosovo," in ed. Larry Minear, Ted van Baarda, and Marc Sommers, *Occasional Paper #36: NATO and Humanitarian Action in the Kosovo Crisis*, Providence: The Thomas J. Watson Jr. Institute for International Studies, 124 and 131.

²²⁶ Caplan, "International Diplomacy and the Crisis in Kosovo," 754.

²²⁷ Matthew Perault, "1. Moving Beyond Kosovo: Envisioning A Coherent Theory of Humanitarian Intervention," April 2005, 9; Power, "A Problem from Hell", 446.

²²⁸ Roberts, "NATO's 'humanitarian' war over Kosovo," 131.

²²⁹ Caplan, "International Diplomacy and the Crisis in Kosovo," 755.

UNSC authorization.²³⁰ Russia and China were both opposed to any intervention as it would have been a precedent for an 'out of area' response.²³¹ The purpose of NATO had originally been to maintain peace and security in Western Europe. Kosovo as part of the eastern bloc of the 'iron curtain' was technically 'out of area'. The US position was that it would be willing to take action without UNSC authorization, as it could be justified as being within the spirit of two previous UN resolutions (1160 and 1199) which identified Serb aggression and implied UN action.²³² Furthermore, UN Secretary-General (SG) Kofi Annan had already signaled that he would be in favour of action in the absence of consent by all members of the P5. Annan urged members not to repeat the mistakes of Bosnia, stating that the wars of the last decade have left no "illusions about the need to use force, when all other means have failed."²³³ Although Annan clearly preferred UNSC authorization, he did not believe that UNSC paralysis should justify inaction in the face of ethnic cleansing or genocide. It was also clear to NATO members that it would be of little use to intervene after the war had started, and the UN would neither authorize a pre-emptive strike, nor would UN involvement be desirable given previous UN actions in the Balkans. If UN action in Bosnia was any indication, with its unsafe 'safe areas' and token half-measures, it was action better left untaken. According to Michael Mandelbaum, "the U.N. itself can no more conduct military operations on a large scale on its own than a trade association of hospitals can conduct heart surgery."²³⁴ NATO

²³⁰ Ibid., 755.

²³¹ Shannon, "Judge and Executioner," 60.

²³² Perault, "Moving Beyond Kosovo," 9.

²³³ Quoted in Kaufman, *NATO and the Former Yugoslavia*, 172.

²³⁴ Michael Mandelbaum, (1994), "The Reluctance to Intervene," *Foreign Policy*, no. 95, (Summer), 11.

was therefore viewed as the only organization which could take action to prevent the suffering.²³⁵

NATO's justification for intervention in Kosovo was threefold: to prevent a humanitarian catastrophe due to Milosevic's repression of Kosovar Albanians; to maintain international peace and security in the region; and to maintain NATO's credibility.²³⁶ According to State Department statistics, approximately 250,000 Kosovars had been driven from their homes before the bombing. Given earlier Serb tactics in Srebrenica, the international community was well aware that forceful international action would be needed to stop Serb atrocities.²³⁷ As mentioned earlier, Kosovo also represented a threat to international peace and security due to the potential to destabilize the entire region.²³⁸ NATO's credibility was also at stake, as it had already threatened Belgrade twice with force.²³⁹ A rumour had begun circulating that the Serb forces' motto of the day was, "A massacre a day helps keep NATO away."²⁴⁰ By not making good on its threat, the organization looked weak at a time when it wanted to reassert its relevance in the post-Cold War world. With NATO's upcoming 50th birthday, Kosovo was a crucial test of its credibility and relevance. The US was also favouring an extension of NATO's mandate which would allow it to go 'out of area' – that is outside of Western Europe.²⁴¹ Kosovo thus provided NATO with an opportunity to set a useful precedent for

²³⁵ Perault, "Moving Beyond Kosov," 9.

²³⁶ Sophie Thomashausen, (2002), *Humanitarian Intervention in an Evolving World Order: The Cases of Iraq, Somalia, Kosovo, and East Timor*, Pretoria, South Africa: Africa Institute of South Africa, 101-102; Shannon, "Judge and Executioner," 58 and 60.

²³⁷ *Ibid.*, 101.

²³⁸ *Ibid.*, 102; Caplan, "International Diplomacy and the Crisis in Kosovo," 755.

²³⁹ Thomashausen, *Humanitarian Intervention in an Evolving World Order*, 102.

²⁴⁰ Quoted in Power, "A Problem from Hell", 447.

²⁴¹ *Ibid.*, 9.

the new strategic concept that was to be approved in April, and would reassert NATO's continuing relevance and future role in conflict resolution.²⁴²

NATO was also prepared to intervene partly because Members felt it would be a relatively easy mission with few casualties due to their reliance on NATO air strikes.²⁴³ However, the refusal to deploy ground troops allowed Serbs to focus on ethnically cleansing Kosovo of the Albanians rather than focusing on defending themselves against NATO troops.²⁴⁴ The refusal to commit ground troops was due mainly to the unwillingness to risk lives; however, it was also due in part to a misconception about Bosnia. Although the Serbs in Bosnia surrendered following NATO air strikes, the air strikes were not the sole reason for their surrender. The Serbs had just suffered a series of defeats on the ground, after the Croats pushed them back. Therefore, the idea that NATO air strikes alone could stop ethnic cleansing was unproven.²⁴⁵ Moreover, NATO members felt that Yugoslavia would capitulate with the mere threat of air strikes, or at most with a token bombing.²⁴⁶ In fact, the ethnic cleansing worsened after the air strikes began, thus leading many observers to criticize NATO's unauthorized actions.²⁴⁷ That ethnic cleansing worsened once NATO bombing began is ironic, given that NATO's stated purpose for intervention was precisely to put an end to such atrocities. The failure

²⁴² Michael Mccgwire, (2000) "Why did We Bomb Belgrade?" *International Affairs*, Vol. 76, No. 1, (January), 9; NATO Summit, *The Alliance's Strategic Concept* Approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C. on 23rd and 24th April 1999 <http://www.nato.int/docu/pr/1999/p99-065e.htm>

²⁴³ Nicholas J. Wheeler, (2001), review article: "Humanitarian intervention after Kosovo: emergent norm, moral duty or the coming anarchy?" *International Affairs*, Vol. 77, No. 1, 126.

²⁴⁴ Roberts, "NATO's 'humanitarian' war over Kosovo," 137.

²⁴⁵ Roberts, "NATO's 'humanitarian' war over Kosovo," 134.

²⁴⁶ *Ibid.*, 135; S. Paul Kapur, (2002) "The Operational Identity of Humanitarian Intervention," *Security Studies*, Vol. 12, No. 1, Autumn, 128; Kaufman, *NATO and the Former Yugoslavia*, 186.

²⁴⁷ Power, "A Problem from Hell", 449-450, 461.

of the initial air strikes initially undermined the credibility that NATO sought.²⁴⁸ Still, by intensifying its attacks, NATO did eventually win the war.²⁴⁹

Although NATO intervened without UNSC authorization, the damage that inaction would have done to NATO's credibility made intervention desirable, especially given NATO's 50th birthday celebrations. NATO members had an interest in maintaining regional security, and felt that the mission would be relatively easy with few casualties. These factors combined to make the political costs of non-intervention higher than the costs of intervention. Sham compliance was therefore not desirable in the case of Kosovo.

Darfur

Background of the Conflict

Conflict in the Darfur region of Sudan broke out in 2003 when the government unleashed Janjaweed militias to attack civilians in response to a rebellion by certain marginalised groups in the region.²⁵⁰ As of 2007, the conflict led to the death of more than 400,000 civilians in Darfur, and displaced over two million.²⁵¹ In March 2004, the UN representative in Sudan, Mukesh Kapila called what was happening in Darfur, the "world's greatest human rights catastrophe," comparing it to Rwanda, insisting that "The

²⁴⁸ Kapur, "The Operational Identify of Humanitarian Intervention," 128.

²⁴⁹ Power, "A Problem from Hell", 456.

²⁵⁰ "Crisis in Darfur," *Responsibility to Protect: Engaging Civil Society* Accessed at <http://www.responsibilitytoprotect.org/index.php/pages/6>

²⁵¹ Gerard Prunier, "Sudan: Genocide in Darfur", *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007).

BBC NEWS: Africa "Sudan's Darfur 'close to abyss'" <http://news.bbc.co.uk/2/hi/africa/6175724.stm>

only difference between Rwanda and Darfur now is the numbers involved.”²⁵² On September 9, 2004 US Secretary of State Colin Powell testified before the Senate Foreign Relations Committee that genocide was occurring in Darfur, but that “no new action is dictated by this determination.”²⁵³ This was followed in June 2005, with a statement by President George W. Bush that the killings in Darfur constitute genocide. This signified a break with the United Nations Secretariat which did not designate events in Darfur genocide.²⁵⁴ Although African Union (AU) troops were deployed in 2004, peaking at 7,000 troops, the force was under-resourced, and ill-equipped, making it ineffectual.²⁵⁵ The Darfur Peace Agreement (DPA) was signed in May 2006; however, key rebel groups were left out of the agreements which were limited in scope and eventually failed as a result.²⁵⁶ Signatories of the DPA, especially the Sudan Liberation Army faction of Minni Minawi (SLA/MM) have been responsible for attacks on civilians, on the AU Mission in Sudan (AMIS), and on internally displaced persons camps. With positions in the government, they favour the status quo and are viewed as potential spoilers.²⁵⁷ Rebel groups that did not sign the DPA are further splintered and boycotting talks and increasing military action.²⁵⁸

²⁵² Quoted in Linda Melvern, “Rwanda and Darfur: The Media and the Security Council,” *International Relations*, Vol. 20, No. 1, 101.

²⁵³ Secretary Colin L. Powell, Testimony Before the Senate Foreign Relations Committee, Washington, DC, September 9, 2004. Accessed at <http://www.state.gov/secretary/former/powell/remarks/36042.htm> (Aug. 6, 2007).

²⁵⁴ Jim VandeHei, “In Break With U.N., Bush Calls Sudan Killings Genocide,” *Washington Post*, Thursday, June 2, 2005, A19.

²⁵⁵ Prunier, “Sudan: Genocide in Darfur”, <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007); Melvern, “Rwanda and Darfur: The Media and the Security Council,” 100.

²⁵⁶ International Crisis Group, “Crisis in Darfur: the current situation,” (updated December 2007) accessed at <http://www.crisisgroup.org/home/index.cfm?id=3060&l=1> (Feb. 2, 2008).

²⁵⁷ International Crisis Group, “Crisis in Darfur: the current situation,”

<http://www.crisisgroup.org/home/index.cfm?id=3060&l=1>

²⁵⁸ Ibid.

In July 2007, the UNSC authorized, through Resolution 1769, the establishment of the UN Assistance Mission in Darfur - a new 26,000-strong joint UN-AU force.²⁵⁹ UNAMID began to be deployed on December 31, 2007; however, the full force has yet to be deployed. Khartoum continues to refuse troops from non-African countries and to prevent the force from operating efficiently.²⁶⁰ As of January 28, 2008, only 1,400 of the allocated 6,000 police officers for UNAMID were in Darfur, and only 7,000 troops out of the total 20,000 had been deployed. It is likely that it will take the greater part of 2008 to fully deploy UNAMID.²⁶¹

Desirability of Sham Compliance

Sham compliance in the case of Darfur is highly desirable. Ten years after the genocide in Rwanda, genocide was occurring once more in Africa, and very little action was being taken to prevent it. The conflict in Darfur also occurred after the Responsibility to Protect report which was completed in 2001, outlining the circumstances under which intervention should occur. R2P was accepted as an international doctrine by the UN at the 2005 World Summit.²⁶² Therefore, the international community had considerable incentive to appear to be taking action. This is particularly the case given NGOs, public opinion and demonstrations around the world,

²⁵⁹ S/RES/1769 (2007), Resolution 1769 Adopted by the Security Council at its 5727th meeting, on 31 July 2007.

²⁶⁰ Africa Action Report, (January 2008), *An Overview of Conflict in Sudan and the International Failure to Protect August 2007-January 2008*, 5; BBC NEWS, Thursday 15 November 2007, "Darfur mission may fail, warns UN" accessed at <http://news.bbc.co.uk/2/hi/africa/7095732.stm> (Feb. 2, 2008).

²⁶¹ Africa Action Report, *An Overview of Conflict in Sudan*, 5-6.

²⁶² A/60/L.1 (20 September 2005) United Nations General Assembly, *2005 World Summit Outcome*, item 138, 31; Nsongurua J. Udombana, (2007), "Still Playing Dice with Lives: Darfur and Security Council Resolution 1706," *Third World Quarterly*, Vol. 28, No. 1, 108-109.

all compelling governments to take action, as well as pleas for action by celebrities including George Clooney and Angelina Jolie.²⁶³

However, several considerations made sham compliance more desirable than more robust action. First, Russia and China, both P5 members, were initially threatening to veto any strongly worded resolutions authorizing the use of force. This is due to the fact that Russia was selling weapons to Sudan, and China was consuming oil from Sudan.²⁶⁴ These countries' strong trade relations with Sudan prevented any robust action in the UNSC. Second, although the conflict had regional implications and was spreading into neighbouring Chad,²⁶⁵ Sudan was not Kosovo. Spillover in Europe was unfortunately not the same as spillover in Africa. The political cost for the P5 of doing nothing was much higher in Europe where refugee flows would affect Western Europe, and where Europeans had a greater obligation to take action. Neither Europe nor North America felt a great obligation to take action in another far away African conflict. Third, America and the UK were preoccupied with the war in Iraq and Afghanistan. America's reputation had also become somewhat tarnished following its invasion of Iraq.²⁶⁶ Sudan is moreover an important ally in the US war on terror, placing the US in a dilemma

²⁶³ NY Times, (September 18, 2006) Africa, "Demonstrations Around the World Draw Attention to Darfur Crisis," accessed at <http://www.nytimes.com/2006/09/18/world/africa/18sudan.html> (Feb. 2, 2008); UN News Centre, (31 January 2008), "Actor UN advocate George Clooney urges greater resources for Darfur force," accessed at <http://www.un.org/apps/news/story.asp?NewsID=25465&Cr=darfur&Cr1=> (Feb. 2, 2008); Angelina Jolie (Feb. 28, 2007), "Justice for Darfur," *Washington Post*, A19, accessed at <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/27/AR2007022701161.html> (Feb. 2, 2008); John Prendergast, (Sunday, Nov. 19, 2006), "Meanwhile in Darfur...So How Come We Haven't Stopped It?" *Washington Post*, B01 accessed at <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/17/AR2006111701480.html> (Feb. 2, 2008).

²⁶⁴ Udombana, "Still Playing Dice with Lives," 109-110; George Packer, (October 9, 2006) "International Inaction," *The New Yorker*, accessed at http://www.newyorker.com/archive/2006/10/09/061009ta_talk_packer (Feb. 2, 2008).

²⁶⁵ *BBC NEWS: Africa* "Chad rebels 'down military plane' Tuesday, 28 November 2006, accessed at: <http://news.bbc.co.uk/2/hi/africa/6193268.stm> (Feb. 2, 2008).

²⁶⁶ Susan E. Rice, Anthony Lake and Donald M. Payne, (Oct. 2, 2006), "We Saved Europeans. Why not Africans?" *Washington Post*, A19, accessed at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/01/AR2006100100871.html>

between acting in accordance with counter-terrorism interests and an interest in protecting human rights.²⁶⁷ Furthermore, the US did not want to undermine the peace process already underway in Sudan to end the 20 year civil war between the regime in Khartoum and the southern Sudanese rebels. Christian groups in the US had long lobbied the US to take action on behalf of the Christian minorities in southern Sudan.²⁶⁸

Despite public opinion being in favour of intervention, and despite the moral and normative obligation to take action, the US and UK were too preoccupied with Iraq, Afghanistan and counterterrorism. While NATO was willing to circumvent the Russian veto in Kosovo, it was not willing to do so for Africa, where there was a greater interest in appearing to take action than in actually taking action. Sham compliance was thus the perfect solution to the dilemma caused by a desire to appear to be acting in accordance with humanitarian norms, and a desire to act according to strategic interest. The international community could have intervened without the consent of the Sudanese government given that the atrocities represented a case of responsibility to protect; however, it insisted on obtaining consent from the Sudanese government. This is despite the fact that five years into the conflict, the Sudanese government continues to employ foot-dragging tactics to avoid an effective mission. By allowing the Sudanese government to employ such tactics, and by refusing to intervene without Sudanese consent, the international community is not only making a mockery of the Responsibility to Protect doctrine, but it is also faking compliance with the norm of intervention. It allows the international community to appear to be taking action, all the while doing very little to protect civilians.

²⁶⁷ Prunier, "Sudan: Genocide in Darfur", <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007); Prendergast, "Meanwhile in Darfur... So How Come We Haven't Stopped It?" *Washington Post*.

²⁶⁸ Ibid.

Conclusion

The three cases of robust intervention have demonstrated that states will only intervene to protect civilians in cases where the mission is perceived to be relatively easy with few casualties, and where circumstances are such that the political costs of inaction are higher than the costs of action. This was the case in Somalia where intervention was undertaken largely to deflect attention from the inaction in Bosnia, and where troops were removed after 18 US marines were killed, one of whom was dragged through the streets of Mogadishu in front of television screens. This was also the case in Bosnia post-Srebrenica, where NATO intervened only after inaction in the face of attacks on safe areas was beginning to make America look weak, and after threats of NATO air strikes followed by inaction began affecting NATO credibility. It was moreover the case in Kosovo, where NATO's credibility was at stake and where the conflict had the potential to destabilize the entire region. Kosovo not only had the potential to jeopardize the fragile peace in Bosnia but also to create conflict in Macedonia.

The debacle in Somalia revealed that intervening states, the US in particular, were not willing to accept large numbers of casualties. This could be seen by the refusal to commit ground troops in subsequent interventions. This was particularly evident in Kosovo, where NATO members relied solely on air power. Given that ground troops were seen as essential to accomplishing their stated purpose of preventing ethnic cleansing, the refusal to deploy ground troops can almost, in and of itself, be viewed as an example of sham compliance. However, given that it was nonetheless a robust intervention, it remains an example of robust intervention rather than sham compliance.

The three weaker cases of intervention all demonstrated either a lack of interest or the presence of interests which conflicted with the humanitarian norm. In Bosnia pre-Srebrenica, it was the Russian veto, combined with the 'Somalia syndrome'; in Rwanda, it was the 'Somalia syndrome' once again and a lack of interest. In Darfur today, it is the Chinese and Russian veto combined with countervailing interests. All three of these cases are examples where sham compliance is desirable. The next chapter turns to how in these three cases, sham compliance was in fact possible.

Chapter 3

Sham Compliance: Keeping Up Appearances

*“For the great majority of mankind are satisfied with appearance, as though they were realities and are often more influenced by the things that seem than by those that are.”*²⁶⁹ –Niccolo Machiavelli, *Discourses, Book 1, Chapter XXV*.

Introduction

Chapter 3 is an analysis of the three cases (Bosnia pre-Srebrenica, Rwanda and Darfur) identified in the previous chapter where sham compliance was seen as desirable. Whereas the previous chapter demonstrated *why* it was desirable for the international community to fake compliance, this chapter seeks to demonstrate *how* this was accomplished by the international community in each of the three cases. The chapter aims to reveal how ambiguities within legal instruments can be interpreted in such a way that states may technically be complying but doing very little of what the instruments actually intended. The role of the UN Charter in the conflict in Bosnia is examined, where the non-inclusion of the concept of peacekeeping in the UN Charter allowed states to create confusing mandates that blended peacekeeping and peace enforcement principles, leading to differing interpretations by different states and individuals. The role of the Genocide Convention is examined in the conflict in Rwanda, where use of the term genocide was avoided, leaving a token force that had limited resources and a limited mandate to prevent the massacres. In the case of Darfur, the role of the Responsibility to Protect Doctrine is examined as well as the Genocide Convention, where again, the

²⁶⁹ Niccolo Machiavelli, *Discourses on the First Ten Books of Titus Livius*, Book 1, Chapter XXV. Quote accessed at: http://thinkexist.com/quotation/for_the_great_majority_of_mankind_are_satisfied/171863.html

ambiguities within the legal instruments led to differing interpretations as to who had the primary responsibility to protect, and whether consent of the host state was truly required for interventions. In each of the three cases, the ambiguities within the different legal instruments led to a game of semantics and interpretation whereby states were able to give the appearance of norm compliance, all the while doing very little of what the norm actually prescribed.

Bosnia Pre-Srebrenica and the UN Charter

Sham compliance in Bosnia was, from the outset, a desirable outcome. It provided a means for an international community which did not want to intervene forcefully to appear to be taking action by essentially substituting a forceful intervention with little more than humanitarian aid. The ambiguities of the UN Charter, the interpretation of UNSC resolutions and the rhetoric about taking action in the Balkans, ultimately provided the tools for the international community to fake compliance with the norm of humanitarian intervention.

When conflict first broke out, only the Europeans were willing to intervene. The US attempted to downplay events. Rather than speak of ethnic cleansing, they characterized the conflict as one of ancient blood feuds.²⁷⁰ In an attempt to justify inaction, US Secretary of State Larry Eagleburger stated, "It is difficult to explain, but this war is not rational. There is no rationality at all about ethnic conflict. It is gut; it is hatred; it's not for any common set of values or purposes; it just goes on. And that kind

²⁷⁰ Western, "Sources of Humanitarian Intervention," 131.

of warfare is most difficult to bring to a halt.”²⁷¹ Eagleburger was thus absolving himself and the US from the responsibility to take action.

The UN Charter provided a means for sham compliance through its silence on the concept of peacekeeping. Bosnia did not fit with the traditional peacekeeping model. Although Bosnia was technically an independent state, the international community continued to view the conflict as a civil war, thus making it a matter of domestic concern and not a matter of international peace and security.²⁷² This provided an excuse for the international community’s inaction. By calling it a civil war, the international community was neither required nor permitted to intervene, as Article 2 (7) of the Charter forbids interference in matters that are essentially within domestic jurisdiction. Although, despite Article 2 (7), the international community still could have declared the conflict a threat to international peace and security.²⁷³ However, regardless of how it was viewed by the international community, it was not a classic case of aggression of one state against another, with a ceasefire in place and a clear border to monitor. Even when ceasefires did exist, they were consistently violated. The fact that peacekeeping was not explicitly included in the Charter meant that the international community was technically not confined to Chapter VI. Although the UNSC initially took a neutral position, placing an arms embargo on all of the former Yugoslavia, it eventually fell into what has often been called, “mission creep”.²⁷⁴ UN troops were originally deployed under Chapter VI of

²⁷¹ Quoted in Western, “Sources of Humanitarian Intervention,” 131.

²⁷² Rosalyn Higgins, (1993), “The New United Nations and Former Yugoslavia,” *International Affairs*, Vol. 69, No. 3, July, 470; Shannon, “Judge and Executioner,” 53.

²⁷³ *Charter of the United Nations*, Chapter 1, Article 2 (7); Higgins, “The New United Nations and Former Yugoslavia,” 470.

²⁷⁴ ‘Mission Creep’ is a term that was initially applied to the US peacekeeping mission in Somalia by several newspapers in 1993, to signify the undesirable expansion of the goals or purpose of a mission. The term was initially used in Jim Hoagland, “Prepared for Non-Combat,” *The Washington Post*, 15 April 1993, A29; Jim Hoagland, “Beware ‘Mission Creep’ in Somalia,” *The Washington Post*, 20 July 1993, A17.

the Charter, with a mandate to monitor the airport in Sarajevo; however, the international community increasingly began viewing the Serbs as the aggressor, and taking action under Chapter VII.²⁷⁵ Although it is not uncommon for a mission to move from peacekeeping to peace enforcement, it can only be effective if there is a decisive shift from one to the other. The two cannot be used simultaneously, as they are in many ways contradictory.²⁷⁶ Peacekeeping implies neutrality and impartiality, consent from the host state and the use of force only in self-defence. Conversely, peace enforcement is used when there is a clear aggressor and when force can be used to put an end to the conflict.²⁷⁷ What happened in Bosnia was an ill-conceived blend of the two.

Given that Serbia was clearly assisting the Bosnian Serbs, who were the main aggressors, Chapter VII could, and indeed should, have been used to put an end to the atrocities. Sovereignty would not have been an issue as Serbia was involved, thus making the conflict an international war with the internationally recognized Bosnian state.²⁷⁸ The problem was that while most UN members recognized Serbia as the clear aggressor, they had no desire to take the necessary action. Furthermore, Russia, which did not recognize Serbia as the clear aggressor, was prepared to veto any strong, forceful action against Serbia. So rather than go to war with Serbia, the UN compromised and sent peacekeepers to keep a non-existent peace and to provide humanitarian aid.

The P5 attempted to resolve the dilemma between their unwillingness to take action, and their moral requirement to protect civilians, by sending peacekeepers into a

²⁷⁵ Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 88.

²⁷⁶ Andreatta, "The Bosnian War and the New World Order: Failure and Success of International Intervention," 22.

²⁷⁷ *Ibid.*, 22; Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 56-57; Lawrence Freedman, (1994), "Why the West Failed," *Foreign Policy*, No. 97, Summer, 56-57.

²⁷⁸ Higgins, "The New United Nations and Former Yugoslavia," 470; Shannon, "Judge and Executioner," 53.

war zone with Chapter VII mandates, interpreted according to Chapter VI principles. Rather than put an end to the ethnic cleansing, the UN merely alleviated some suffering by providing humanitarian aid.²⁷⁹ Peacekeepers were consistently fired upon, with relief supplies stopped, while the fighting continued.²⁸⁰ Yet they could do nothing as a result of the principles of neutrality, impartiality and consent. This led the UN to experiment with, in the words of Lawrence Freedman, “every available form of coercion short of war.”²⁸¹ No-fly zones were imposed but not enforced, threats of NATO air strikes were made but never tried.²⁸² As such, they provided the appearance of an intervention, which in reality was nothing more than a sham. UNPROFOR’s force commander, General Jean Cot, who later resigned, lamented, “There are incredible gaps between the resolutions adopted by the Security Council, the will to implement them, and the means provided to commanders in the field.”²⁸³ The generals in the field were not the only ones upset with UN and US policy in Bosnia. In an angry speech in Washington, Senator Bob Dole encapsulated the discrepancy between rhetoric and action with what he called ‘multilateral make-believe’:

In order to believe that the United States and European approach in Bosnia is working, one simply has to play a game I call ‘let’s pretend.’ The rules are simple. It goes like this:

Pretend that the U.N. forces are delivering humanitarian aid to those in need;

Pretend that the U.N. forces control Sarajevo airport;

Pretend that the U.N. forces are protecting safe havens such as Sarajevo and Srebrenica and that no Bosnians are dying from artillery assaults and shelling;

Pretend that there is a credible threat of serious NATO air strikes;

Pretend that the no-fly zone is being enforced;

²⁷⁹ Higgins, “The New United Nations and Former Yugoslavia,” 469.

²⁸⁰ Higgins, “The New United Nations and the Former Yugoslavia,” 469.

²⁸¹ Freedman, “Why the West Failed,” 59.

²⁸² Weiss, “Collective Spinelessness,” 21.

²⁸³ S/RES/836 (1993), Bosnia and Herzegovina, 4 June; Quoted in Coulon, *Soldiers of Diplomacy*, 121.

Pretend that Serbian President Milosevic is not supporting Bosnian Serb forces;

Pretend that Bosnian Serb air defenses are not deployed against NATO aircraft and are not integrated into Serbia's air defense system.

Pretend that the rapid reaction force will react forcefully and rapidly under the same U.N. rules of engagement which have made UNPROFOR impotent;

Pretend that U.N. forces can stay in Bosnia forever and that we will never have to contemplate U.N. withdrawal.²⁸⁴

Although the UN authorised the use of force under Chapter VII, the UN members differed in their interpretation of Resolution 836. The Non-aligned countries thought that they were sending peacekeepers to protect the Muslim population from attack. However, the permanent five members of the UNSC affirmed that the use of force was only authorised to act in self-defence when fired upon.²⁸⁵ Paragraph 5 stated that the Security Council decided “to extend...the mandate of UNPROFOR to enable it...to deter attacks against the safe areas.” However, in paragraph 9, the Security Council, “authorizes UNPROFOR....in carrying out the mandate defined in paragraph 5 above, acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys.” Furthermore, paragraph 10 authorised, “the use of air power...to support UNPROFOR in the performance of its mandate set out in paragraphs 5 and 9 above.”²⁸⁶ The mandate was so

²⁸⁴ Bob Dole, “Failed Approach in Bosnia,” *Congressional Record*, 104th Cong., 1st sess., July 10, 1995, 141, pt. 110: S9624.

²⁸⁵ Coulon, *Soldiers of Diplomacy*, 124.

²⁸⁶ *UN Security Council Resolution S/RES/836*.

confused that Swedish general Lars-Eric Wahlgren, the Commander of UNPROFOR, was forced to return to New York to ask for clarification. The UN responded that peacekeepers were permitted to react with the use of force only if they were directly attacked. However, if Bosnian Muslims were attacked, they could do nothing.²⁸⁷ According to one Western diplomat, the UN had no intention of militarily intervening in Bosnia and merely passed the resolution in response to international public opinion.²⁸⁸ The ambiguity was intentional in order to appear to be taking action, when in reality doing very little.²⁸⁹ These safe areas proved to be among the least safe areas, as peacekeepers could do little in response.²⁹⁰ UN policy increasingly became concerned with protecting peacekeepers rather than protecting civilians.²⁹¹ In fact, Bosnians had begun to comment that the word 'self' should be inserted in front of 'protection' in UNPROFOR's title.²⁹² The UN was making threats of NATO air strikes and consistently failing to follow up, compromising UN and NATO credibility in the process.²⁹³

The peacekeeping principles of neutrality and consent increasingly became a problem for UNPROFOR. With threats of NATO air strikes and little concealment on the part of either NATO or the UN of their view of the Serbs as the clear aggressors, the Serbs increasingly viewed the UN as a party to the conflict. Serb leader Radovan Karadzic had already warned that any NATO air strikes would result in Serb retaliation against UN peacekeepers.²⁹⁴ UNPROFOR's status as an impartial and neutral peacekeeping force providing humanitarian assistance to all parties of the conflict held

²⁸⁷ Couldon, *Soldiers of Diplomacy*, 125.

²⁸⁸ Couldon, *Soldiers of Diplomacy*, 125.

²⁸⁹ *Ibid.*, 125.

²⁹⁰ Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 89.

²⁹¹ Power, "A Problem from Hell", 306; Weiss, *The World and Yugoslavia's Wars: Chapter 3*, 16.

²⁹² Weiss, *The World and Yugoslavia's Wars: Chapter 3*, 16; Power, "A Problem from Hell", 396.

²⁹³ Shannon, "Judge and Executioner," 56.

²⁹⁴ Power, "A Problem from Hell", 284.

the UN captive to Serb demands. The use of force by UNPROFOR in defence of Muslims would destroy their neutral status and would provoke Serb retaliation. On the other hand, NATO air strikes would put the lives of UN peacekeepers at stake. The mix of peacekeeping and peace enforcement prevented any form of effective action and endangered the lives of peacekeepers.²⁹⁵ This series of half-measures was arguably worse than no action at all.²⁹⁶

NATO did finally use air strikes in 1994 over violations of a 12-mile artillery 'exclusion zone' around Sarajevo, where all heavy weaponry had to be withdrawn; however, negotiations concerning Sarajevo were only followed with new ethnic cleansing activities in the so-called safe area of Gorazde. NATO responded with the bombing of Serb positions outside Gorazde; however, Karadzic kept his promise of Serb retaliation and held 200 UN personnel hostage and took over Gorazde. Several more safe areas were eventually attacked with UN peacekeepers often chained to NATO targets as human shields.²⁹⁷ The safe area of Bihac proved particularly embarrassing for the UN, as Serbs attacked the so-called safe area from the Serb-held Krajina - an area of Croatia supposedly protected by the UN.²⁹⁸ This chain of events demonstrates the grave dangers caused by the mixing of peacekeeping principles with peace enforcement measures. Not only were UN peacekeepers unable to defend those they were sent to protect, but they also proved unable to protect themselves.

²⁹⁵ Hillen III, *Killing with Kindness*; Steven L. Burg, (2004), "Intervention in Internal Conflict: The Case of Bosnia," in ed. William J. Lahneman, *Military Intervention: Cases in Context for the Twenty-First Century*, Lanham, Boulder, New York, Toronto, Oxford: Rowman & Littlefield Publishers, Inc., 54-55.

²⁹⁶ Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 88.

²⁹⁷ Weiss, "Collective Spinelessness: U.N. Actions in the Former Yugoslavia," 14.

²⁹⁸ *Ibid.*, 14.

Weiss, Forsythe and Coate write of the irony that “UN peacekeepers – poorly equipped and without a mandate - were deployed when there was no peace to keep and...NATO war-fighters appeared when there was.”²⁹⁹ The adherence to peacekeeping principles of neutrality, impartiality, consent and the use of force in self-defence when there was no peace to keep constrained the ability of the UN to respond to conflict in Bosnia effectively. At the same time, the authorisation of peace enforcement measures without the means to enforce them put lives in danger and seriously compromised the UN’s credibility. This ill-conceived blend of peacekeeping and peace enforcement was due largely to the ambiguities within the UN Charter, which does not explicitly mention peacekeeping, thus allowing great flexibility in constructing the mandates of UN peacekeepers. What this mix of peacekeeping and peace enforcement did accomplish was to provide states, reluctant to use force, with the appearance of compliance with the norm of humanitarian intervention. The creation of confusing mandates permitting NATO air strikes as well as the use of force to defend safe areas, combined with the limitations on the use of such force, was meant to create an illusion of intervention. Unfortunately, the illusion succeeded. Tens of thousands of Bosnian Muslims went to UN protected safe areas, with the hopes that it would save their lives. It was not long before this illusion was shattered into a million pieces. The reality emerged of a UN organization that cared far more about the preservation of its reputation and the interests of its member states than of the civilians it sought to protect. Yet if there is one silver lining to the sham of intervention which occurred in Bosnia, it is that it ultimately led to a more robust intervention, which otherwise might not have occurred. As safe areas fell and UN peacekeepers, unable to defend themselves, were chained to NATO targets to

²⁹⁹ Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 89.

prevent air strikes, the inaction eventually became embarrassing to the P5 and NATO, whose reputation was now at stake. Had it not been for UNPROFOR's embarrassing failure, a robust intervention might never have become desirable for the P5.

Unfortunately, the lives of thousands of Bosnian Muslims were not enough to provoke a robust intervention; in the end, it was only when UNPROFOR's failure began affecting the P5 that the international community mobilized to take serious action.

Rwanda and the Genocide Convention

When genocide occurred in Rwanda in April 1994 and not one state was willing to intervene to prevent it, the international community relied on sham compliance to resolve the dilemma between moral and legal obligations to intervene and conflicting national interest. Sham compliance allowed states to appear as though they were taking sufficient action as was required by the situation at hand. Sham compliance was possible mainly because of the ambiguity of the Genocide Convention, as well as a game of semantics, and a token peacekeeping force.

The Clinton administration, still reeling from Somalia, and having just implemented PDD 25, was not prepared to intervene in Africa once more. However, the international community was bound to punish and prevent genocide by the Genocide Convention. The Convention defines genocide as:

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about

*its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.*³⁰⁰

Clearly the systematic attempt of Hutus to massacre all Tutsis was consistent with the definition of genocide. There has been some debate as to whether the international community was certain that genocide was occurring. However, it is more than likely that they knew. Force Commander of UNAMIR, Lieutenant-General Roméo Dallaire had sent a cable to the United Nations Department of Peacekeeping Operations (UNDPKO) as early as January 11, 1994, three months before the genocide began, stating that genocide would occur.³⁰¹ Alan J. Kuperman argues that this was not necessarily based on reliable information.³⁰² However, even if this were the case, at the very least, it would have been well-known that genocide was occurring by April 19 when Human Rights Watch and other organizations, approached the president of the Security Council with reports from the field that made it clear that acts of genocide had occurred.³⁰³

Despite this knowledge, and the legal requirements to prevent genocide, the international community refused to take robust action. In order to appear as though their actions were consistent with what was required, the Security Council expressly omitted the word 'genocide' from its condemnation of the killings, at the behest of the United States.³⁰⁴ In an effort to avoid intervention the US sought to downplay events and to ensure that US nationals were safe. In the initial days of the genocide, President Clinton spoke more of his concern for the safety of 258 American expatriates than the hundreds

³⁰⁰ *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, Article 2.

³⁰¹ Graybill, "Responsible....by Omission: The United States and Genocide in Rwanda," 91.

³⁰² Alan J. Kuperman, (2000), "Rwanda in Retrospect," *Foreign Affairs*, Vol. 79, No. 1, 113.

³⁰³ Graybill, "Responsible....by Omission: The United States and Genocide in Rwanda," 89.

³⁰⁴ *Ibid.*, 89.

of thousands of Rwandans whose lives were at risk. In statements, he called on both sides to stop the violence, indicating that it was not clear what was going on, and that it was a civil war, not a systematic attempt to wipe out an entire group.³⁰⁵ In fact, President Clinton went so far as to send a memo to the State Department and the National Security Council prohibiting the use of the term ‘genocide’ with regards to Rwanda. Instead, spokesperson, Christine Shelley spoke of “acts of genocide” which “may have occurred.”³⁰⁶ The international community, led by the US, made a deliberate attempt to make it appear as though it was a civil war fuelled by centuries of ethnic hatred, rather than a genocide, not only because use of the term ‘genocide’ might make them morally responsible to take action, but it would also make them *legally* responsible. By avoiding use of the term, Clinton was able to avoid the legal ramifications of the Genocide Convention, while at the same time avoiding a public outcry at inaction in the face of genocide. By not referring to the massacres as genocide, and by referring to it as a civil war between tribes, the US was technically complying with the letter of the norm. If there was no genocide, there was no requirement to act and there was no violation of the Genocide Convention. Similarly, if it was a civil war due to ancient ethnic hatreds, there was no need to act, as it was a domestic dispute of little interest to the US. Furthermore, by sending humanitarian aid and by leaving a token force of 270 troops, the international community could be said to be ‘taking action’.³⁰⁷

However, the ambiguity of the Genocide Convention was not limited to its definition. There was also ambiguity about what response was required. While today the

³⁰⁵ Graybill, “Responsible....by Omission: The United States and Genocide in Rwanda,” 89-90.

³⁰⁶ *Ibid.*, 89-90.

³⁰⁷ Allison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, (New York: Human Rights Watch, 1999), 600, 622,632; “Rwanda – UNAMIR Background” *United Nations*, Accessed at http://www.un.org/Depts/dpko/dpko/co_mission/unamirS.htm (Aug. 6, 2007).

Convention is viewed as a mechanism to prevent genocide, in the past it has been viewed primarily as a punitive measure. The Convention was initially adopted at the behest of Raphael Lemkin, a Polish Jew who was forced to flee to the United States during the Holocaust. Once in the United States, Lemkin began to lobby the UN to create a law that would outlaw or prevent new attempts to exterminate an entire race. Lemkin hoped that making it possible to punish those who committed genocide would deter them from committing such atrocities. Although the Genocide Convention also includes the right to prevent genocide, the main focus was the fact that it was now a crime punishable by law. There are in fact, no direct provisions for prevention within the articles of the Convention. The Convention merely states that, "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."³⁰⁸ Jeffrey S Morton and Neil Vijay Singh attribute this lack of measures to the inadequate knowledge at that time on the causes of genocide as well as the divergent positions of states during the drafting of the Convention. It is for this reason, they argue, that prevention relies on deterrence in the form of punishment of the perpetrators. Prevention is therefore, necessarily dependent on a credible form of punishment.³⁰⁹ However, given the non-existence of the International Criminal Court at that time, many viewed the Convention as completely lacking in any enforcement capability.³¹⁰ Some international lawyers assert that had the Convention been intended to do any serious work for the purpose of prevention it would have

³⁰⁸ *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, Article VIII.

³⁰⁹ Jeffrey S. Morton and Neil Vijay Singh, "The International Legal Regime on Genocide," *Journal of Genocide Research*, Vol. 5, Iss. 1, 2003, 61.

³¹⁰ *Ibid.*, 60; Uwe Makino, "Final solutions, crimes against mankind: on the genesis and criticism of the concept of genocide," *Journal of Genocide Research*, Vol. 3, Iss. 1, 2001, 57.

included language authorising the use of ‘all necessary means’ to prevent genocide.³¹¹

That this is not the case may indicate that the Convention was not seriously meant to obligate intervention to prevent genocide.

The main focus of the Convention was punishment, not prevention. Most states at that time did not fear that they would be obligated to intervene to protect civilians in various corners of the world. Instead they themselves feared being punished for the crime of genocide. This was one of the main reasons for which the United States refused to ratify the Convention before 1988. They feared the application of the Convention to lynchings and race riots.³¹² The American Bar Association (ABA) was one of the most ardent opponents of the Convention up until the 1980s. The ABA, moreover, claimed that the Convention was unconstitutional. This was due to the ability to try any person charged with a crime committed in the US in a court of law without the limits of the US constitution.³¹³

It is interesting that despite the fact that the Genocide Convention was initially viewed more as a punitive mechanism rather than a preventive measure, the international community still felt an obligation to take action and refused to call the massacres ‘genocide’, for fear of invoking the Convention. This indicates a significant shift in how the norm of genocide prevention and humanitarian intervention more broadly is perceived. As the norm of intervention has become more prevalent in the 1990s, the way in which the Convention is perceived has changed. Although the Convention was originally more focused on punishment, it is now viewed mainly as an instrument for

³¹¹ Ibid., 89.

³¹² Lawrence J. Leblanc, “The Intent to Destroy Groups in the Genocide Convention: The Proposed US Understanding,” *American Journal of International Law*, Vol. 78, No. 2, April 1984, 374.

³¹³ Binoy Kampark, “Shaping the Holocaust: the Final Solution in US political discourses on the Genocide Convention, 1948-1956,” *Journal of Genocide Research*, Vol. 7, Iss. 1, 2005, 91-92.

prevention. This would seem to support Finnemore and Sikkink's life cycle model, except for the fact that the lack of corresponding behavioural change demonstrates precisely the opposite. Finnemore and Sikkink are right in that as the norm cascades, attitudes concerning the appropriateness of behaviour change accordingly. However, what Finnemore and Sikkink neglect to mention is that it does not necessarily lead to a subsequent change in actions. The hesitance of the Security Council to use the word 'genocide' demonstrates that the existence of the norm merely makes it more difficult for states to justify inaction. It does not necessarily compel states to take action. Although the norm leaves states with a sense of moral and even legal guilt, they can engage in sham compliance, through semantics and a token peacekeeping force. The ambiguity of precisely what is considered genocide and what the Convention actually prescribes essentially allows such sham compliance to occur despite promises of 'never again'. Unfortunately for 800,000 Rwandans, the genocide in 1994 was a prime example of how the ambiguities of the Convention allowed the international community to fake compliance with the norm of humanitarian intervention.

Darfur and R2P

When conflict broke out in 2003 in the Darfur region of Sudan, very few states were willing to take action. Instead the international community was able to appear to be taking action by delegating this responsibility to the ineffectual African Union and by playing a game of semantics with regards to both the Genocide Convention and the new Responsibility to Protect doctrine.

R2P was designed to resolve the contradiction between the principle of non-intervention in internal affairs, and the principle of humanitarian intervention by shifting the conception of sovereignty so that it was viewed not as sacrosanct, but as a responsibility.³¹⁴ However, there are several problems with the doctrine. First and foremost, it is not operational in the sense that there are no legal consequences for not acting in accordance with R2P.³¹⁵ Nor does it resolve questions of political will and operational capacity.³¹⁶ The doctrine responds to the need for clarification of two contradictory concepts; however, it does not necessarily compel states to take necessary action, nor does it provide states with the capacity to undertake a successful intervention. Without the will or the means to intervene, R2P may have little impact in actually encouraging intervention. Second, the report is sufficiently ambiguous as to permit grossly varying interpretation. Although the report permits intervention in the face of 'largescale' killings, it is not entirely clear what 'largescale' amounts to.³¹⁷ It is therefore perhaps no more likely than the Genocide Convention to escape the problems that come with interpretation. Furthermore, while R2P is often viewed as a doctrine governing the use of military force, the responsibility also implies political, diplomatic and economic solutions. Therefore, states are not at all obligated to take military action and can claim action through diplomatic efforts.³¹⁸

³¹⁴ *The Responsibility to Protect*, (2001), Report of the International Commission on Intervention and State Sovereignty, Ottawa: International Development Research Centre.

³¹⁵ Carsten Stahn, (2007), "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *The American Journal of International Law*, Vol. 101, No. 1, January, 117

³¹⁶ Neil MacFarlane, Carolin Theilking, Thomas Weiss, (2004), "The Responsibility to Protect: Is anyone interested in humanitarian intervention?" *Third World Quarterly*, Vol. 25, Iss. 5, 980.

³¹⁷ David Chandler, (2004), "The Responsibility to Protect? Imposing the 'Liberal Peace'," *International Peacekeeping*, Vol. 11, Iss. 1, 69.

³¹⁸ Lee Feinstein, (2007), "Darfur and Beyond : What is Needed to Prevent Mass Atrocities," *Council on Foreign Relations*, CSR No. 22, January, 16.

The current conflict in Darfur is precisely the kind of situation that R2P was meant to respond to. The government in Khartoum is not protecting its people, and is in fact largely the source of its people's suffering. However, despite the killing of approximately 400,000 people to date - a number which can certainly be considered 'largescale' - very little action has been taken.³¹⁹ R2P has, quite predictably, been interpreted by the P5 in accordance with its own interests. The US and the UK have been too preoccupied with the war on terror to take action; and the Russians and Chinese, given their trade relations with Sudan, have threatened the use of the SC veto.³²⁰ Furthermore, Sudan has threatened all-out war with the UN should it attempt forcible deployment of peacekeepers in Darfur.³²¹ The UNSC has, therefore, been unwilling to take action. As a result, the UNSC has interpreted the responsibility to protect as a regional responsibility, and has delegated it to the African Union. This can be viewed as an abdication of responsibility on the part of the international community. Despite the fact that many observers have encouraged 'African solutions to African problems,' it was quite clear from the outset that the AU would be incapable of having a serious impact on security in Darfur. The AU is seriously under-resourced, and ill-equipped, lacking both the training necessary to be effective, and the mandate to permit such action.³²² It was for precisely this reason that the AU was initially the one intervening force that the

³¹⁹ Gerard Prunier, "Sudan: Genocide in Darfur", *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007).

BBC NEWS: Africa "Sudan's Darfur 'close to abyss'" Thursday, 28 November, 2006, accessed at: <http://news.bbc.co.uk/2/hi/africa/6175724.stm> (Feb. 2, 2008).

³²⁰ Nsongurua J. Udombana, (2007), "Still Playing Dice With Lives: Darfur and Security Council Resolution 1706." *Third World Quarterly*, Vol. 28, No. 1, 109-110.

³²¹ *Ibid.*, 98.

³²² Gerard Prunier, "Sudan: Genocide in Darfur", *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007), Linda Melvern, (2006), "Rwanda and Darfur: The Media and the Security Council," *International Relations*, Vol. 20, No. 1, 100; Udombana, "Darfur and the Security Council," 103

government in Khartoum was willing to consent to. The international community knowingly sent a force that was completely ineffective. However, this was desirable as it permitted the international community to appear as though action was being taken to protect civilians.

The concept of R2P had also been differently interpreted by the Government of Sudan, which asserts that within R2P the state retains the prime responsibility to protect. Therefore, the government in Khartoum argued that it and not the UN had the responsibility to protect its own people.³²³ However, given that Sudan was responsible for the suffering of its own people, this was a gross misinterpretation of R2P in accordance with Sudanese interests.

The UNSC did eventually pass a resolution authorizing an intervention in August 2006, three years after the conflict began; however, the resolution ‘invited consent’ from the Sudanese government.³²⁴ The entire concept of R2P should have eliminated the need for the debates surrounding consent, yet it has continued. By ‘inviting’ consent, the UN was satisfying all members of the UNSC as well as the Government of Sudan. The invitation of consent was acceptable by all UNSC Members as it allowed for interpretation. Depending on what was seen as more desirable, UNSC Members could focus on either the need for consent, or on the fact that it was merely an invitation not a requirement. Those, including the United States, that chose the latter response were able to give the appearance of at least attempting to take action by making threats of intervention with or without Sudanese consent, knowing full-well that Russia and China would never consent to a UN intervention without Sudanese consent and that Sudan

³²³ Alex J. Bellamy, (2005), “Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq,” *Ethics and International Affairs*, Vol. 19, Iss. 2, 33

³²⁴ S/RES/1706 (2006) *Reports of the Secretary-General on the Sudan*.

would be unlikely to consent to a robust mission.³²⁵ Although Sudan did eventually consent, it was not without foot-dragging tactics and obstruction that would make an effective UN intervention extremely difficult if not impossible. President Omar al-Bashir of Sudan was initially refusing to consent, arguing that a UN intervention signified a return to colonial practices.³²⁶ When he did finally consent to a UN force through Resolution 1769 in July 2007, he refused certain troop contributing countries outside of Africa, thus delaying deployment of the UN mission.³²⁷

R2P was not the only legal instrument that was subject to semantic games and interpretation. The Genocide Convention received similar treatment. As previously mentioned, the Genocide Convention contains no direct provisions for the prevention of genocide, and merely states that, “Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.”³²⁸ The US government, having seemingly learned from past mistakes, decided that rather than avoiding use of the term genocide as in Rwanda, it would use the term in Darfur. The lesson coming from Rwanda appears to be that if one form of sham compliance does not work, try another form. This other form of sham compliance was to admit that genocide is occurring, and to send humanitarian

³²⁵ Daniel B. Schneider, (2006) “U.N. Council Votes to Send Troops to Darfur; Sudan objects,” *New York Times*, August 31 accessed at <http://www.nytimes.com/2006/09/01/world/africa/01sudan.html> (Feb. 7, 2008); *Security Council Report*, October 2006, Darfur/Sudan accessed at http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.2087345/k.F23/October_2006BRDdarfurSudan.htm (Feb. 7, 2008); Gerard Prunier, “Sudan: Genocide in Darfur”, *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007).

³²⁶ Gerard Prunier, “Sudan: Genocide in Darfur”, *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007).

³²⁷ S/RES/1769 (2007), Resolution 1769 Adopted by the Security Council at its 5727th meeting, on 31 July 2007; Africa Action Report, (January 2008), *An Overview of Conflict in Sudan and the International Failure to Protect August 2007-January 2008*, 5; BBC NEWS, Thursday 15 November 2007, “Darfur mission may fail, warns UN” accessed at <http://news.bbc.co.uk/2/hi/africa/7095732.stm> (Feb. 2, 2008).

³²⁸ *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, Article VIII.

aid. In so doing, no one could accuse the US of trying to hide the fact that genocide was occurring, as was the case in Rwanda. This time, the US could take credit for being the one state to recognize that genocide was occurring, and could make bold statements and threats to the Sudanese government, and blame the European allies for their inaction. When Colin Powell declared in 2004 that genocide was occurring in Darfur, he was able to use the ambiguity of the Convention's prevention principles to his advantage, by declaring that "no new action is dictated by this determination."³²⁹ This was entirely accurate and consistent with the Genocide Convention as there are no specific measures for genocide prevention. Powell was also able, along with the UN, to use this declaration to deflect attention to the AU. In his address to the Senate Foreign Relations Committee Powell declared that the AU mission "is the fastest way to help bring security to the countryside through this expanded monitoring presence so we can see what is going on and act to prevent it."³³⁰ The US knowingly endorsed an under-resourced, under-staffed AU force that was ill-equipped to prevent genocide with its limited mandate.³³¹ By endorsing the AU while referring to the killings in Darfur as genocide, the US was able to claim to be taking action to prevent genocide, all the while doing little to save the lives of Darfuri civilians.

The UN and the US in particular have succeeded in faking compliance one more time. Through semantics and interpretation of R2P and the Genocide Convention, the international community was able first to deflect responsibility to an organization that

³²⁹ Secretary Colin L. Powell, Testimony Before the Senate Foreign Relations Committee, Washington, DC, September 9, 2004. Accessed at <http://www.state.gov/secretary/former/powell/remarks/36042.htm> (Aug. 6, 2007).

³³⁰ Powell, Testimony Before the Senate Foreign Relations Committee.

³³¹ Gerard Prunier, "Sudan: Genocide in Darfur", *Le Monde Diplomatique*, english ed. March 2007 <http://mondediplo.com/2007/03/08darfur> (accessed March 15, 2007).

was known to lack the capacity to take any serious action, and then to base any larger UN intervention on the consent of the Sudanese government. “Inviting” the consent of the government in Khartoum initially allowed the US in particular to make threats against the Sudanese government and give the appearance of a willingness to take action, knowing that such action would not be taken. It also allowed the Sudanese government to delay the deployment of the intervention. The requirement of consent succeeded in shifting the onus of intervention from the international community, which was now ‘willing’ to intervene, to the Sudanese government which could now be viewed as obstructing the process. In reality, R2P had eliminated the need for consent and permitted an international community that was unwilling to intervene to appear to be doing its utmost to do so, only to be blocked by the Sudanese government. R2P, like the Genocide Convention, was interpreted in order to permit sham compliance. Although a UN mission was eventually established, it has yet to fully deploy, and has come far too late for the over 2 million displaced, and some 400,000 Darfuris that lost their lives.³³²

Conclusion

Through its analysis of three cases of sham compliance, this chapter has demonstrated that while the norm of intervention influences attitudes regarding appropriateness of behaviour, it does not necessarily compel states to take such action as required. The legal conventions authorizing intervention are sufficiently ambiguous as to permit differing interpretations, allowing states to appear to be acting in accordance with

³³² Ibid., *BBC NEWS: Africa* “Sudan’s Darfur ‘close to abyss’”
<http://news.bbc.co.uk/2/hi/africa/6175724.stm>

the norm. In all three cases examined, the international community has felt an obligation to take action; however, the action has been so minimal that the intervention was in fact a sham – whether in the case of Bosnia where safe areas were anything but safe, in Rwanda where troops were withdrawn leaving a small contingent of 270 troops to respond to genocide, or in Darfur where the African Union has been completely ineffective, and where the UN has still not deployed to its full capacity. In each case, semantic games were played in order to give the appearance that it was not ethnic cleansing, but rather ancient ethnic feuds going back hundreds of years; or that it was not genocide, but merely ‘acts of genocide’, or that humanitarian aid was a sufficient response to genocide. The UN Charter in Bosnia, the Genocide Convention in Rwanda, and R2P in Darfur were all interpreted in such a way where the international community was still technically complying or seen to be taking some minimal form of action. The three legal instruments were, moreover, not interpreted in the same way by all states. Each state interpreted the conventions in order to suit their own interests. This chapter ultimately demonstrates that when states face a moral dilemma between state interests and the humanitarian norm, states will often resolve this dilemma by making every effort short of any real decisive action to give an appearance of norm compliance. Bosnia, Rwanda and Darfur were all victims of sham compliance. In the end, the international community was far more concerned with keeping up appearances than with saving strangers.

Conclusion

The international community's application of the norm of humanitarian intervention has been notoriously selective. This has led some observers to question the existence of a humanitarian norm. However, the fact that states feel an obligation to take action, as illustrated by the examples of sham compliance in Bosnia pre-Srebrenica, Rwanda, and Darfur, demonstrates that there is indeed a norm of humanitarian intervention. Despite the relatively frequent occurrence of sham compliance, it has received surprisingly little scholarly attention. While Martha Finnemore and Kathryn Sikkink's norm life cycle model explains how and why norms are adopted, it fails to sufficiently account for true behavioural change. Consequently, Finnemore and Sikkink neglect the issue of sham compliance. This thesis has attempted to reveal some of the limitations of the norm life cycle model by demonstrating why and under what circumstances sham compliance is likely to occur, as well as how the ambiguities within the UN Charter, the Genocide Convention and R2P have allowed sham compliance to occur.

According to Martha Finnemore and Kathryn Sikkink's norm life cycle model, a norm first must have a group of proponents or 'entrepreneurs' who push states to accept the norm. The norm must then reach a tipping point whereby a substantial number of states (normally about one third) accept the norm. It then reaches the final stage at which point states automatically act in accordance with the norm, without considering any alternative course of action.³³³ The model is an accurate description of norms that have sufficient clarity and are sufficiently codified. However, the model does not account for

³³³ Finnemore and Sikkink, "International Norm Dynamics and Political Change," 895.

selectivity and sham compliance, which result from norms, such as the example of humanitarian intervention, which lack clarity and are insufficiently codified. The model could, therefore, benefit from further specification in order to allow for the potential for sham compliance.

Finnemore and Sikkink argue that we recognize a norm because of the need for states to justify their actions when they are seen not to be acting in accordance with the norm.³³⁴ States have consistently felt strong pressure to act, and the need to justify inaction when an intervention does not occur. What does this imply for the norm? Has it internalized? The norm life cycle model is premised on the idea that a norm eventually becomes internalized. However, it is not clear whether a norm must internalize, or whether it can merely cascade and remain in the second stage, giving rise to sham compliance. It is not clear whether in the second stage of the life cycle model, we can expect behavioural change. A problem with the norm life cycle model is that it largely ignores the source of behavioural change. While one would assume that behavioural change would accompany a norm, this does not necessarily occur with the example of humanitarian intervention. Finnemore and Sikkink mention norms, such as the end of slavery and women's suffrage, as examples that would fit the norm life cycle model.³³⁵ However, these are highly codified norms with clear implications. There is no ambiguity regarding these norms, and they are not subject to interpretation. The same cannot be said of the norm of humanitarian intervention.

This raises a number of questions. First, the model is perhaps only truly applicable to clear norms that are highly codified and are not subject to interpretation.

³³⁴ Ibid., 892.

³³⁵ Finnemore and Sikkink, "International Norm Dynamics and Political Change," 896, 911.

Second, if the model is indeed meant to be an explanation of all norms, including humanitarian intervention, then the model is insufficient. By not addressing the issue of behavioural change, the model suffers from an inability to predict whether, how and why norm compliance occurs, and to sufficiently differentiate between the second and third stages of the life cycle model. Without incorporating the issue of behavioural change, one can almost argue that the norm of humanitarian intervention has internalized, as it has been codified through both the Genocide Convention and R2P, precedents have been set, there is a sense of obligation to take action, and there is essentially no other option considered in the face of genocide or ethnic cleansing. If other measures fail, the automatic response is to send a peace enforcement mission. The response is never an outright refusal to take action. There is always some sort of limited action, such as a small peacekeeping mission. However, it makes little sense to say that a norm which is so selectively applied is internalized, especially when the extent of the selectivity may lead one to question whether humanitarian intervention can truly be considered a norm.

By not considering the issue of behavioural change, the model becomes an ineffective explanation of not only humanitarian intervention, but also potentially any norm which lacks clarity and is subject to state interests. The model could, therefore, benefit from further specification. This thesis attempts to rectify this problem by offering an explanation which can be incorporated into the life cycle model to account for behavioural change. Through the concept of sham compliance, this thesis explains why states comply, when they do so and why humanitarian intervention is indeed a norm despite a high degree of selectivity.

As mentioned earlier, Finnemore and Sikkink argue that one can recognize a norm by the justifications for non-compliance that state leaders often feel compelled to offer.³³⁶ If compliance is the appropriate standard of behaviour, states will feel compelled to offer a justification for their non-compliance. Sham compliance resolves the apparent contradiction between state interests and normative concerns not by offering excuses, but by giving states the appearance of conformity. The fact that there is often a great discrepancy between the international community's stated intentions and the reality on the ground has been noted on many occasions by many observers. This is largely due to sham compliance. Through a combination of rhetoric, and interpretation of mandates and legal conventions, the international community is able to place a small contingent of peacekeepers anywhere in the world, provide humanitarian aid, and claim to be 'taking action'. Yet this claim of action all too often stands in stark contrast with the weak mandates preventing the use of force and the limited equipment and resources which result. While peacekeepers are sent, they often lack the most basic requirements to protect themselves, much less those they are sent to protect. It is this discrepancy between rhetoric and reality which is missing from the norm life cycle model.

When diplomacy and sanctions do not succeed in putting an end to atrocities, and they rarely do, then a peacekeeping mission, either robust or weak, is deployed. This has become the automatic response to a humanitarian crisis. This is not an example of a weak norm, which has not internalized. The norm itself is quite strong, so strong in fact, that rather than disobey the norm, the international community prefers to fake compliance.

When does sham compliance occur, and how does it fit into the norm life cycle model? To determine whether sham compliance would have been a desirable option, this

³³⁶ Finnemore and Sikkink, "International Norm Dynamics and Political Change," 892.

thesis examined six cases of humanitarian intervention – Somalia, Bosnia pre-Srebrenica, Rwanda, Bosnia post-Srebrenica, Kosovo, and Darfur. In each case there was at least some very limited form of intervention. Three of the cases (Somalia, Bosnia post-Srebrenica, and Kosovo) were examples of robust intervention. The other three (Bosnia pre-Srebrenica, Rwanda, and Darfur) were examples of weak intervention. An examination of the case studies revealed that in each of the more robust cases of intervention, there were reasons aside from mere humanitarian concern that made a true intervention desirable. As intervention was desirable, sham compliance was not considered. The reasons behind the interventions were often complex. However, in each case, intervention was considered acceptable due to the fact that the intervention was perceived as a relatively easy mission with few casualties. Moreover, in the case of Bosnia in particular, NATO threats that were not followed through led to concerns about the credibility of the NATO alliance, and in the case of Somalia, the intervention there was used to deflect attention away from the inaction in Bosnia, thus revealing the strength of the norm. The US felt obligated to take action, but was unwilling to risk casualties in Bosnia, and instead intervened in Somalia which was perceived as an easy mission.

Although each intervention was motivated by different factors, there were two factors in particular that were common to all missions: the perceived lack of difficulty of the missions and the presence of non-humanitarian concerns. In the three cases where the interventions were relatively weak, several factors combined to make sham compliance desirable; however, the uniting factors included a reluctance to incur casualties, and a lack of strategic interests at stake. At times, the reasons for non-intervention on the part

of some UN member states were strategic. In each of these cases of weak intervention, the P5 felt an obligation to intervene and was facing public pressure to take action; however, the norm conflicted with their interests. Sham compliance was thus a desirable option, as it gave the appearance that the international community was taking action, without going against state interests. Sham compliance resolved the conflict between interests and the norm.

In the cases of both robust and weak interventions, the decision to intervene or not depended largely on the interests of the most powerful states. On the one hand, this places into doubt whether humanitarian intervention can even be considered a norm, as the strength of the norm should have led to action regardless of state interests. If states are only complying with the norm when it suits their interests, then it is not so much a norm, but rather considerations of *Realpolitik*. On the other hand, the need for sham compliance demonstrates the strength of the norm. If there were no norm or if the norm were extremely weak, there would be no need to fake compliance. Without taking sham compliance into consideration, it becomes extremely difficult to explain where or how the norm of humanitarian intervention fits into the norm life cycle model, or to explain the relative strength or weakness of the norm.

However, it is not sufficient to demonstrate whether sham compliance was desirable, it is also necessary to demonstrate how sham compliance was made possible. This task was undertaken in the third chapter. As Chapter 2 demonstrates that sham compliance was not seen as necessary or desirable in the cases of Somalia, Bosnia post-Srebrenica, and Kosovo, these cases were not discussed in Chapter 3. The focus of the third chapter, were the remaining three cases where sham compliance was seen as

desirable (Bosnia pre-Srebrenica, Rwanda, Darfur). In each of these cases, some form of sham compliance did occur. This occurred in a variety of ways. In two out of three cases, the international community attempted to downplay the events in order to give the perception that it was not known exactly what was occurring, or that it was an insoluble problem that went back centuries. The one case where this did not happen was Darfur. However, part of the reason it was not downplayed was in fact sham compliance. A different form of sham compliance was used. By calling events in Darfur 'genocide', the US accomplished two things. It prevented the criticism they received for refusing to call the massacres in Rwanda 'genocide' ten years earlier; and it allowed the Bush administration to show that it is more willing than the rest of the international community to act. The UN had not called it genocide, and the US likely knew that the UN would not intervene robustly. This allowed the US to blame the lack of action on its allies, who refused to call it genocide. The US also used another form of sham compliance in Darfur by interpreting the Genocide Convention in such a way as to require that no new action beyond the support for the AU troops and the humanitarian aid that they were already providing. R2P was also interpreted in such a way where the responsibility to protect initially fell not to the UN, but to the African Union. There was therefore no need to downplay events, as action was technically being taken. Furthermore, the US had troops in Iraq and Afghanistan and therefore an excuse not to intervene, as they were overstretched, and their intervention would not be well-received in the aftermath of the invasion of Iraq. Sham compliance was also used in Bosnia, with the ambiguity of the concept of peacekeeping versus peace enforcement, and the interpretation of mandates under Chapter VII according to Chapter VI principles. A combination of semantic games

and interpretation of ambiguous legal conventions provided the international community with plenty of opportunities to fake compliance. The international community, grasping the significance of these opportunities, never failed to use them to their advantage.

This demonstrates that the norm is strong enough that sham compliance is seen as desirable and necessary when there is insufficient will to intervene. However, the norm is not strong enough to compel states to intervene when it is not in their interest to do so, and when there is high risk of casualties. The norm has passed the tipping point and has been accepted, and in certain respects can almost be said to have been internalized. This demonstrates a clear gap in the norm life cycle model, with respect to norms that are subject to interpretation and selectivity. These are not norms such as women's suffrage and slavery, which, once adopted, are relatively clear and leave little room for interpretation. There is very little ambiguity about the definition of slavery and women's suffrage and who is or is not considered a slave; whereas, it is not always clear whether a humanitarian intervention is tantamount to the provision of humanitarian aid, peacekeeping, or peace enforcement. Nor is it clear, how large-scale massacres must be to be considered examples of genocide or ethnic cleansing. Moreover, while attitudes regarding the acceptability and now even the responsibility of intervening to protect civilians has evolved over the years, it has not translated into action in the same way that a change in attitudes regarding the acceptability of slavery led to its abolition. The norm remains highly selective. Kosovo merited intervention even without a Security Council resolution. In Darfur, which has seen atrocities on a larger scale than Kosovo, it has been deemed that no intervention can take place without Sudanese consent.

Humanitarian intervention is an issue which affects national security and the lives of soldiers. It will therefore always likely require a weighing of expected consequences. Although the expected consequences of the abolition of slavery and the establishment of women's suffrage were likely also carefully considered, this did not continue once the law was adopted. The law was never operationalized on a case-by-case basis. While attitudes regarding slavery and women's suffrage, and humanitarian intervention, have all evolved considerably, there was one key difference. Slavery and women's suffrage were issues that affected the citizens living within the states adopting these norms. As humanitarian intervention is an international issue, not a domestic one, public opinion is not considered in the same way as with domestic norms. While a president could win an election on a platform of anti-slavery and women's suffrage, it could not do so based on humanitarian intervention. In fact, the reverse is true. A president could lose an election based on a failed intervention, or win an election based on a platform of 'bring our troops home'. The benefits of intervention do little for the domestic population; but the negative consequences, the death of soldiers, leaves the domestic population outraged. For this reason, humanitarian intervention is in a different class of norms. Although it is universally understood that genocide and ethnic cleansing are reprehensible crimes that must be punished and prevented, it is not universally understood or accepted that nationals must risk their lives trying to save strangers. There is, therefore, not the same kind of pressure to comply as with domestic norms that affect the voting population more directly. However, the example of humanitarian intervention may be unique among international norms as well, as it leads to bodily harm. With images of the horrors of ethnic cleansing appearing on the television screens of voters, the public often responds

to the images, demanding that action be taken, despite the fact that they are unwilling to risk soldiers' lives. This may be different from other international norms, concerning the environment, or self-determination, for example, which do not necessarily provoke the same kind of outrage among voters. This makes sham compliance particularly desirable as there is pressure to act, but not always a corresponding willingness to accept the resulting costs.

The lack of clarity of international humanitarian law and the situation itself allows selectivity, making sham compliance both possible and at times desirable. When sham compliance is taken into account in the norm life cycle model, the norm of humanitarian intervention and the selectivity with which it is applied is easily explained. States will comply with the norm of intervention when a number of conditions are in place, including relative ease of the mission, a perceived low number of casualties, and at times the presence of national interest. When these conditions are not fulfilled, states will turn to sham compliance as a means of resolving the conflict between norm compliance and national interest.

However, a question that is yet to be answered is precisely where and how sham compliance fits into the norm life cycle model. Is it a stage between norm cascade and norm internalization? Is it a part of the second stage of norm cascade, and stops once the norm is internalized? Or does sham compliance occur throughout the entire life cycle? The first option – an intermediary stage between norm cascade and norm internalization – seems to offer the best explanation for norms that are ambiguous. The current norm life cycle model remains fully applicable in cases where norms are highly institutionalized and clear. However, norms such as humanitarian intervention, which are prone to

selectivity, are of a different nature and require a further refined model. There has been a major shift in attitudes towards humanitarian intervention. Where prior to 1990, even interventions with humanitarian outcomes were not justified with a humanitarian rationale, today an intervention would be unthinkable without using some sort of humanitarian rationale. The automatic reaction when there is a humanitarian crisis is ‘we must “do something”’. In most cases, this ‘something’ is some form of peacekeeping. It is an automatic reaction that a peacekeeping mission is the appropriate response in instances of humanitarian emergencies. It is unclear whether it is likely to be closer to peace enforcement, or to traditional peacekeeping. The answer is all too often dependent on state interests, whether this be to protect an alliance, or for domestic reasons, for public opinion, or for economic reasons.

Therefore, in a modified model, a norm would pass the tipping stage once it becomes accepted as an appropriate standard of behaviour by a substantial number of states (as with Finnemore and Sikkink’s model). However, the difference would lie between norm cascade and norm internalization. Sham compliance is most likely to occur when the norm is near internalization. If the norm is still disputed, there is no need for sham compliance. A state can simply disagree with the norm. However, once it is truly accepted and internalized, it is at this point, where appearances become important for states and where it becomes costly for a state and its domestic and international reputation, to be seen not to be conforming to the norm. States may not intervene in all places all of the time; however, as the norm strengthens and internalizes it becomes extremely important to appear to be doing so. However, complete internalization would

be when there is no sham compliance. Therefore, sham compliance would be an intermediary stage between norm cascade and norm internalization.

In a revised model, there would be two paths to norm internalization: one for clear norms, and one for ambiguous norms. Clear norms could move directly from norm cascade to norm internalization, as they are consistent with the current norm life cycle model. However, norms such as humanitarian intervention that are more selective would move from norm cascade to sham compliance. In the sham compliance stage, genuine compliance may occur when there are no conflicting interests. However, when there are interests that conflict with the norm, states would resort to sham compliance. There remains the possibility for ambiguous, selectively applied norms to enter into the stage of internalization; however, due to the potential for sham compliance, it is extremely difficult. Internalization would perhaps require greater codification, or some kind of other method to eliminate the potential, and perhaps more importantly, the desire for sham compliance. However, it is more than likely that sham compliance would in fact be an end state for ambiguous norms.

While both domestic and international norms may be subject to sham compliance, it may be likely that international norms would be more amenable to it. This is due to a variety of factors, including that international norms are more likely to be ambiguous due to the inability of all states to agree on the language used in various legal conventions. At the same time, due to the fact that domestic norms as well as domestic rule of law are more likely to greatly affect voters, state leaders may find compliance to be more important with regards to domestic norms, as it may be more likely to affect their chances for re-election. Both domestic norms as well as domestic rule of law assume democracy.

Therefore, there is also the possibility that democracy leads to greater compliance. Given that the international system is anarchical, there is the possibility that this influences the lack of compliance internationally. However, this is not to suggest that sham compliance only occurs with international norms. In fact, further research may be required to determine whether there is, in fact, greater compliance among domestic norms.

Sham compliance resolves a crucial aspect which is lacking in the norm life cycle model. It accounts for slow or partial behavioural change. It also clarifies a potential intermediary stage between norm cascade and norm internalization by demonstrating at what point and to what extent we can expect a change in state behaviour. Sham compliance also responds to a gap in the norms literature. While the literature focuses on why and when states comply and how norms evolve; the issue of faking compliance, whether, to what extent, and why this occurs has received very little scholarly attention.

This thesis paves the way for future research on sham compliance, both with respect to the norm of humanitarian intervention and with other norms. The question of whether humanitarian intervention is the exception, or whether sham compliance can be applied to other norms, is an area which may require further attention. Greater research is needed to determine whether the modified model is more applicable to international norms versus domestic norms, whether international norms are more prone to ambiguity, and whether there is greater compliance among domestic norms. There is also the possibility that humanitarian intervention is a unique case. The results of inaction, and therefore non-compliance, in the case of humanitarian intervention are often horrifying beyond imagination, in ways that perhaps other norms are not. The effects of the mass media, and images of the atrocities on the public, may offend domestic public opinion,

and domestic values, in ways that other norms do not, thus leading state leaders to make a greater effort to show that they are taking action and complying with the norm. More research is needed to determine if humanitarian intervention is, indeed, a unique case, or if it is more a question of it being an international norm, or if there are many norms both domestic and international which conflict with state interest and lead to sham compliance.

Another area of future research may be a greater examination of the legal conventions used by those who engage in sham compliance. Were these legal instruments constructed ambiguously in order to permit sham compliance? Was the norm initially clear and became ambiguous as time went on, as appears to be the case with the Genocide Convention? The concept of sham compliance demonstrates that norms are important, if for no other reason than to make non-compliance more difficult. However, sham compliance also reveals that while norms may make non-compliance more difficult, it does not force compliance. The ambiguity of some norms still leaves the door open for states to fake compliance.

Is further codification the answer? Or would further codification create more problems than it would solve? Greater codification may actually make it harder for those who would like to intervene to do so, depending on how narrowly the circumstances permitting intervention are defined. The concept of sham compliance opens the door to resolve many of these questions, as the ambiguity of legal instruments has been instrumental in permitting sham compliance. Through further research it may be possible to encourage greater codification, or perhaps even encourage less codification, depending on whether it would be more desirable to have a narrower or broader conception of humanitarian intervention. By understanding the various forms of sham compliance, it

may one day be possible to make sham compliance more difficult, thereby encouraging greater compliance and norm internalization. The ultimate goal in continuing this research would be to take us one step closer in eliminating what has unfortunately become the greatest sham of all – the phrase ‘never again’.

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