Reforming the United Nations Security Council by Ignoring It

By Jed Lea-Henry

The United Nations Security Council (UNSC), as the only legitimate dispenser of humanitarian intervention, has limited effectiveness due to the veto powers of the Permanent Five (P5) members. Various reform agendas have been attempted over the years, and all have failed: for the most part because any such reform would limit the current level of international control that the veto affords the P5, and yet those reforms would also require P5 approval before they could be enacted. A potential solution to this PS veto roadblocking could be to utilize the regional peacekeeping solutions envisioned in the UN Charter, which do not merely seek to execute resolutions by themselves, but actually bypass United Nations (UN) approval and processes altogether in possible violation of UN Charter Article 53. This could take away the control over international actions that the P5 members currently hold with their veto power. By simply ignoring the UNSC, regional peacekeeping solutions would force the UNSC to accept the complete loss of power associated with that behaviour or choose to reform itself to retain a diminished share of its original powers. Ignoring the UNSC might just be the best means to reforming it.

Introduction and the UNSC

At the turn of the century, then Secretary General of the United Nations (UN), Kofi Annan, was becoming despondent, and during his Millennium Report to the General Assembly he emptied his conscience onto the international stage. According to Annan, international law would have to undergo huge structural changes, or either of two unpleasant scenarios would become reality. First, mass atrocities would continue to take place, and the world would do nothing to stop them. Alternately, countries would stop seeking United Nations' approval for intervention and would simply go it alone – "If the conscience of humanity… cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and justice" (ICISS 2001, 6.22). For Kofi Annan, both were horrifying propositions. Annan was responding to the mass atrocities and corresponding humanitarian crises that came to define the 1990's. During this time, civilian populations became the primary targets of conflict, more so than ever before (Holt and Berkman 2006, 16). More alarming was the disjointed, and often entirely absent, response of international actors in terms of humanitarian intervention and aid (Bellamy 2011, 1).

The UN, specifically the United Nations Security Council (UNSC), as the international "dispenser of legitimacy" (Tsagourias 2013, 138) (Thakur 2006, 245), was designed toward paralysis due to the veto powers granted to the Permanent Five members (P5). In the aftermath of the Second World War, the United Nations was formed with the hope of becoming the facilitator of international cooperation and peace. This was an appealing prospect to smaller, less secure nations; but the 'great powers' would need more convincing. They, after all, were already in an enviable position in the ungoverned space of international relations – for them, the United Nations represented a relinquishing of power and control. The Security Council was the hook needed to reel them in.

By offering the United States, Great Britain, France, Russia (then the USSR) and China (then Taiwan) permanent seats on the Security Council and a unique power to veto any resolution with a single vote, they were guaranteed a means to maintain positions of unequal international influence and protect their own national self-interest (Tsagourias 2013, 143; ICISS 2001, 6:13). Through the structure and function of the UNSC, the UN, on matters of international peace and security, has become a substantial impediment to humanitarian ideals; an intrinsically intractable organization (Pogge 2010, 167). As such, countless attempts have been made over the years to try and reform the UNSC to allow a more determinate, substantial, and morally concordant organisation, specifically when it comes to authorising and supporting humanitarian interventions to address mass atrocities and human suffering. All such attempts have failed!

In recognition of this fact, as he was sworn in as the secretary-general of the UN on December 12, 2016, Antonio Guterres, focussing on the ongoing humanitarian crisis in Syria, eerily echoed Annan from over a decade earlier: "this organization is the cornerstone of multilateralism, and has contributed to decades of relative peace, but the challenges are now surpassing our ability to respond". The UN must "recognize its shortcomings and reform the way it works" and "must be ready to change" (United Nations 2016). The need to reform the UNSC is now more pressing than ever. Yet the hopes of achieving reform are just as unlikely as ever, because they will, by definition, work to limit the existing powers of the P5, yet will require P5 approval. This leaves very few options available: either accept the status quo whereby mass atrocities more often than not will continue unaddressed and unmitigated, or find a way to force through UNSC reform; that is to find a way to tilt the cost-benefit-analysis so that the P5 members will come to see UNSC reform as being in their interest.

This could be achieved through a normative rise in regional peacekeeping solutions envisioned in the UN Charter, which do not merely seek to execute resolutions by themselves, but actually bypasses UN approval and UN processes altogether in a possible violation of the UN Charter Article 53. This would, in effect, remove the P5 members' control over international actions currently exercise through the veto power. By simply ignoring the UNSC, regional peacekeeping solution could force the UNSC to accept the complete loss of its power or choose to reform themselves in order to retain a diminished share of that original power. Ignoring the United Nations Security Council might just be the only means to reforming it.

The Legal Right to Humanitarian Intervention

There is a long moral and legal tradition that supports the right to humanitarian intervention, particularly in response to the existence of mass atrocity crimes. This legal tradition for humanitarian intervention can be separated into four key categories. The first category is based on the fundamental and basic language of the UN Charter. A second category is based on an understanding the UN Charter as a document that incorporates, and applies to, developments in human rights law; that is, as an "organic document" (Chomsky 2012, 149). The third category is based on the legal foundation of the Paquete Habana Case (1900) (Hehir 2008, 23), by valuing the rise of normative and customary law as a legal grounding for state behaviour (Heinze 2009, 58). The final category uses codified universal human rights standards, across various conventions and covenants (Weiss 2007, 21), conceptualised as broadly as possible; that is, a protection of negative liberties and human agency, as a "tool kit against oppression" (Ignatieff 2003). Furthermore, humanitarian intervention is justified and

governed by the principle of universal jurisdiction, making international crimes the responsibility of foreign states (Heinze 2009, 85-86).

That being said, the absence of an explicit "humanitarian exception" in the UN Charter outlining international humanitarian obligations and the 'right to intervention' presents a degree of ambiguity (ICISS 2001, 6.13). The Doctrine of the Responsibility to Protect (R2P) was developed as a legal fix, as well as a moral clarification, for this problem. Previously, by virtue of the legal precedents inherent within Common Article 1 of the Geneva Conventions (1949), the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, the International Court of Justice (ICJ) report on Bosnia vs. Serbia, the UN inquiry on the genocide in Rwanda (Bellamy 2010, 161), and International Law Commission, an international 'obligation' to assist populations in need was shown to exist.

R2P stepped further. The Doctrine redefined the principle of state sovereignty to mean 'functional sovereignty', based on three "non-sequential" and "equally weighted" foundational pillars. First, sovereignty is forfeited if civilian populations are not protected. Second, the international community is obliged to assist countries in this protection. Third, the international community is obliged to intervene militarily in any situation where this standard cannot be met (genocide, crimes against humanity, systemic war crimes, ethnic cleansing) (Bellamy 2010, 143). These core obligations were then framed around three categories: the Responsibility to Prevent (R2Prevent), the Responsibility to React (R2React), and the Responsibility to Rebuild (R2Rebuild) (ICISS 2001).

First conceptualised in a 2001 report by the International Commission on Intervention and State Sovereignty (ICISS), R2P moved from idea to legal principle after being adopted by the 2005 UN World Summit, and then legal consensus (Hehir 2012, 19; Weiss 2007, 1). This was reaffirmed in 2009 and also in 2012 by the UN General Assembly (UNGA) and quickly became the normative and "obligatory reference point in academic discourse on the issue of humanitarian intervention" (Hehir 2012, 4). Independently, R2P has been referenced in declarations concerning the control of light weapons, children in conflict zones, and the protection of civilian populations; referenced in UN resolutions concerning Cote d'Ivoire, Burundi, Central African Republic, Democratic Republic of Congo (DRC), Mali, Yemen, Sudan and Libya; as well as in UNSC presidential statements dealing with peace and security in Africa, children in conflict zones, civilian populations in conflict, international peace resolution, peace promotion, Central Africa, and the Middle-East; and also operating toward the creation of new institutional architecture, such as the Peacebuilding Commission (Evans 2006, 714; Bellamy 2011, 110).

Kofi Annan saw R2P as the change he had long desired: "I believe we must embrace the responsibility to protect, and, when necessary, we must act on it" (Evans 2006, 714). Co-chairman of the ICISS report, Gareth Evans, commented that with R2P "Maybe, just maybe, we'll be able to say 'never again' in the future without having to periodically look back, as has so often been the case in the past, asking ourselves, with a mixture of anger, incomprehension and shame, how did it happen again" (Stark 2011). A sentiment championed by British Foreign Minister, Jack Straw: "if this new responsibility had been in place a decade ago, thousands in Srebrenica and Rwanda would have been saved" (Hehir 2012, 127). The moral and legal commitment to humanitarian intervention was elevated to new heights following the implementation of R2P, however the sole legitimator of international intervention, both in authorisation, operational objectives and operational guidelines remained the UNSC, a reality that was reaffirmed in the World Summit document itself.

United Nations' Failures in Practice

The 1990's and early 2000's, a period of heightened cooperation following the end of the Cold War, saw a rise in large-scale humanitarian emergences (Holt and Berkman 2006, 16) (Barnett 2011, 6) and an increased focus on the strength of international laws and norms to enforce humanitarian intervention. The encumbering role of the United Nations also came to the fore.

In the case of Somalia, the term 'humanitarian' appeared on 18 occasions on a single resolution authorizing intervention, United Nations Security Council (UNSC) resolution 794. However, the language had no backing in reality. Once the UNSC mandate was provided, it became apparent that no UNSC member had any intention of fulfilling it. Accordingly, the resulting intervention was both "underfunded and weakly staffed" (Laitan 2004, 44) and enacted with an overt strategy of "quick exit" (Ignatieff 1999, 91-94). Moreover, the intervention itself was hopelessly belated: Special Representative to the Secretary General, Mohamed Sahnoun, was predicting societal collapse and mass atrocities even before the 1991 fall of President Maxamad Siyaad Barre (Laitin 2004, 36). In January 1991, UN Secretary-General Javier Perez de Cuellar, described Somalia as "the most serious humanitarian crisis of our day". However, it was not until December 1992 that resolution 794 was authorised humanitarian intervention. The deaths of 18 US servicemen in October 1993 caused US withdrawal, and the UNSC followed suit with resolution 954 ordering complete withdrawal, despite the continued presence of tribal warfare, mass atrocities and widespread human suffering (Weiss 2007, 7). The continuing humanitarian suffering has failed to attract even the language of R2P (Bellamy 2011, 89).

In Yugoslavia, following the 1991 Croat and Slovak declarations of independence, the spiral into state collapse and communal violence began with force. As early as 1992, at risk populations were openly calling on the international community for protection (Ignatieff 1999, 100), yet substantial intervention did not materialise until November 1995. Prior to this, UNSC resolution 743, authorizing a peacekeeping mandate for Croatia was passed in February 1992, yet considerably less than half of the resources and funding were ever delivered. Of the 35,000 troops designated for the protection of Bosnia, only 7000 arrived, leaving designated 'safe-zones' largely undefended with only 'several hundred' soldiers (Ignatieff 1999, 137). The resulting massacre in the safe zone of Srebrenica, happened in the presence of UN observers and facilitated the atrocities by keeping the targeted victims grouped together. The "West's vacillation over the use of force" (Weiss and Collins 2000, 91) empowered Serbian forces to violate UN safe zones and take hostages of UN Peacekeepers (Weiss 2007, 62).

With the memory of the Yugoslav disintegration still in the minds of the international community (Chomsky 2012, 37), the intervention into Kosovo was occurred with little hesitation and with the required resources to put an effective halt to what was an escalating cycle of violence (ICISS 2001, 1). However, the intervention was undertaken by the North Atlantic Treaty Organization (NATO) without the approval of the UNSC. The NATO-led bombing campaign forced the Serbian parliament to agree to an approved peace plan, and persuaded the UNSC to pass resolution 1244 in 1999, thereby assuming administrative control over Kosovo (Weiss and Collins 2000, 93-100). Yet despite this, prior to the NATO intervention, UNSC members were divided over authorising intervention and failed to provide any explicit authorisation prior to the intervention. The intervention was approved retroactively, but at the time, it was technically illegal (Thakur 2006, 216).

In the years leading up to the genocide in Rwanda, communal violence and the presence of 'death squads' were widely reported. Indeed, the CIA, in January 1994, had modelled that 500,000 Tutsi's would likely be killed if the violence erupted across the country. Estimates based on even a minimal military intervention after the genocide was underway, indicated that at least 25 percent of the total death toll would have been avoided (Kuperman 2001, 102-109). Yet despite these warnings, as the genocide was unfolding, UNSC resolution 912 was passed authorising a UN troop withdrawal from 2558 peacekeepers to 270; and those remaining only existed in a 'monitoring' capacity'. The UNSC, in ts deliberations at the time, desperately avoided using the label "genocide" to describe the violence, to avoid international obligations as defined under the Genocide Convention (Weiss and Collins 2000, 101). When UNSC resolution 918 was finally adopted, thereby increasing troop numbers on the ground, it took a further three months until any of this additional troops actually arrived in Rwanda (a time when nearly 10,000 people were being killed each day) (Thakur 2006, 293).

In 1999, the latent violence that had been simmering since the 1975 Indonesian invasion, erupted again in East Timor. As 750,000 to 880,000 Timorese were forced from their homes under the constant terror of death squads and Indonesian supported militias, the international response was almost entirely absent, until Australia, operating in some ways from geopolitical pressures, undertook the intervention nearly singlehandedly. Yet "delays…meant that although Australia did intervene, intervention came only after the worst of the violence was over" (Bellamy 2006, 150).

'Operation Restore Democracy' was undertaken in Haiti after Chapter VII of the UN Charter was invoked claiming that the internal crisis in the country represented a "threat to international peace and stability" (Hehir 2008, 20). However, the intervention was explicitly undertaken with the intention of displacing the government and installing a democratic alternative, thereby stepping outside the boundaries of what is justified under humanitarian intervention (Weiss 2007, 49). Even then, the intervention was delayed continuously, thus it took almost three years following the original coup, a period of near constant political violence and human rights abuses (Weiss 2005, 122) for restorative military intervention to occur.

A rare occasion when near universal political consensus was achieved, was the 1991 intervention in Iraq. This condemnation of Saddam Hussein's invasion of Kuwait brought about UNSC resolution 678 in 1990, authorizing "all necessary means" to halt Iraqi aggression (Ignatieff 1999, 100). Several months later, in April 1991, as 2.5 million Kurds were fleeing revenge attacks, UNSC resolution 688 demanded "immediate access by international humanitarian organisations to all those in need of assistance in all parts of Iraq", a mandate that came to incorporate a 'no-fly zone' being imposed over Iraqi-Kurdistan (Weiss and Collins 2000, 77-80). Yet the language of resolution 688 did not explicitly authorise intervention, thereby casting the legality of the Kurdish 'protected zone' into doubt (Weiss 2005, 46).

The intervention into Liberia by the Economic Community of West African States (ECOWAS) to halt what was a long-running civil war and politically motivated violence, predominantly by Charles Taylor backed rebels, happened without UN approval. Despite the obvious levels of human suffering, neither prior to the intervention, nor in retrospect, did the UNSC agree to authorise military action (Weiss 2007, 9)

A long-standing humanitarian crisis in the Democratic Republic of Congo (DRC) (approx. 1998 to 2007) consistently drew the attention of the UN. The international

community openly condemned the violence, and military intervention was debated resulting in the UNSC adopting numerous resolutions. However, a reluctance to staff, supply and fund various UN peacekeeping missions (Chomsky 2012, 28; Weiss 2007, 52) meant that "humanitarian intervention melted into air" (Adelman 2002, 17). After the introduction of R2P, the UNSC has not authorised a single intervention under its guise for the DRC. In other words, the doctrine has had no noticeable impact on the conflict in DRC (Bellamy 2011, 89).

Described as a "slow-motion genocide" (Weiss 2007, 52), the conflict in Darfur failed to attract any meaningful response from the UNSC, or any action capable of addressing the rolling violence or protecting at-risk populations (Weiss 2007, 53-55). Strangely the international community seemed obsessed with getting prior approval for any intervention from Sudanese President Omar al-Bashir (Schulz 2009, 150). For example, UNSC resolution 1706 asked for "the consent of the Government of National Unity" (Hehir 2008, 67). Post-R2P, the British Parliament announced, "if the responsibility to protect means anything, it ought to mean something in Darfur" (Bellamy 2011, 52-54). Similarly, R2P was referenced in a UNSC resolution criticising the government in Sudan. However, the international community proved unwilling to support intervention, and particularly unwilling to supply the 12,000-20,000 troops required (Weiss 2007, 55).

In Libya, often seen as a peak of humanitarianism, UNSC resolution 1973, despite authorising intervention, seemed to deliberately avoid making explicit reference to R2P, by avoiding any mention of the responsibility of the international community to protect the Libyan people. Rather, once again the emphasis was placed on the need of the Libyan state to protect its own population (Hehir 2012, 13). Inside the UNSC, China and Russia were intent on vetoing Resolution 1973 until regional support in the form of the Arab League, the Organisation of Islamic Conference and the Gulf Cooperation Council assuaged their reluctance and diminished their direct responsibility (Hehir 2012, 14). Even then, Russia, China, India and Brazil abstained from voting rather than actively supporting the resolution from within the UNSC, and the BRICS nations (Brazil, Russia, India, China and South Africa) openly questioned both the applicability of R2P and expressed doubts about the intervention itself (Garwood-Gowers 2013, 82-88).

Concerning the state collapse and running humanitarian crisis in Syria, the UNSC has been extremely vocal in condemning the violence and has passed resolutions authorising limited observer missions, including resolution 2118 demanding the destruction of Syria's chemical weapon arsenal, and even went so far as to offer an outline of the transition of power. However, this allowed the Syrian government to continue targeting its own citizens, as long as it did not involve the use of chemical weapons: chemical weapons would later be used by the Syrian regime without any corresponding humanitarian intervention. When it came to authorizing military intervention and peacekeeping protection for civilians, the UNSC was consistently deadlocked. The UNSC failed to achieve any substantial coercive measures in relation to Syria, let alone any consensus on appropriate responses to the rumbling crisis. Moreover, resolution 2118 was enacted via the Chemical Weapons Convention, not under the auspices of R2P (Garwood-Gowers 2013, 82 & 94).

After Islamic militants launched an armed invasion of the northern regions of Mali imposing strict religious law, extrajudicial killings, torture, rape and force population displacement, three separate UNSC resolutions were passed authorising international intervention. In support of this, the Economic Community of West African States (ECOWAS) offered their backing to the Malian government. Yet despite this, it took a unilateral intervention (Operation Serval) by France to answer the needs of the Malian nation.

In similar fashion, violence in Uganda (Weiss 2007, 52-53), Sierra Leone (Chomsky 2012, 28), North Korea (Bellamy 2011, 67-68), Guinea (Bellamy 2011, 88), Zimbabwe (Garwood-Gowers 2013, 85-86), and Sri Lanka (Crawshaw 2009) failed to be met by a significant protective humanitarian intervention, because the missions were undersupplied, understaffed, underfunded, because the conflicts themselves were simply ignored, or because resolutions could not be reached. Effectively, no action was taken because the UNSC failed in its capacity as the sole international arbiter of military force and humanitarian intervention.

Institutional Failure of R2P

This history of failure is also written into the structure of R2P. A series of institutional failings on behalf of the international community and the UN were present from the outset of the doctrine. Despite the universal acceptance of the World Summit outcome, the language of the document represented a clear "watering down" of the original ICISS article (Weiss 2007, 57). The world Summit outcome put prominence on the need for states to take responsibility for mass atrocities within their jurisdiction, thereby weakening the international responsibility for outside states to intervene when necessary. The term "obligation" was itself removed from early drafts of the R2P document after various states objected to its implications (Holt and Berkman 2006, 32; Weiss 2007, 57; Hehir 2012, 19). The original threshold for intervention – "large scale loss of life" – was replaced by the higher threshold categories of 'war crimes, genocide, ethnic cleansing and/or crimes against humanity' ('the four crimes'). And the justifying principle of "manifestly failing" to protect citizens from these crimes, was reduced from the original, and considerably lower benchmark of "unwilling or unable" to protect (Garwood-Gowers 2013, 84).

Beyond this, significant disagreements came to the fore after the World Summit outcome over the exact meaning of R2P. What R2P actually meant in terms of functionality, reach, application and capacity remained lost in indeterminacy as states began immediately debating their commitments regarding R2P (Bellamy 2010, 144). Even the wording was openly questioned; some states claimed that by accepting the World Summit outcome they were also accepting the ICISS report (Chomsky 2012, 60), whilst other countries claimed that they had not agreed to, nor authorised R2P as a doctrine in any capacity, even after signing on to the World Summit outcome (Evans 2009, 52). R2P became little more than a "political catchword that gained quick acceptance because it could be interpreted by different actors in different ways" (Stahn 2007, 99-102).

At the 2009 UNGA debate, four core concerns were raised by member states, indicating that R2P was never actually accepted by the international community. The first, the R2P call for an effective early warning system, and required information gathering, was considered to be an unacceptable intrusion into state sovereignty. Second, concerns were raised regarding thresholds for intervention and clarity of evidence. Third, it was argued that without UNSC expansion, R2P would be unacceptable in practice. Fourth, it was questioned as to whether R2P, in its entirety, added anything of value to the institutional architecture of the UN (Bellamy 2010, 148). This final point was certainly justified, with the heavily diluted World Summit outcome doing nothing more than reiterating already accepted, but often ignored, principles of the international order (Chomsky 2012, 160-161; Hehir 2012, 52).

But the most significant institutional failure of R2P was with the World Summit's failures to address the barrier that the UNSC has presented to effective humanitarian intervention. Alternative routes to authorisation for humanitarian intervention, beyond that of the UNSC, were proposed in the ICISS document but removed at the World Summit (ICISS 2001, 3.31 & 3.35). Additionally, an ICISS proposed code of conduct for the use of veto powers by the P5 members in matters of humanitarian concerns was abolished in the World Summit document (Hehir 2008, 71). Finally, as if to clarify these backtracks, the UNSC was reaffirmed as the sole arbiter of international military force, and as holding absolute discretion over humanitarian missions (Hehir 2012, 19).

Previous Reform Agendas for the UNSC

On matters of humanitarian intervention, the UNSC remains the sole arbiter and dispenser of international justice. Any such force, in the absence of a UNSC authorising resolution is considered illegal (Thakur 2006, 245). This is a system of humanitarian legitimacy that places an unnatural amount of control and power onto a single, unrepresentative body, and particularly so into the hands of the P5 members by virtue of their veto power. At the expense of balance-of-power considerations, the needs of the suffering, and the at-risk, are simply not considered in the institutional architecture of the UN. This is a system designed toward gridlock, paralysis and inaction; a system where the political motivations of a few powerful states override and, more often than not undermine, what would otherwise be considered best ethical practice (Tsagourias 2013, 135-138). With the UN, and particularly the UNSC, presenting a significant barrier to the timely, regular and decisive application of humanitarian intervention to address mass atrocities, a long and persistent history of attempts to reform the UNSC, focussing on various key areas, have come and passed over the years, all of which have failed to achieve substantial change (Von Freiesleben 2008; Voeten 2007). Some of the more significant and well-constructed attempts to improve the organisation are discussed below.

The R2P Code of Conduct

The original ICISS report outlining the doctrine of R2P included a recommendation to the P5 members that they impose upon themselves a 'code of conduct'. This code would essentially require P5 members to make a commitment to refrain from exercising their veto powers under three key conditions: if the situation in question is a serious humanitarian crisis, if the resolution in question achieves majority approval within the UNSC, or if the national interest of the potential vetoing nation is not being directly impacted by the resolution. Rather than veto resolutions pertaining to humanitarian crises, P5 members would simply 'constructively abstain'. To support this change, the ICISS report recommends an expanded role for the UNGA. Although a UNGA mandate can be only of a "recommendatory" nature, the two-thirds vote it requires undoubtedly carries "powerful moral and political support" (ICISS 2001, 6-7). Despite the limited scope of UNGA, by virtue of article 10, and article 11 of the UN Charter the UNGA does hold a certain nascent power over issues that are within UNSC jurisdiction. Thus, the ICISS recommendation involved a wider use of UNGA "Emergency Special Sessions" under the "Uniting for Peace" provisions and under UNGA 'Rule of Procedure 65', in order to encourage deliberations over humanitarian crises, prior to or post, UNSC deliberation and decisions. This offers an added, and significant form of moral, and normative leverage on UNSC decision-making. However, the World Summit document on R2P removed this 'code of conduct' provision from its language (ICISS 2001, 6:21-6:30).

A United Nations Constitution

The creation of a UN constitution has been proposed on numerous occasions. Indeed, calls for such a constitution can be traced back to the League of Nations and the belief that the organisation, just as the UN afterwards, suffered from a lack of common understanding due to the lack of an encompassing constitution. A UN constitution would, in principle, be a step toward creating confidence in both the behaviours and intentions of member states, and it would be a binding document of international unity across states that at a glance have little in common (Tsagourias 2013, 152). It would define the rules, tools and structures of international cooperation, but also be the embodiment of a "common mindset": a common understanding of what constitutes peace and security, the recognition of a cosmopolitan ideal, a means to ensuring that future claims to human security do not remain in the abstract. Considering that there is no forum, either internal or external to the UN, where UN reform can be debated or discussed, nor any internal mechanisms that govern and rule the internal processes of the organisation, constitutionality is often considered an avenue toward better marrying the 'UN in practice' to the 'UN as an ideal' (Tsagourias 2013, 151-153).

The Jurying Process

Thomas Franck proposed the 'Jurying Process' under the assumption that grand scale reformations of the UN and the UNSC, as with the previous two proposals, are unlikely to ever be accepted and therefore doomed to failure. The Jurying Process is a means around the need for foundational reconstruction by instead building a forum for dealing with humanitarian crises within the existing institutional architecture of the UN. This would mean the creation of a new open forum for the discussion and debate of humanitarian concerns; a forum where equal weight is provided to both legal and moral considerations, thereby offering a means to remarry common and normative values with international law. Such an embedded consultative process would offer a means around the excessively "strict constraints" that govern the UNSC. In moments when the UN Charter and the UNSC become barriers to international peace and justice, or when humanitarianism is undermined by obfuscation, delay or non-compliance, such legal structures could fairly be derogated. This would produce considered moral outcomes, rather than dogmatic restatements of legal procedure. In essence, the Jurying Process would operate in a similar fashion to a Grand Jury; where the application of morality and legality are judged by a transparent and accessible forum and its decisions would hold the UNSC accountable for their symmetrical decisions (Pogge 2010, 165-177).

The International Court

Similar to the Jurying Process, but with more judicial weight, is the formation of a fully empowered 'International Court', as proposed by Thomas Pogge. The Court would address the need that Pogge described as an "effective judicial organ for the authoritative interpretation and adjudication of international law – in real time" (Pogge 2010, 180). The Court would be comprised of a panel of legal experts (judges) with a deep and proven history in the field of international law and the UN, with the role of delivering verdicts and offering legal clarity on humanitarian crises, and the power dynamics and existing mechanisms that allow such issues to avoid international redress. The creation of such a body, though non-

intrusive in its set-up and would have the ability to influence down-stream reforms and the behaviour of powerful states in a disproportionate manner. This would be achieved by separating powerful states and their influence from the judicial process governing international law and UN functioning. The Court would rule definitively over whether international or domestic obligations violated and whether international conventions breached. The spill-over effect of this would be a more robust legal system and clearer avenues to humanitarian interventions, as well as clearer guidelines for the delivery of such interventions. The important advantage that the Court has to the Jury Process is in its complete independence from the influence of UN member states. Most important of all though, would be in the Court's capacity to legalise intervention, if only normatively. This would shift the emphasis of UNSC resolutions. No longer would the body be 'authorising' intervention, but rather passing 'forbidding resolutions' on decisions of the Court that they disagree with, thereby almost entirely nullifying the power of the P5 veto (Pogge 2010, 180-182).

The UN Standing Army

One of the key failures of the UNSC in practice has been in the application of peacekeeping missions. Such missions, once authorised, tended to fail, at least in part, due to UN member states not adequately funding the operations not supplying the stipulated levels of equipment and troop numbers (Tsagourias 2013, 137-145), and by inadequate training and preparation for the troops that are provided considering the often unique and specialised nature of humanitarian missions (ICISS 2001, 7:1-7:51). A solution to this challenge could be the creation of a permanent, United Nations commanded, military force. Requiring between 15,000 to 20,000 troops, on two-year rotations from member states, and ready for fast deployment of only a matter of days, the force would train together exclusively for the sole purpose of future use in UNSC authorised humanitarian missions. Once the Army has been formed, and has operated over a number of years, the costs of it would likely reduce to a level that is considerably cheaper than ad hoc interventions and an even financial dispersal across member states (Pattison 2008, 129). Though still limited in its deployment by the passing of UNSC resolutions, the UN Standing Army would reduce the ability of P5 member states to obfuscate their international obligations by passing resolutions as a means of passing-the-buck. No longer would such states be able to agree to resolutions with the sole intention of calming public outrage, yet without having any intention of funding or supplying already agreed to missions. Military engagement would flow autonomously following the passing of humanitarian resolutions: moral commitments would always be guaranteed material backing. Such a force would also help address the problem of differing interpretations of the meaning of resolutions, would ensure universal UNGA engagement in all UNSC resolutions, would reduce instances of mission creep and mandate abuse by removing the mission control of member states, and would help to ensure that the humanitarian principles of intervention are not lost during the conflict (Tsagourias 2013, 137-145; Pattison 2008, 126-132; ICISS 2001, 7:1-7:51).

Other reform attempts that would have undoubtedly improved the effectiveness of the UNSC in regards to humanitarian intervention, have tended to focus upon: further democratising the UN expanding UNGA powers, expanding UNSC membership ,limiting the power of the veto, abolishing the veto altogether, expanding the number of vetoes needed to block resolutions, creating subject areas where the veto cannot be used, and streamlining the operational effectiveness of the UNSC. All such reform proposals, regardless of how mild, intelligently targeted, or limited in its reach, have failed to achieve even the most minimal levels of traction (Tsagourias 2013, 135-144).

The landscape of literature on the prospects of reform for the UN varies considerably. Joseph Schwartzberg argues that the voting structure of the UNSC and the UNGA needs to be the key target for any designs on reform. His solution is to include an accounting of each member states' population, the amount that they contribute to the UN budget, and the totality of their legal membership (Schwartzberg 2003). Jonathan Strand and David Rapkin follow this line of reasoning down into 'weighted voting', seeing this as the fundamental stumbling block for the work of the UNSC, and importantly its ability to act decisively. They gameplay scenarios and show that under such changes the performance of the UNSC will improve (Strand and Rapkin 2010). On the other side of this, Adam Roberts and Benedict Kingsbury champion the UN largely because of its central significance in the global order, think that the importance of the organization overweighs its failings, and do not see the challenges building before it as existential (Roberts and Kingsbury 2008). Ilyana Kuziemko and Eric Werker highlight the avenues for corruption and bribery associated with rotating seats on the UNSC, showing that powerful nations increase their foreign aid commitments to states once they rotate into membership. This offers a means to greater control the organization by a few powerful states - generally the P5 (Kuziemko and Werker 2006).

Ruben Mendez touches on the chronic failure of funding, and the inevitable downstream impacts this has on the international functions of the organization (Mendez 1997). Thomas Franck paints a picture of UN morass based on the failure of any single legal principle to control state behaviour. For Franck, the normative nature of the UN Charter is diminished by this, allowing for member states to resort – at will – to all manner of unlawful international violations (Franck 2003). David Tolbert and Andrew Solomon see the UN as in desperate need of reform, and that this is understood by both the organization itself and the member states. This often produces a situation where the organization actively squanders its ability to instil the rule of law in member states (Tolbert and Solomon 2000). From this line of reasoning, a range of authors, such as Ronald Meltzer, have talked about the failure of the UN to deal with challenges that are faced primarily by the underdeveloped or developing world, in a global defining organization that is so heavily leaning toward the interests of a few powerful nations (Meltzer 2009).

Ignoring the UNSC and Regional Peacekeeping

A certain truth is unavoidable at this stage: no matter the nature, purpose or need of any given reform, the UNSC, and particularly the P5, will resist the change in question out of a desire to maintain the level of control and influence that privileges them under the current system. Consequently, and considering the prominent position that the UNSC holds with regards to the authorisation of humanitarian intervention, as well as UNSC's long history of institutional failure for protecting at-risk populations around the world, a new approach to reform must be formulated. Kofi Annan, though clearly offering the statement as a warning, touched upon the only conceivable option for forcing UNSC reform into the near future: "If the conscience of humanity… cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and justice" (ICISS 2001, 6.22). Ignoring UNSC processes altogether in seeking authorisation for humanitarian intervention comes with certain dangers, as Annan was alluding to. However, when weighed against the danger of allowing things to continue as they are now, a situation whereby the UNSC is forcing us all into being "complicit

bystanders in massacre, ethnic cleansing, and even genocide" (ICISS 2001, 1.22), it might just be the best-worst-option. From a moral and legal standpoint, UNSC reform is required if international justice is to mean anything... and there are just no conceivable options left.

There is a useful and largely supported – though still embryonic – test case for such an institutional divorce: the International Monetary Fund (IMF) and the World Bank are the primary international financial institutions on the global stage. However, since implementation they have suffered under a steady stream of criticism, largely directed at an institutional architecture that many consider to be anti-democratic and American controlled. Both institutions resisted change, largely due to American intransigence – not wanting to relinquish any of the power and influence it holds over the world order via these institutions. Notably, the U.S. Congress has consistently blocked attempts to even bring discussions of reforms of the Bretton Woods order. However, the functions provided by the institutions – namely allowing nations to continue trading despite balance of payment problems – is widely considered to be a general good for the world economy. Therefore, needing an international investment bank but stifled by the intransigence of the current system, the China-led Asia Infrastructure Investment Bank (AIIB) (US$50 billion) and the BRICS Bank (US$100 billion) are being pursued as alternative institutions with new democratic values built into their foundations. The BRICS Bank and/or the AIIB offer two mutually beneficial outcomes they immediately provide what the IMF and World Bank have been unable to in terms of institutional reform, and they start a process by which the IMF and the World Bank will be forced to reform or become largely redundant once the new banks begin meeting a long-denied desire. By bypassing them, by ignoring them, there is a pathway to reforming them.

It is obvious that the P5 members, countries that dominate the global scene and maintain a large degree of that control via their veto provision within the UNSC, are unwilling to do anything that might degrade that power in any way. If, however, that power was already being stripped away by an alternative avenue to humanitarian intervention, and the institution faced a choice between reformation and permanent obscurity, it would almost certainly choose the former. A rise in regional peacekeeping and normative legitimacy in such operations might just be the means of achieving this. By ignoring the UN, and particularly the UNSC, in favour of regional solutions to humanitarian crises, the institutions might just be forced into reform.

A rise in regional peacekeeping would be building upon an extant desire and practical foundation that would make such interventions more palatable and more effective than UN directed missions. At a time when Western powers are showing an increasing aversion to engage in humanitarian intervention (Cottey 2008), the opposite is often true of regional actors. Indeed, states have been shown to be statistically more willing to engage in peacekeeping operations as the physical distance between themselves and the mission location decreases (Perkins and Neumayer 2008). Regional peacekeeping simply tends to be more politically and morally appealing than broader international missions.

Similarly, joint membership of regional associations helps to increase the likelihood of both supporting and participating in humanitarian intervention due to increases in variables such as joint strategic interests (Bellamy 2009), economic interconnectivity (Kernic and Karlborg 2010), and the chance of cross-border spill-over effects (ICISS 2001, 6:31-6:35). In terms of operation, regional states and organisation simply are better situated for rapid responses, tend to have cheaper implementation and running costs for the missions in question, are likely to have a more nuanced understanding of the challenges inherent in the intervention, should hold greater cultural sensitivity for local communities, tend to possess

increased legitimacy from both the state and population targeted by the intervention (Bellamy 2009b; ICISS 2001, 6:31-6:35), and are better able to structure and impose relevant sanction regimes (Vines 2013).

Regional organisations are explicitly recognised in the UN Charter under Chapter VIII: Regional Arrangements specifically regarding dispute resolution, and have long been involved in UNSC responsibilities in 'assisting capacities'. The UNSC passed resolution 1631 supporting greater peacekeeping cooperation between regional and UN bodies, and resolution 1674 (reaffirming the World Summit Outcome) explicitly recognised the valid role of regional organisations in protecting populations in armed conflict (Paliwal 2010). Normatively, such regional organisations have been moving steadily toward autonomous operations.

The African Union (AU) offers a useful test case: from its establishment in 2001, the AU (replacing the Organisation of African Unity (OAU)) has moved quickly from an organisation focussed on economic growth and development to be incorporated within the African Peace and Security Architecture (APSA) as the key organ for achieving peace and security in Africa. Currently, the AU is at the decision making heart of the African Common Defence Policy, the African Peace Fund (APF), the Continental Early Warning System, the Military Staff Committee, the Panel of the Wise, and the Peace and Security Council and the African Standby Force (ASF) (Vines 2013). The AU is an organisation that has adapted, and is still doing so, to deal specifically with the disproportionately high instances of mass atrocities, coups, civil wars, violence conflict and human suffering that afflict the African continent (Enuka 2012, 52) (Vines 2013); an organisation recognising that, as an African solution, it and not the UNSC, offers the best means to address such crises.

The AU Constitutive Act, authorises the enforcement of "peace, security, and stability on the continent", "the right of the [AU] to intervene in a Member State pursuant to a decision of the Assembly [the Assembly of African Unity] in respect of grave circumstances, namely, war crimes, genocide, and crimes against humanity", and "the right of Member States to request intervention from the [AU] in order to restore peace and security". Therefore, despite running contradictorily to the UN Charter, particularly article 2(4), regional peacekeeping has been endorsed by the African states (51 in total) along with the AU's right to exercise it on their behalf. Recognising this trend, and the sentiment embodied in it, the UN has been pressured into making an exception concerning the absolute power of the Security Council over interventions. The AU can now 'legally' authorise regional humanitarian interventions "in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity" without deferring to the UNSC (Tsagourias 2013, 149) , provisions that had been normatively in place since they were applied in relation to apartheid South Africa (Chomsky 2012, 160-161). However, this is an exemption that has not yet been extended to other regional bodies. Supporting this trend, the AU Commission Chairperson, Jean Ping, at the African Union summit in Addis Ababa in July 2012, declared: "the solutions to African problems are found on the continent and nowhere else" (Vines 2013, 89).

Following suit, regional organisations such as the European Union (EU), pseudo-regional organisation such as the North Atlantic Treaty Organisation (NATO) and sub-regional organisations such as the Economic Community of West African States (ECOWAS) and the South African Development Community (SADC) are all constitutionally empowered with ensuring peace and security, have a proven history of successful missions, have broad regional support, have been steadily increasing the scope of their peacekeeping responsibilities, and have been questioning (if only implicitly) whether they owe deference to the UNSC at all

regarding those responsibilities. As such regional organisations grow, integrate other sub-organisations, and develop significant soft power, it becomes only natural that they begin to take more meaningful responsibility for humanitarian interventions. In fact, such a step is representative of the maturity of such organisations (Sola 2012), as well as a vital step toward the process of state-building with has shown to have a flow on effect to the decreased likelihood of mass atrocities affecting a community (Thakur 2006, 266; Ulfelder 2012).

Early warning mechanisms and early response times are essential in all humanitarian interventions, with violence and conflict becoming harder to address as it spreads and becomes normalised within communities. Early-stage intervention tends to be, in both theory and practice, a universally cheaper, simpler, easier to effect, more successful (judged by outcomes), and potentially more morally defensible option, as opposed to a traditional after-the-fact responses to extant mass atrocities (Stamnes 2009; ICISS 2001, 3.7; Kuperman 2001, 100). In this regard, regional control over humanitarian intervention represents a chance for significant improvement. However, such early warning mechanisms require the nuanced analysis of data that might otherwise seem superficial, representing only subtle changes within populations centres, communities and governments, but that potentially indicate dangerous emergent realities on the ground (ICISS 2001, 3.10). Both acquiring and analysing the inherent risk in such information, involves a deep local understanding, working relationships with sub-state groups and non-governmental organizations (NGOs) (Kuperman 2001, 101), and the ability to actually deliver fairly immediate responses when such local indicators are going in the wrong direction (ICISS 2001, 3.6-3.12). For example, approximately 250,000 Tutsi's were killed in Rwanda in the first two weeks following the death of President Habyarimana (Kuperman 2001, 15-16). Only a regional organisation, or collection of regional actors, could realistically deploy in time to make an impact on such a fast rate of killing; such organisations are just in a better position to act (Bellamy 2009; ICISS 2001, 3.17; Vines 2013). Beyond this, regional interventions would likely reduce the material costs of any operation, thereby making them much more likely to be undertaken.

Differing proposals for the creation of a UN Standing Army have consistently failed to attract international support, particularly from the P5 members and other powerful countries. This is an intransigence built upon fears from states that such a force might be employed against them in the future, that it represents a degradation of state power, the embryonic stages of a 'World State', and only secondary, operational concerns regarding the capacity and effectiveness of such a force (Pattison 2008, 126-130). The creation of regional standing armies might be less troubling to member states of those organisations due to notions of shared values and common identity. A reasonable test case could be the realisation of the proposed African Standby Force (ASF). The ASF, operating under the directive of the AU (as well as selected sub-regional bodies) would be a collection of ready-for-action troops, supplied by all member states, and structured into sub-regional divisions so as to be quickly deployable (ideally 5,000-10,000 troops in each of Africa's five regions and sub-regional organisations; North African Regional Capability (NARC), ECOWAS Standby Force (ESF), ECCAS Standby Force (ECCAS), Eastern African Standby Force (EASF) and SADC Standby Force (SSF)). With major Western powers, such as America, France and Britain, already indicating that they would help fund, resource, and train such a regional initiative, the creation of the ASF would, if properly implemented, funnel what has so far been divergent funding by such nations – with the American launched Global Peace Operations Initiative (GPOI) and the French Reinforcement of African Peacekeeping Capabilities (RECAMP) program – away from

splintered initiatives and into a single, capable body. This would help focus resources, improve capacity, help develop impartiality mechanisms, and help to administer uniformity when it comes to operational standards (Bellamy 2009; Vines 2013, 97-98; Coleman 2011).

Furthermore, with such a standing force in place, the scope of intervention could be increased at the approval of individual member states via selectively chosen 'Intervention Agreements'. For example, reversals in democracy, break-downs in central power structures, forcible regime change, authoritarian government, or just the lack of representative government, dramatically increases the likelihood that a society will suffer from mass atrocity crimes (Bellamy 2011, 108; Bellamy 2011, 97; Ulfelder 2012; Pogge 2010, 41). Considering such risk, new democratic states, or even democratic states that consider themselves at-risk, might choose to sign an Intervention Agreement with the ASF stating that if its government becomes undemocratic, or if it is removed by violence or coup, the intervention in order to restore democracy is 'pre-authorized', something that is otherwise prohibited under international law (Pogge 2008, 159).

Conclusion

By opening a legitimate space for regional humanitarian intervention, both in authorisation and in application, certain risks become apparent. First, due to regional politics/strategic considerations, certain humanitarian emergencies might be allowed to continue unabated. However, this is substantially no different to the claim that international strategic considerations and politics might cause conflicts and suffering today to rumble on indefinitely. In fact, this is exactly what has tended to happen; Syria is a good example. Second, there is an argument that on a regional platform nations will seek to support their local allies as a primary concern, and therefore regional peacekeeping will simply become an easily misappropriated means of protecting the existing regimes of states rather than their populations. However, this sort of misappropriation of humanitarian principles and mission objectives is what has already been used by Russia in South Ossetia and Crimea (Bellamy 2011, 55-56), by France in Myanmar following cyclone Nargis (Bellamy 2010, 151-152), and by the United Kingdom's Tony Blair in trying to retrospectively justify the 2003 invasion of Iraq (Weiss 2007, 124; Byers 2005, 107; Evans 2006, 717). Finally, a move towards regional peacekeeping could represent a first step towards a splintering into global anarchy; a return to a world without rules. However, this is an overly gloomy picture of what existed pre-UN, as well as an overly optimistic view of what exists now. The world has always been governed by principles, if only moral, but always explicable and understood. Currently, there may be a new institutional architecture in the form of international humanitarian law, but it is so often ignored, so selectively applied, so widely abused, so poorly enforced, and so regularly stifled by the very structure that is meant to be enforcing it – namely the UNSC – that the very idea of 'humanitarian law' is collapsing through this process of failed application.

We are faced with a reality that needs addressing: the failure of the UNSC, and particularly the P5 veto power, means that we are unable to adequately provide humanitarian protection for at-risk populations of the world. Considering our inability to reform these institutions, despite numerous attempts, there are very few options available. One is to accept the status quo whereby mass atrocities more often than not will continue unaddressed and unmitigated. The other is to find a way to force through UNSC reform; that is to find a way to tilt the cost-benefit-analysis so that the P5 members come to see UNSC reform as being in their interest. This can be achieved through a normative rise in regional peacekeeping

solutions that do not merely seek to execute resolutions by themselves, but that actually bypass UN approval and UN processes altogether. This would, in effect, take away the control over international actions that the P5 members currently hold with the veto power. By simply ignoring the UNSC, the UNSC will be forced to accept the complete loss of power associated with it, which would likely have its benefits in the form of a greater willingness to approve intervention, as well as improved mission capabilities, as a result of their new regional control bases, or choose to reform themselves in order to retain a diminished share of their original power. Either way, ignoring the United Nations Security Council might just be the only means to reforming it.

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