LXV

SIXTY-FIFTH SESSION

6TH LEGAL

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Introduction to LEGAL

The 6th Committee is the primary General Assembly body tasked with considering matters of international law. 6th Legal debates and sets the standards with which the international community enforces the laws and guidelines it creates through treaties and conventions. 6th Legal's topics of consideration range from the combating global terrorism, establishing international court systems, and overseeing the application of the UN's Peacekeeping program. It oversees a wide berth of issues, all centered on issues of applicability of law, such as issues of jurisdiction and enforcement and working to develop international treaties that are effective and clear in guidelines for application.

Topic I | Reform of the ICC/ICJ System

The International Criminal Court and the International Court of Justice are the two primary juridical body tasked with the enforcement and application of international law. The ICC is an independent body tasked with bringing individuals accused of international violations of law before a panel of judges— the ICJ is a UN body tasked with adjudicating disputes between sovereign states. Both are essential tools in advancing progressive aims of international law— both, however, are mired in controversy, criticism, and demands for reform. Notably, the United States has withdrawn from accepting the jurisdiction of both courts. This committee will assess the current state of the World Court system and will attempt to formulate principles moving forward toward a system fully accepted and ratified by the entire international body

Background

History of the ICJ

The first significant experiment with an international arbitration system in the 20th century arrived in the wake of World War I with the Permanent Court of International Jurisdiction (the PCIJ). Established as an arm of the League of Nations, the PCIJ was designed to handle "disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement" (*Covenant of the League of Nations, 1924)*. The PCIJ was dissolved alongside the League of Nations after World War II, and replaced with the International Court of Justice, established as: "the principal judicial organ of the United Nations...based upon the Statute of the Permanent Court of International Justice" and as "an integral part of the present Charter"(Article 92 UN Charter). The names and official constitutions changed, but the goal of the ICJ was still the same as its predecessor: to serve as an intermediary body between states and to adjudicate disputes based in treaties and international law. The ICJ was able to take on its first case in 1947, the Corfu Channel dispute between Albania and England. Since the Corfu Channel dispute, 161 cases have been entered for consideration before the ICJ ("List of Advisory Proceedings").

Basic Structure of the ICJ

The ICJ consists of 15 Elected Judges. No two judges from the same country may serve simultaneously. Candidates for the judgeship are elected to 9-year terms by

separate votes from the General Assembly and the Security Council. A third of the court is elected every three years. According to the ICJ Statute, judges should be "persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices" (Article 2). The ICJ Statute also makes provisions for States that do not have judges who share their nationality to select a judge to sit *ad hoc* for any case that the State is a party to (Article 31).

As it is intended to resolve disputes regarding international laws and treaties, only states (not individuals/groups) may bring cases before the ICJ. As will be shown later, this component of the ICJ has long been a potential factor in its lack of ability to bring meaningful justice on the international stage.

The jurisdiction of the ICJ is at no point “automatic.” This means that at no point may the court, unless working under the auspices of a separate international treaty or under the explicit consent of a member state, initiate a case on its own. States agree with one another to appear at the ICJ in order to settle their disputes at hand. Thus, the legal standards under which the court operates are ever-changing, depending on the treaties that oversee the given states that appear before it.

Critiques of ICJ

In recent years, the ICJ has faced its fair share of criticism. As a result of these qualms, major world powers have effectively abandoned the ICJ. Subsequently, the number of significant cases taken on by the court has declined. The reasons for critique of and the subsequent decline in the ICJ’s role in the international arena lay in the election and composition of the court as well as its weak jurisdictional powers.

There is a widespread perception among diplomatic figures internationally that the judges of the ICJ tend to be chiefly loyal to the countries that they originally hail from. This issue is crystallized by the previously discussed provisions of Article 31 of the ICJ Statute, which allows a state party to nominate a judge *ad hoc* to the case's panel if none of the presently elected judges of the court hail from the states in question. This means that, for the duration of the case in question, a State party may select their own judge to serve on the case's panel of jurors. These judges do not necessarily need to share a nationality with the State who selected them. A partial justification for this practice, according to the UN, is that it is "useful for the Court to have participating in its deliberations a person more familiar with the views of one of the parties than the elected judges may sometimes be" ("Judges *ad hoc*"). However, studies of voting behaviors of these judges have indicated overwhelmingly that they will vote in favor of the country that has appointed them to the panel (Posner 2004). Legal scholar S. Gozie Ogbodo summarizes the central contradiction at the heart of this practice: "Since an ad hoc judge is an appointee of a state party before the Court, the likelihood of future appointment will definitely sway the judge to be sympathetic to the state party which typically is his home state" (109).

In addition to state loyalty, the bodies that elect the judges are seen to have unintended effects on judicial voting patterns. A central, and perhaps unavoidable, issue is the prospect of electability in the first place. It is delegates to the General Assembly, representing their states, who are responsible for the re-election of judges to the ICJ. Since judges are desirous of maintaining their positions on the court, they are thus likely to act in the interest of obtaining re-election, whether or not that fully complies with their

own personal ideal applications of judicial standards. Ogbodo notes that it is often a judge's home country that is responsible for financing a judge's re-election efforts—thus creating an immediate incentive to make decisions that will keep them in the favor of those who will direct their ability to remain in office. Furthermore, there is no limit to the amount of re-elections a judge can stand for, meaning that the desire to stay in office is a continuous one until retirement

The relationships between the court's composition and the great powers (China, the United States, the United Kingdom, France and Russia) have also led to claims of bias (Suh 1969). Essentially, the great powers of the Security Council wield disproportionate power in both the deciding of cases and their enforcement. The Security Council conducts separate elections for the ICJ and has permanent seats for judges on the court. Furthermore, the UN Charter makes an explicit provision for the Security Council to enforce ICJ decisions by the Security Council. These enforcements, of course, must be passed with the full consent of the 5 Permanent Members, who all wield the ability to veto any resolution. The disproportionate influence of the world powers in both the deciding of cases as well as their enforcement creates a continuous incentive for smaller states to name ad hoc judges and demand a bias from their judges as the only option for an effective counterweight.

Finally, a major issue in the court's ability to function effectively is its lack of an impactful mechanism for compulsory jurisdiction. Out of the 5 "Power" Permanent members of the UN Security Council, only the United Kingdom, has accepted compulsory jurisdiction, watering down the ability of the court to make a meaningful impact amongst states that wield the most power on the international stage. Some have

claimed that compulsory jurisdiction needs to be a mandatory condition of ICJ membership in order for the court to have any measure of impact. So long as only some states are guaranteed to follow the orders of the ICJ, and so long as the majority of the world powers see themselves as immune from ICJ intervention, there is no possible way to ensure a consistent and equal distribution of the court's resources and ability to make meaningful juridical decisions in all circumstances across the globe.

History of the ICC

The earliest iteration of an International Criminal Court was proposed in the wake of World War One, when the postwar treaty bodies were unable to effectively create an international tribunal to try individuals for war crimes. After World War Two, in 1945, the Allied Powers agreed to the Charter of the International Military Tribunal, otherwise known as the Nuremberg Charter. In it, an important standard would be laid down to the purpose and scope of the crimes under investigation, which were defined by: "Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated" (Nuremberg Charter 1945). These standards are important as they set the stage for the nature of crimes that the international community would see as fundamentally opposed to the concept of human rights and proper action. The subsequent war crime trials held in Nuremberg and in Tokyo were important precursors, both legally and symbolically, to the eventual role the ICC would serve.

Upon the formation of the UN and its founding charter, basic standards were brought forth in order to define international crimes of war and crimes against humanity. Upon adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, the United Nations General Assembly established the International Law Commission, which was tasked with examining the establishment of an international court that could execute the jurisdiction of these newly codified principles. A statute was indeed drafted and put forth by the ILC in the early 1950's, but most efforts to move forward and establish an official court were stymied in the shadow of the Cold War. (*Coalition for the International Criminal Court,* "History of the ICC").

In 1989, just after the fall of the Berlin Wall in a speech before the UN General Assembly, the Prime Minister of Trinidad and Tobago revived the notion of a World Court. PM Arthur N.R. Robinson envisioned the court as a vehicle for curbing international drug and weapons trafficking (Bui 2014). In the following years, the UN would establish another set of international war tribunals for conflicts in, among other regions, Yugoslavia, leading to greater traction for a more regulated system of handling crimes against humanity and other war crimes. After various studies and preparatory committees, the ICC was officially established at the 1998 Rome Conference. In 2002, the requisite 60th state ratified the Rome Statute and the ICC was officially entered into force. Most notably, however, were the absences of ratifications from the United States, China, Russia, Israel and India, among many others.

ICC Structure

The ICC has jurisdiction only over crimes that have occurred within the states that have ratified its treaty. The ICC, unlike the ICJ, tries individuals for war crimes and

other violations of international law. 18 judges adjudicate cases, each with 9-year terms. As with the ICJ, no two judges may hail from the same state. Elections of judges are conducted internally by the ICC's Assembly of State Parties ("Election of ICC and ASP Officials"). The judges are split between the Pre-Trial Division, the Trial Division, and the Appeals Division. The Office of the Prosecutor itself refers cases to the Office of the Prosecutor by individual States or the Security Council, or. The Office of the Prosecutor will then commence an investigation into the areas of alleged crimes, and, if the Prosecutor ultimately requests, the investigation will end with a warrant of arrest from the Pre-Trial Chamber.

Suspects who appear before the ICC are presumed innocent and have the right to defense by counsel of their choice (or by assigned legal assistance in case of financial hardship). Once the Pre-Trial Chamber confirms the viability of the charges at hand (discussed in Courtney 2015), the judges of the Trial Chamber commence the trial itself. The Prosecution and Defense both make their cases, and the Trial Chamber judges will then offer their verdict and, in the case of a conviction, their sentence. Judges of the ICC may impose prison sentences at a maximum of 30 years (or life imprisonment in extreme cases) and may also add fines or forfeitures of properties and assets. Sentences are served in States that have indicated willingness to accept convicted suspects. Any party may bring the case to the Court of Appeals to seek the overturning of a verdict.

One unique aspect of the ICC is the granting of rights to victims. Individuals who are seen to have been directly impacted in a harmful manner by a crime under ICC consideration are able to offer information and testimony, as well as seek reparations

for their suffering (paid for by either the convicted party or the ICC's Trust Fund for Victims ["Victims"]). The ICC has an Office of Public Counsel for Victims to provide support for victims throughout the procedure, as well as to coordinate their assistance and protection ("Understanding the International Criminal Court".

Critiques of ICC System

A major critique of the International Criminal Court rests in the unilateral nature of its proceedings. Without reference from the Security Council or from the country of concern, the ICC is able to proceed with its own cases and its own investigations. While this is likely intended to create a sense of impartiality and fairness, it also calls into question any chance of efficacy due to a lack of collaboration with states it needs information from. The ICC requires quite a deal of cross-participation from a number of states in order to coordinate witnesses and evidence— without collaborative and participatory action it risks its ability to obtain such resources (Sanchez 2013). The ICC has often put current heads of state under prosecution— a move that goes against a number of international law customs that protect currently operating officials from prosecution, so that they may continue to carry out their duties. The ultimate effect of this clash with customs is, again, a lack of collaboration and participation from relevant parties, leading to a slowed-down and inefficient process. Many have countered that it is perhaps the exact point of an international tribunal to hold leaders, no matter what their current electoral status may be, accountable for their actions (Cooper 2013). Nonetheless, leaders across the world have still held up a perceived immunity as a reason to avoid cooperation with the ICC, leaving the Court with little options to proceed.

A critique of the ICC and of the system of international tribunals in general have arrived from more theoretical angels as well. Much of this rests in criticism of “legalism” as an ideology holding justice and juridicism in a higher esteem and ultimately as more right and of higher value than politics. This, according to Duncan McCargo, flattens

historical and geopolitical realities for the sake of creating impossible and hierarchical moralistic standards. McCargo points to the UN involvement in the Cambodian genocide, which, in his analysis, ended up causing more harm than good through an ignorance of the realities of the blurred lines between victims and perpetrators, leaving only an inflamed sense of anti-colonialism and an empowered nationalist government claiming defense against foreign meddling. McCargo argues instead for national courts handling their own processes of prosecution for war crimes and past actions (McCargo 2015).

Recent Action

A major recent case of the ICC was its decision to drop charges against Kenya's President Uhuru Kenyatta. Kenyatta was originally indicted for his involvement in election-related ethnic violence following Kenya's 2007 contests. By the time that the case had been officially launched as an investigation, Kenyatta as well as another accused figure had announced their intentions to seek the presidency in the upcoming 2013 elections. Kenyatta's status as a powerful heir to a political dynasty in Kenya made for a complicated situation— his election was seen as quite likely, regardless of any accusations of war crimes. Kenyatta himself participated in the ICC elections, but it also believed that the government of Kenya was actively involved in suppressing witness participation throughout the entire process (BBC 2013). Meanwhile, a 2013 meeting of the African Union saw a proposed massive walkout from the ICC Charter, in response to perceived bias against African leaders. Ultimately, as Karen J. Alter of Northwestern has argued, the ICC succumbed to political will and material advantages in allowing Kenyatta to leave the trial unscathed, though Alter also notes that there is a high possibility that the awareness of international pressure within Kenya prevented a recurrence of electoral violence in 2013 (Alter 2014).

As for the ICJ, it is perhaps notable in its relative lack of major cases within its recent history. A glance at the ICJ's most recent dockets reveals cases surrounding mostly issues of territorial disputes and some brief inquires into issues of nuclear proliferation. As stated previously, advocates of reform have pointed to a perceived lack of fairness in the judge-selection process as well as a lack of effective enforcement in order for major, impactful cases to appear before the ICJ.

Case Studies

ICC/ICJ Reform: USA's participation in the world court system

The United States has had a complicated relationship with both the International Criminal Court and the International Court of Justice ever since the two were first created. The US is currently not a participating member of the ICC, having failed to ratify the body. The country was a member of the ICJ, but withdrew its position due to disputes over jurisdiction. The history of the United States' complex relationship with each international body makes international decision making as a whole increasingly difficult.

The United States was a great promoter of the ICC when it became operational in 1945. The US played a big role in post-war trials and had many military tribunals of its own that set precedent for the years to follow. The US was very active in the process that leads to the birth of the ICC. The States have a big concern for holding nations accountable for violations of international humanitarian law. For these reasons, the US was also very active in drafting the Rome Statute. However, the nation eventually declined to sign said statute. The US chose not to ratify the ICC because they held that the court has no jurisdiction and cannot affect the rights of third states for crimes committed within territory of state parties. This reason is one of many for why the US chose not to sign the Rome Statute.

Another reason the United States declined to ratify the ICC was a concern over prosecution of American nationals abroad, especially American servicemen. Another main problem the US has with the ICC, and a reason the nation did not ratify the body, was the ICC's relationship with Security Council. The US did not like how the ICC would

simply stand alone as its own association; the States thought the ICC needed to be part of the “international order” and fall under scrutiny of the Security Council (Schabas 2004). The United States believed the Rome Statute was trying to reduce the role of Security Council. However, an overarching speculation about the US’s opinions towards the ICC have been drawn from conclusions that the United States simply has a general hostility towards multilateral diplomacy and international organizations. However, this is a very broad theory about American foreign politics as a whole. Another reason the US does not support the ICC is summarized by Stephen Rapp, who currently serves as the U.S. Ambassador-at-Large for Global Criminal Justice. Rapp stated that,

> “…long-standing political and philosophical traditions in our country have prevented us from joining the ICC…most important…is the belief by Americans that we can better help suffering people than the international community, and that our ability to help others without changing our national identity or culture will be threatened by joining an international institution that has its own laws and regulations which come from non-American societies.” (Bulger)

The United States has an overarching belief that the ICC is simply contradictory to ideas that the US was founded on.

The United States also plays a large role in criticisms of the International Criminal Court. A main criticism the States have is over rights of the accused, or the right individuals have to a fair trial. The States believed the ICC does not offer this right to its full purpose or potential. The Heritage Foundation, an American conservative think-tank based in DC has argued that protections offered by the ICC are insufficient. American opponents of the ICC state that people under the ICC would be denied basic American

rights, such as the right to a fair trial by a jury of their peers, protection from double jeopardy, and the right to confront accusers. These criticisms are another part of why the United States voted against adoption of the Rome Treaty.

As stated above, the United States is not a participant in the International Criminal Court. The States have not ratified the Rome Statute. They did previously sign it but withdrew intent of ratification. The relationship between the US and the ICC has fluctuated throughout the years, with different presidencies bringing about questions over whether the US would join the ICC or ratify the Rome Statute. In 2000, President Bill Clinton signed the Statute. It reached 60 ratifications in 2002 but President Bush sent a note to the United Nations Secretary General to suspend the US's signature. Once the Obama Administration came to power, they stated intent to cooperate with the ICC. Hillary Clinton, as then Secretary of State, said the US would end hostility towards the court. However, there is still no intention to rejoin the Rome Statute or submit the treaty for Senate ratification. The Rome Statute is said to be incompatible with the United States Constitution, and that ratification would require an amendment. The United States is still at odds with the ICC's Statute, accountability, and jurisdiction. The US government is opposed to an international court that could hold the US military and political leaders to a uniform global set of standards ("US Opposition").

The story concerning the United States relationship with the International Court of Justice is very similar. From 1946 to 1986, the US accepted general jurisdiction of the ICJ in all cases against other nations. However, in 1986, after an unfavorable ruling from the court over mining of Nicaragua's harbors, the US withdrew from the ICJ. There have been numerous American criticisms of the ICJ from around that time until the

present. However, during the time, the United States still continues to accept ICJ jurisdiction under around 70 treaties.

The US case in the ICJ regarding Nicaragua was what first fueled American hostility towards the International Court of Justice. The US withdrew compulsory jurisdiction in 1986 to accept the court's jurisdiction only on a case-by-case basis. The States then withdrew acceptance following the court's judgment that called on the US to stop their force against the government of Nicaragua. The US used their Security Council powers to veto the possibility of Security Council enforcing this case. The US then issued a communiqué suggesting the nation could not present sensitive material to the court because of the presence of judges from eastern bloc states.

Complete US withdrawal came in 2005 after the Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes (Liptak 2005). This protocol provides jurisdiction in the ICJ when any state party to the Vienna Convention seeks to sue another state party for violating the protocol. The US withdrew from the optional protocol that gives the ICJ jurisdiction to hear cases under the Vienna Convention on Consular Relations. The US did not withdraw from the convention itself, just the specific protocol. The US decision to withdraw was also prompted by the international tribunal's decision regarding Mexicans on death row in the US. Withdrawing from the protocol meant that the US was not supporting a protocol that gave the tribunal power to rule over such disputes as the one concerning death row. However, the Bush administration did tell state courts to abide by the tribunal's decision, an action that prosecutors claimed was inconsistent with the US's usual hostility towards international bodies.

There are other reasons for the US withdrawal from the ICJ. First, the administration was troubled by foreign interference in domestic capital justice system, but the nation would still abide by international law, as Bush has shown. The US's withdrawal was protecting against future ICJ judgments that might interfere in the same way. Additionally, the United States had lost two cases in the ICJ regarding situations where US police did not observe consular access for arrested foreign nations and their withdrawal was a response to these decisions. There are many criticisms of US withdrawal, including how the US now can't establish jurisdiction over other nations for violations of the same degree for which they withdrew. There are also questions over whether the US withdrawal was valid, for it is unclear if states are even allowed to withdraw from a treaty that does not mention withdrawal or contain any clause about the action. Most importantly, the withdrawal created accusations that the US takes a unilateralist approach to international law, which tarnishes their reputation for future international interactions.

In order to harness US support and participation in both the ICC and the ICJ, there must be certain reforms in each of the bodies. Clearly, the United States has concerns over the jurisdiction of each association. In regards to the ICC, the US might ratify the body if a certain amount of their power is reduced so it does not compete as much with the Security Council. As for the ICJ, clarifications about jurisdiction of the court over domestic issues would appease some of the original issues the US had with the court.

ICC: Africa Bias

The International Criminal Court (ICC) was created with the noble intent to be able to indict those that have committed severe crimes of against humanity. It was to be an unbiased body of governance to pass justice regardless of international borders, however, there is severe criticism towards the ICC, particularly from African leaders, in terms of anti African bias. Of the nine cases that the ICC had been inspecting up until as recently as January 2016, all nine cases were in African countries (Jacinto) highlighting the disproportionality on the Court of Africa.

With the dark times in Africa during the 1990s, including the Rwandan genocide of 1994 and the rampant effects of apartheid, African leaders were very vocal in the creation of the ICC. In its initial creation, 34 of the 139 countries that first voluntarily ratified the Rome statute were African. However, sentiments changed when in 2006, the court looked into the Darfur region of Sudan and subsequently charged Sudan's president, Omar al-Bashir, with genocide amongst others ("Nice Idea").

The most notable case to note as of recent times, is the case against the Kenyan president, Uhuru Kenyatta, and his deputy president, William Ruto in which the ICC has accused them of "orchestrating post-election violence in 2007 which left at least 1,300 people dead and perhaps half a million homeless" ("Nice Idea"). The government of Kenyan has been nothing but unhelpful throughout the investigation, going as far as to bribing and intimidating witnesses, refusing to provide helpful evidence, and even paying people to assault members of the rival political party.

The trial against William Ruto, the deputy president case highlights many of the criticisms against the ICC as a legitimate and unbiased body of justice. As highlighted

by Toby Cadman for *Al Jazeera,* the fact that the prosecution is held concerning a democratically elected current leader in Africa, the negative publicity and immediate condemnation of Ruto by the media, the key witnesses obtained via the help of NGOs in turn for funding from European governments who are publically known for being political opponents of Ruto, and the fact that all these witnesses have either refused to appear in court or have contradicted their original testimony, all show that there should traditionally no longer be a case for prosecution, and yet the case continues onward to undermine the credibility of the court and fuelling the perception of African bias (Cadman).

As a result of this investigation into the Kenyan heads of state, Kenya responded by calling for a mass withdrawal by African countries within the ICC, leading to a special African Union summit in the October of 2015. This call for withdrawal eventually was not endorsed due to the lack of support but they decided that “no African sitting head of state should be obligated to stand trial during his or her tenure in office and that the AU would strongly push for a deferral of the case of Kenyan President Uhuru Kenyatta” (Fortin). In addition, the African Union has adopted has collaboratively decided to allow for a bigger role in the continent of Africa to “deal with its own legal issues without contradicting international norms” by expanding the African Court to also include the ability to deal with the same kind of crimes handled by the ICC, such as genocide, crimes against humanity, and war crimes, so that they are easily able to take over ICC cases when they involve the persecution of African leaders. This may encourage the ICC to be able to thoroughly consider if a case is more suitable for international laws or for domestic international legal principles (Sainati) thereby increasing its legitimacy by

not spending resources on indicting or evaluating political climates that may result in little or a relaxed action.

There is, however, a counterargument towards the seemingly biased stance towards African nations by the International Criminal Court. Fatou Bensouda, the lead prosecutor for the ICC has written in response to the perceived targeting of solely African countries that per the mandate set in the Rome statute “the ICC’s jurisdiction is limited to crimes committed after July 2002” and limited to war crimes, crimes against humanity, and genocide. As well, the ICC’s jurisdiction can only be upheld over crimes committed by a person or territory of a nation that has accepted the jurisdiction over it by the ICC or if the Security Council refers the situation to the ICC. Furthermore, the ICC may not have jurisdiction over a certain situation if there is already a national prosecution or investigation in place. The severity of the crimes committed in the circumstances currently being investigated in Africa are further punctuated by the sheer numbers of victims which reach 2.5 million in Darfur, 2 million in the Democratic Republic of the Congo, and 1.3 million in Uganda with no actions or repercussions being taken by the nations in which these tragedies occurred. On a surface level, these facts alone ICC may feel that there is sufficient evidence to step in and persecute those held accountable, especially if these nations are under the appropriate jurisdictions of the ICC. It may even seem to be pure happenstance that these cases are all in Africa. Bensouda has further pointed out that of the eight cases processed in 2015, five of them were brought to the attention of the ICC by the countries themselves and two of them were referred by the Security Council. In fact, the Kenyan cases were spurred on

by the United Nations' former Secretary General, Kofi Annan, a Ghanaian, to the then Kenyan government officials ("Nice Idea").

Currently, the state of the ICC definitely does not reflect the notion that it is being run by western imperialists. The currently president of the ICC is Silvia Fernandez de Gurmendi, hailing from Argentina, while the lead prosecutor, Bensouda herself, is from Gambia. In addition, although 9 of the 10 situations currently under investigation are in Africa, the majority of the countries under preliminary examinations belong to nationals of countries outside of Africa, including, but not limited to, Colombia, British soldiers stationed in Iraq, and Ukraine (ICC).

The case against the Kenyan heads of state, however, have changed the way in which the international community now thinks about the jurisdiction of the ICC. In some ways, the perceived bias can be simply left as perceived, but the question now lies in not whether there is or is not bias, rather, the question one must ask is if the ICC should be the body of governance to tackle on regional cases, or if they should act as a body of deference of cases to regional courts that are spurred on by social movements supported by civil society groups, legal and political activists, as well as local human rights activists in order to reinforce the ICC's noble goal in upholding international law, although this time, by keeping legal issues at home so repercussions can resonate locally.

Questions to Consider

1. If the ICJ and ICC are both to continue, how can they organize the composition of their judges and the procedures of their trials in order to maximize effectiveness and ensure global participation?
2. What is the role of the ICJ/ICC as opposed to more localized regional courts?
3. Should bodies such as the ICC and ICJ hold precedence over state constitutions?
4. What should the relationship between political negotiation and third-party legal proceedings be on the international level?
5. Can bias truly be removed in an international court?

Topic 2 | Re-evaluating the Responsibility to Protect

Beginning in 2005, the UN adopted a standard doctrine for determining the legality of international military intervention known as the Responsibility to Protect (R2P). R2P set forth standards for intervention based in the notion that while states are ultimately sovereign bodies free from arbitrary intervention, they are responsible to their citizens to provide basic protections against atrocities and genocide. If these protections are not meant, the international community is said to be able to begin the process of intervention. Applied in the recent Libyan Civil War and notably non-applied in the ongoing conflict in Syria, R2P has come under international scrutiny at a level not seen since its adoption a decade ago. This committee will evaluate the doctrine in light of recent events, and will also consider alternative applications such as the responsibility to protect in situations of natural disasters.

Background

History Preceding R2P

The UN has been concerned with international standards for nonconsensual military intervention into the affairs of member states from the outset. An early UN resolution, the 1948 Convention to Prevent Genocide, sought to ensure that there would be a robust and clear standard for international action in the case of a massive-scale crime against humanity, so that an event like the Holocaust would never happen again. The central principle inscribed by this resolution claims, in reference to genocide, that "in order to liberate mankind from such an odious scourge, international co-operation is required" (*Convention* 1948). From this point onward, although it was never exactly formalized or codified, the international community would proceed on a non-codified but mutually understood standard of intervening known popularly as "humanitarian intervention," referring to any kind of intervention explicitly intended to protect innocent civilians and prevent mass casualty conflicts and atrocities.

A key set of events in the 1990's brought about the need for serious revision in the way that the international community dealt with standards for intervention into a potential mass-casualty situation. Perhaps chief among these was the Rwandan Genocide. In 1994, the Hutu majority government in Rwanda, following the assassination of President Juvénal Habyarimana, initiated a mass order for execution and genocide of any and all members found belonging to the Tutsi minority ethnic group. Notable at the time was the lack of direct UN intervention to prevent the government (as well as civilians inspired by calls to action from Hutu leaders) from killing Tutsi minorities. In a self-commissioned report in 1999, the UN claimed that, in

reference to its own failure to intervene, “the fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda and to the United Nations presence there. There was a persistent lack of political will by Member States to act, or to act with enough assertiveness” (UN Report 1999). D.R.L Ludlow, in a report written contemporaneously with the UN’s own analysis, added that “the unwillingness of members of the international community to commit military forces to prevent the deaths of hundreds of thousands of Rwandans, in the absence of clear national interests, demonstrates how far there is to go in establishing a general principle or practice of humanitarian intervention” (Ludlow 1999). These analyses imply that, in replacement of a hope for general political consensus to respond to crises, the international community needs instead clear legal standards and doctrines upon which they may act.

The UN’s self-critique of its failure to intervene in Bosnia’s 1995 massacre of Muslims by Serbs in Srebenica noted an additional problem with existent standards of intervention. In another 1999 report, Secretary-General Kofi Annan alongside other senior officials stated that “through error, misjudgment and the inability to recognize the scope of evil confronting us we failed to do our part to save the people of Srebrenica from the Serb campaign of mass murder...These failings were in part rooted in a philosophy of neutrality and nonviolence wholly unsuited to the conflict in Bosnia” (Crossette 1999). As in Rwanda, although in very different circumstances, the UN admitted that political will often took precedence over a clear-eyed examination of immediate needs on the ground in order to preserve as many lives as possible.

Amidst these and other crises of mass casualty events in the 1990's, alongside growing critique of the nebulous and ill-defined nature of "humanitarian intervention" as it stood, Kofi Annan released his Millennium Report in 2000 that asks "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?" (2000). Widely seen as a call to action, this major question set in motion the gathering of the International Commission on Intervention and State Sovereignty, which would go on to define the Responsibility to Protect.

The ICISS was commissioned by the Canadian government as an ad hoc gathering chaired by Australian legislator Gareth Evans and Algerian diplomat Mohamed Sahnoun. In their 2001 report, entitled *The Responsibility to Protect*, the ICISS aimed to lay out key principles to guide a new standard for international intervention. The ICISS also aimed to move away from the past terminology of humanitarian interventionism, acknowledging the incompatibility of this terminology with the reality of military interventionism (Interestingly, the ICISS also noted the ways in which a "humanitarian" framing of an intervention creates immediate pre-judgments on its merits, making a fair and rational assessment of options within the international community difficult to achieve).

The crux of the legal framework established by ICISS lay in its novel definition of sovereignty:

> "State Sovereignty implies responsibility, and the primary responsibility for the protection of the people lies within the state itself. Where a population is suffering

harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect" (2001).

The notion of sovereignty only being recognizable when a state fulfills its duties of protection allowed for the introduction of any kind of justification for intervention from therein. Hence, the entire structure put into place beginning in 2001 for international intervention would be identifiable by the term "Responsibility to Protect." Against this responsibility of the state, according to the ICISS, the international community itself had a core set of duties. These are "the Responsibility to prevent, the responsibility to react, and the responsibility to rebuild" (ICISS 2001). In order to properly address situations of conflict and potential mass casualties, the international community, according to the ICISS report, should be keenly aware of prior circumstances, immediate needs, and the subsequent post-conflict processes. Intervention, then, would not be solely conducted as a military response followed by a quick exit. It would be seen holistically and in mind of the potential of conflicts to come.

2005 Summit Outcome Document

The ICISS report laid the groundwork for the Responsibility to Protect to be officially codified as UN doctrine. Section IV of the Human Rights and Rule of Law portion of the 2005 UN World Summit Outcome Document was entitled "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity," and laid out the following declaration:

"138. Each individual State has **the responsibility to protect** its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This

responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability."

Alongside this adoption of the notion of sovereignty as responsibility the Summit Outcome Document also established new norms for intervention: "**w**e are prepared to take collective action**,** in a timely and decisive manner, through the Security Council...on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (2005). After the introduction of the Summit Outcome Document as well as the passing of Security Council Resolution 1674, the Responsibility to Protect became official UN doctrine.

There is a set of significant differences between the 2005 Summit Outcome Document and the 2001 ICISS report that help reveal how R2P changed under circumstances of practicality. Firstly, the Summit Outcome Document does not share the three-pronged approach of the ICISS's commitment to prevention and rebuilding alongside intervention. The UN aim here was mostly centered on circumstances where sovereignty and intervention were in play. There were indeed brief mentions to responsibilities to prevent, and the writings of Secretary General Ban Ki-Moon (as discussed in *Recent Action*) would come to address this in more detail— however, it is clear that the central priority of the UN in codifying R2P was to establish norms and

standards for interventionary action in the midst of conflict, rather than prior to or after the fact. The Summit Outcome Document also limits the authority to declare intervention situations to the UN Security Council, without leaving room for the possibility of a deliberation by a regional body, a process left open in the ICISS declaration. Lastly, as will be discussed in the case studies, the UN limited the threshold for intervention events to instances of war crimes, crimes against humanity, and genocides— the ICISS included other possibilities including civil wars, insurgencies, state instability, and environmental disasters.

Criticism

Vagueness

Inconsistencies and vagueness in the doctrinal language of R2P are sites of major critiques of it. Hugh Breakey, in a 2011 research review of the history and development of R2P, sums up the critiques of R2P's specificity through three questions: what is to be protected, what does the responsibility to protect entail, and whose responsibility is it to protect? The first query refers to continuing debates surrounding the ambiguity of what exactly constitutes a triggering intervention event. Breakey refers to the official UN doctrine of "narrow and deep" put forward by Secretary General Ban Ki-Moon, meaning "narrow in terms of the specific crimes to which it responds, but deep in the sense of a wide array of responsibilities, institutions, organs and actions to prevent, respond and rebuild from those specific crimes" (Breakey 2011, p. 42). And, yet, the notion of "deep," according to Breakey, "appears to widen at least the purview of the Responsibility to Prevent," meaning that the triggering situations for interventionary debate are no less broad when the Responsibility to Protect is considered in all of its iterations. Another similar criticism surrounding the imprecise language of R2P is the fact that it is unclear if R2P is itself a legal norm within the international community, holding those who fail to intervene to the same responsibility as the states who fail to protect. Breakey summarizes critiques from this angle as suggesting that, in this instance, "if there is no legal duty to be beholden to a responsibility to react to atrocities, then one can question the likelihood that states will in fact recognize a political or moral duty to react, or whether their choices in such matters will be entirely self-interested," leaving R2P as "grandiose speech-making rather than

problem-solving, of the sort unlikely to create the degree of pressure and political will needed to alter foreign policy" (48). The lack of legal duty and beholden to political will leads into a second major set of criticisms for R2P— those concerning the doctrine's complicity in continuing the international justifications for larger states asserting dominance over weaker states using the language of humanitarian concern in order to justify military and political intervention into sovereign affairs, culminating in what is feared as a potential "Trojan horse."

R2P as "Trojan horse"

The "Trojan horse" critique surrounding R2P, argued prominently by Alex J. Bellamy, charges that the doctrine is actually simply an advanced form of a rhetorical cover to justify an invasion that materially benefits the powerful intervening countries involved (Bellamy 2005). This critique intensified especially in the wake of the US-led invasion of Iraq in 2003. Since R2P is still at its core a unilateral form of intervention, critics charge, it will continue to bear similarities to colonialism and other legacies of interventionism that mask themselves as assistive and born of humanitarian interests. Defenders of R2P, however, have argued that there is little incentive for such aggressive behavior when the realities of the 21st century market offer more logical and efficient means of facilitating the flow of goods and resources across state territories (Peters 2006).

Intervention

Beyond technical issues as well as issues of suspicions of neocolonial intent, there is also, finally, the issue of whether military intervention itself should ever be on the table in international affairs. Once again, Alex Bellamy has been a prominent voice

of this argument, arguing that in order for R2P to be successful and reach a true international consensus, it will need to distance itself from the language of intervention and instead rework itself as an impetus for increased genocide detection standards as well as a policy framework that explicitly prioritizes the protection of innocent populations, rather than the dismantling of oppressive regimes (Bellamy 2008).

Recent UN Action

The Second Sudanese Civil War began in 1983 as a conflict between the Sudanese government and the Sudan People's Liberation Army. In 2005, the two parties reached a Comprehensive Peace Agreement. The increasing brutality of the war and the alarming rate of civilian casualties, however, made implementation of the Peace Agreement an uneasy task. In 2006, the United Nations Security Council adopted resolution 1706 (with abstentions from China, Qatar and Russia), which would authorize deployment of United Nations forces to the Darfur region in Sudan, in order to oversee the implementation of the Darfur Peace Agreement meant to address the increasingly. The intent in passing 1706 was to protect humanitarian personnel, to ensure the proper implementation of the Peace Agreement, to "protect civilians under the threat of physical violence" (UNSC res. 1706), and, finally, to seize any weapons or other materials of war that would violate previous agreements. Within the preamble of Resolution 1706, the Security Council invoked the 2005 World Summit outcome document while also citing its strong affirmation of the "sovereignty, unity, independence, and territorial integrity of the Sudan" (UNSC). Representatives from the United States and the United Kingdom, among others, expressed dismay at the deteriorating situation and a desire to ensure a fast end to the looming genocidal situation in Sudan. The abstaining representative from Qatar, however, noted that " the Council should have given due regard to the numerous aspects and underlying solid principles of international practice before taking up a resolution that would have a bearing on the sovereignty of the Sudan" ("Security Council Expands Mandate 2006). The representative from Qatar felt that there was already a plan in place from the

Sudanese government to address the situation on the ground, and that not enough had been done to ensure the full consent from Sudan.

As the UN continued to attempt to perfect and clarify the proper role of R2P, the offices of the Special Adviser on the Prevention of Genocide and the Special Adviser on the Responsibility to Protect were merged in 2007, beginning with Edward Luck and continuing as of 2016 with Dr. Jennifer Welch.

Alongside this office, Secretary General Ban-Ki Moon began drafting yearly reports to address the current state of R2P, and where the UN needs to continue to work to ensure maximum effectiveness in how it intervenes. The report of 2009 was uniquely significant in establishing norms and standards for the implementation of R2P. This report established the notion of the "Three Pillars" of a comprehensive plan for intervention. Pillar One refers to the "Protection Responsibilities of the State," forming a set of recommendations made to states to avoid potential mass-conflict situations, thus outlining what a "responsibility" to protect actually entails. Moon's recommendations includes a greater focus on refining human rights laws within states, ensuring full participation in the international judicial bodies of the UN, as well as "Candid self reflection, searching dialogue among groups and institutions, both domestically and internationally, and periodic risk assessment" (Moon 2009, pg. 16). This section also made clear that for R2P to have any success in international implementation, the UN bodies that seek to enforce it must always be conscious of local customs, cultures, and histories (pg. 12). The second pillar, entitled "International assistance and capacity-building," referred to best practices for ensuring that individual states have the ability to effectively prevent and respond to any potential mass-casualty conflict situation. Ideally,

the international community would play a major role in building these capacities, in the form of “assistance programmes that are carefully targeted to build specific capacities within societies that would make them less likely to travel the path to crimes relating to the responsibility to protect” (pg. 20). The specific “capacities” Moon refers are “Conflict-sensitive development analysis, “Indigenous mediation capacity,” “Consensus and dialogue, “Local dispute resolution capacity,” and finally “Capacity to replicate capacity” (pg. 21). These will not be explained in depth, but they as categories form the core of what the UN believes are the central functions of state and local powers that work to prevent large-scale crimes and conflicts. Finally, Pillar Three refers to a focus on ensuring a “Timely and decisive response” in responding to emergency situations. Moon notes that “despite years of study and public discussion, the United Nations is still far from developing the kind of rapid-response military capacity most needed to handle...rapidly unfolding atrocity crime” (pg. 27) and advocates for “Better modes of collaboration between the United Nations and regional and subregional arrangements” in order to ensure an efficient and effective response.

The most recent R2P report from Moon, as of this writing, was issued in 2016. This report is Moon’s last, and it is titled “Mobilizing collective action: the next decade of the responsibility to protect.” (Moon 2016). Moon expressed in his final report a degree of dismay at a recent uptick of atrocity-crimes, especially those involving non-state actors such as the Islamic State of Syria and the Levant. Moon also pointed to a lack of decisive action on the part of international community in regards to playing an active role in preventing potential emergency situations, despite the growing capacities of UN information-gathering and early-detection systems. Finally, Moon notes an added

complication to the reality of conflict situations— external support in the form of arms and funding from third-party states, creating unnecessary and dangerous enabling of atrocities. Social media is touched upon as well as a growing tool for groups to incite atrocities. Moon concludes his report with a continued urging to member states to fulfill their obligations to their international community at large, to increase the degree of collaboration toward the goal of prevention and assistance, and for leaders abroad to "speak out whenever and wherever atrocity crimes are being committed, or are imminent," to "prioritize the protection of vulnerable populations over narrow national interests, to work tirelessly to overcome political divisions and make concrete investments in stronger capacities for prevention and response" (18). It is important to note that it appears to be the UN's continued belief that the principles and basic framework of R2P are sound, and it is the incentives to act on the part of members states that are in need of reforming.

Case Studies

Early debates regarding the use of R2P in instances of environmental disaster

The Responsibility to Protect, created at the United Nations 2005 World Summit, is a global political commitment about protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement. However, an area of dispute surrounding the R2P is whether the responsibility extends not only to heinous acts of human nature, but environmental disasters as well.

The wide scope of application awarded to the Responsibility to Protect brings into question whether the environment is included as a force from which populations need protection. The report by the International Commission on the Intervention and State Sovereignty, which first articulated the Responsibility to Protect in its December 2001 Report, envisioned a broad range of application in its delivery of the principle, which included, “overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened.” (ICISS 2001). Application for responsibility to protect against environmental disasters was first outlined in this report. However, having environmental disasters as criteria for intervention was ultimately not adopted.

Gareth Evans, one of R2P’s progenitors, also gives a brief overview of the concept regarding potential applications in situations of environmental emergencies. He warns that one must be very careful when extending the reach of the responsibility to protect across to environmental emergencies. He argues that it is a matter of good public policy to protect peoples from natural disasters and environmental catastrophes as much as any other danger. However, in this same context, one can mention

protection from HIV/AIDS or the proliferation of weapons of mass destruction. If one is looking for umbrella language to bring these issues and themes together, it is more appropriate to use the term “human security” rather than applying the concept of a “responsibility to protect” (Evans 2009). Having a term used so broadly diminishes the R2P’s ability to generate effective responses. Evans stated, “if it is about protecting everybody from everything – it will end up protecting nobody from anything” (Evans). There is a huge problem with stretching the concept of a responsibility to protect to embrace the human security agenda.

One area of contention over the necessity and effectiveness of R2P responding to environmental disasters is outlined through the failure in Myanmar. The nation refused foreign aid following Cyclone Nargis, causing the legalities of disaster aid refusal to become a popular topic. There was a dismal domestic response following the disaster; the people of Myanmar were provided with almost no relief assistance by the country’s military regime. Here, the idea of military humanitarian intervention under the rubric of R2P was proposed. However, with the urgency of relief assistance following natural disasters, which are matters of emergency life or death situations, questions arise over the effectiveness of R2P as a possible response strategy (Özerdem 2010). Yet, if there continues to be no justified humanitarian intervention, many people under such regimes could go on without proper assistance after natural disasters occur. The question over applying R2P to natural disasters must weigh the necessity of intervention with the effectiveness such intervention could actually maintain. There is also the question of state sovereignty, and whether intervening to help people of nations

experiencing environmental disasters is against that state's sovereignty and domestic rights.

Another example of a recent disaster where R2P could have been applicable is the incident in Nepal. The Nepalese earthquake of 2015 killed more than 8,000 people and injured more than 21,000. Following the disaster, hundreds of thousands of people were homeless and entire villages flattened. If the Responsibility to Protect had the power to intervene for environmental catastrophes such as the earthquake Nepal experienced, the outcome might have been much different. Having justification for intervention during natural disasters such as this could have quickened response times and increased foreign aid to the people of Nepal. International humanitarian intervention has the ability of saving many lives and speeding up post-disaster development. However, effectiveness of this intervention is still a question, and whether extending the R2P criteria for intervention does more harm than good is very debatable.

There also exist arguments over whether the responsibility to protect people from mass atrocities should include natural disasters. People who seek to limit the scope of R2P read the UN focus on mass atrocities as a conscious exclusion of natural disasters for being criteria to trigger R2P. In contrast, R2P supports argue there is no meaningful distinction between failure to protect following natural disasters and failure to protect from mass atrocities. Professor Jarrod Wong writes about how the causes of harm are irrelevant, developing a "constructive interpretation" of the Responsibility to Protect. In this interpretation, Wong details his thought that, "R2P applies equally to a state's failure to protect its population from harm caused by its omission to act when that omission

constitutes a crime against humanity" (Wong 2009). This opinion connects to the failure in Myanmar of local officials to provide sufficient aid following the cyclone.

There have also been calls for R2P to intervene on behalf of climate change. This includes intervention to pressure countries into the crossover to renewable energy and using R2P to reduce emissions. The fight against climate change using R2P could come through, "creating interventionist policies that mitigate greenhouse gas emissions…within the confines of supranational bodies like the WTO" (Seavitt 2013). The international body could also use R2P to fund environmental developments like forest sinks in order to reduce carbon emissions. The application of R2P in environmental affairs could stretch across many boundaries, not only including responses to immediate natural disasters, but also pressuring countries into planning for the future state of the environment.

Among the many criticisms and voices of support for having the R2P include response to environmental disaster, there still lies the fact that the R2P's involvement in natural disasters has only been a proposal and nothing more. There are many possible applications of the environmental responsibility to protect, but each comes with specific questions of effectiveness. For any further advancement to take place, the United Nations must adopt the idea into the actual framework of the Responsibility to Protect.

R2P in the Arab Springs of Libya and Syria

Like many of the initiatives of the United Nations and modern thinkers, the "Responsibility to Protect" (R2P) is meant to decrease loss of human life and offer aid and liberty to all people on Earth. However, actions are rarely taken unless there is something to be gained. This is seen through the stark contrast between the

intervention, and lack thereof, of two of the largest humanitarian crises of recent times: the use of R2P on Libya and the disuse in Syria.

Since the notion of R2P came into being in the 1990s, the first and only use of R2P intervention is during the he said-she said jumbled events of the Benghazi massacre in Libya. There was miscommunication in which the global media and Western leaders focused exclusively on Gaddafi's speech in which he said "We are coming tonight…we will find you in your closet" (Nuruzzaman). As a result, the Western forces believed that there would be a mass murder in Benghazi if they were to not intervene even though that same day, Gaddafi had "promised amnesty for those 'who throw their weapons away' but 'no mercy or compassion' for those who fight" (Kirkpatrick) indicating that his targets would not be the civilians of Benghazi.

Nonetheless, the West acted and interfered with the events in Benghazi and immediately repercussions were felt as people divided themselves to both camps on the Responsibility to Protect: whether they were for it or against it. Two prominent advocates of R2P spoke out, including Gareth Evans, a co chair of the ICISS, saying that the intervention done by NATO and carried out by Obama was the perfect textbook example of R2P being used as it was supposed to. As well, Ramesh Thakur, a commissioner of the ICISS, saying that the decision made by Security Council for NATO to intervene was a decision based on universal values, not strategic interests (Nuruzzaman) as it was a response to "the idealized United Nations as the symbol of an imagined and constructed community of strangers: we are our brothers' and sisters' keepers" (Thakur). Thakur further argues that, by invoking the R2P, the time it took to take action in Libya by "mobilizing a broad coalition, securing a UN mandate,

establishing and enforcing no-fly and no-drive zones [in order to] stop Gaddafi's advancing army and prevent a massacre of the innocents in Benghazi" only took one month, compared to the decade long struggle to intervene on the conflict in Kosovo in 1999.

Thakur's idea that the decision reached by the Security Council was not based on strategic interests, however, weighs heavily on the international community. Gaddafi has never been popular with Western leaders, with activities in Africa, which were unfavorable amongst the P3 countries (Britain, France, USA) by spending billions of dollars for arming rebels in Mali, calling for jihad in Congo, and supporting intervention in Chad. In addition, Libya's production of 2% of the world's oil could be opened to the Western market if Gaddafi were to be removed and would put a dent in China's multi billion dollar deal with Gaddafi in order to spur on China's growing economic prowess and expansion.

Regardless, Mary Ellen O'Connell argues that the military intervention used in Libya separated the uprisings from the other revolutions during the Arab Spring in Tunisia and Egypt in that Tunisian and Egyptian rebels understood that non violence and being self reliant would be key to invoking change, not only to reduce casualties, but also to show that they are different from the leaders they were protesting to sack (O'Connell 2011). Before the Libyan intervention, the rebels had killed around 250 people but after Gaddafi made the Benghazi threat and NATO started to bomb cities, an estimated 30,000 people were killed and even more were injured. In fact, in some cases, NATO specifically targeted sites with a large amount of civilians, which resulted in heavy casualties.

Some might argue that without the rhetoric of the R2P and the ruling by the Security Council, there may have been many more casualties in Libya but it is difficult to say if the hastily decided resolution of R2P considered all possibilities of actions before reaching to the conclusion of the use of force in order to pursue a change in regime.

In contrast, the situation in Syria is becoming dire and yet there is a noticeable lack of effort in implementing the R2P. Aidan Hehir, the Director of the Security and International Relations Programme at the University of Westminster, argues that because the Security Council is the only one that has the exclusive right to act, it is in no way under an obligation to actually accomplish anything, rather, countries, especially the P5 countries, will "determine the response of the 'international community' to intra state crises" by considering their own national interests. This especially applies to the extremely large hurdles of Russia and China who are unable to be swayed by any amount of finger pointing by Gareth Evans, a co chair of the ICISS, or Western NGOs.

It should come as no surprise that both Russia and China have twice vetoed draft resolutions on the Syrian crisis with both being allies of Syria, with Russia being a buyer of Russian military hardware and equipment as well as providing a Mediterranean naval facility to the Russian navy. In fact, any intervention on Syria will be difficult since any action taken on Syria may provoke Russia and Iran and possibly cause a larger regional – and perhaps even global – war.

Saying this, if the Responsibility to Protect were unanimously agreed upon as the ideal way to solve global conflicts and alleviate tension by putting human lives at the forefront of international issues, the Security Council may be able to be reach unanimous decisions on crises intervention; however this simply is not the case.

Nuruzzaman states that for R2P to be successful, three preconditions must be fulfilled: “1) the willingness on the part of the most powerful intervener to use force, 2) the intervener’s media monopoly to shape domestic and global public opinion in favor of intervention, and 3) the moral standing of the intervener(s)”. Of these three criteria, NATO and the US, as well as the P5 countries, do poorly on all of these items. With the declining favorable vantage point of the US and the strong arming of Russia and China on the Security Council (with France and Britain taking the backseat on most of these settlings), the Responsibility to Protect faces severe challenges towards its becoming of a go-to strategy.

Questions to Consider

1. Bearing in mind recent events as well as the growing global concern surrounding neocolonial interventionism, should UN continue forward with the doctrine of R2P? Should it make substantial revisions to the doctrine? Should it scrap it altogether? If so— what should replace it?
2. Should military intervention be something that the international community has the power to conduct?
3. What should the proper role of the Security Council in debates over intervention be?
4. Leaving aside the issue of intervention itself, what steps can the international community take to improve the capacities to prevent atrocity crimes as well as the capacity to rebuild after them?

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