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From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era

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From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era

*Jonathan E. Davis**

ABSTRACT

This Article fills a gap in the literature by examining in depth China's state practice and official pronouncements in respect of nine post-Cold War cases typically cited by academics when considering the international legal status of humanitarian intervention. The majority of today's commentary and scholarship holds that the People's Republic of China's position on sovereignty and intervention remains inflexible and absolutist, much as it was for the PRC's first four decades. This Article contends that this view is outdated and overly simplistic: while China continues to champion a strong conception of state sovereignty in interstate relations, it has signaled a shift from an ideological insistence on noninterference toward a more pragmatic approach to humanitarian crises. In particular, this can be seen in China's willingness to acquiesce in and even actively support

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multilateral humanitarian interventions that obtain both Security Council authorization and target state consent, as well as in China's willingness to use its growing economic and diplomatic leverage to help secure consent to intervention.

TABLE OF CONTENTS

I.	INTRODUCTION	218
II.	HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW.....	221
III.	HISTORICAL CHINESE ATTITUDES TOWARD INTERVENTION.....	224
IV.	CHINESE ATTITUDES TOWARD HUMANITARIAN INTERVENTION IN THE 1990S.....	227
	A. <i>Iraq: The Northern and Southern No-Fly Zones</i>	227
	B. <i>Somalia</i>	230
	C. <i>Haiti</i>	232
	D. <i>Rwanda</i>	236
	E. <i>Bosnia</i>	238
	F. <i>Kosovo</i>	245
	G. <i>East Timor</i>	251
V.	CHINESE ATTITUDES TOWARD HUMANITARIAN INTERVENTION IN THE 2000S.....	254
	A. <i>The Responsibility to Protect</i>	254
	B. <i>Darfur</i>	264
VI.	ANALYSIS: CONTINUITY AND CHANGE IN CHINESE ATTITUDES TOWARD HUMANITARIAN INTERVENTION...	270
VII.	CONCLUSION.....	281

I. INTRODUCTION

The rise of the People's Republic of China (PRC) raises many questions about the country's perceptions of international law, as well as how China conceives of its role as a great power in the international system. With its growing economic, political, and military power, as well as its increasing assertiveness in international relations, China is now a relevant actor in a broad range of issues that transcend national borders.¹ Historically, China

1. The extensive literature on China's rise is a testament to this. See, e.g., C. FRED BERGSTEN ET AL., CHINA'S RISE: CHALLENGES AND OPPORTUNITIES (2009); C. FRED BERGSTEN ET AL., CHINA: THE BALANCE SHEET (2006); MARTIN JACQUES, WHEN

has expounded an absolutist conception of sovereignty, which stands in contrast to the sovereignty-eroding characteristics of many solutions to today's most pressing transnational problems.² Whether and how China adapts its traditional views of sovereignty to meet these challenges will say a lot about China's rise and its future role in the international system.

One particularly instructive lens through which to examine China's changing attitudes toward sovereignty and intervention is its response to humanitarian crises, which have been—and are almost certain to remain—a common feature of international relations in the post-Cold War world. The role China plays in future humanitarian crises will depend in large part on its position on the limits of sovereignty and the international legal constraints on humanitarian intervention.

Surprisingly little has been written about China's position on humanitarian intervention, notwithstanding the country's ability to shape or obstruct the development of international norms in this area. As one commentator put it, "[e]ither China is perceived to be irrelevant to emerging post-Cold War norms in this area or it is viewed as simply an insurmountable obstacle, so far out of step with the rest of the world that it should be ignored."³ This Article suggests just the opposite. With its great-power status and privileged position as a permanent member of the United Nations Security Council, China has considerable influence over the development of the international law of humanitarian intervention. Additionally, although China's position often conflicts with the position of those who promote a right of humanitarian intervention, it is hardly "far out of step" with global trends. In fact, China's position on humanitarian intervention corresponds to that of a large number of other states.

CHINA RULES THE WORLD: THE END OF THE WESTERN WORLD AND THE BIRTH OF A NEW GLOBAL ORDER (2009); JAMES KYNGE, CHINA SHAKES THE WORLD: A TITAN'S RISE AND TROUBLED FUTURE—AND THE CHALLENGE FOR AMERICA (2006); SUSAN L. SHIRK, CHINA: FRAGILE SUPERPOWER (2008); ROBERT G. SUTTER, CHINA'S RISE IN ASIA: PROMISES AND PERILS (2005); ROBERT G. SUTTER, CHINESE FOREIGN RELATIONS: POWER AND POLICY SINCE THE COLD WAR (2008); Zheng Bijian, *China's "Peaceful Rise" to Great-Power Status*, FOREIGN AFF., Sept.–Oct. 2005, at 18; G. John Ikenberry, *The Rise of China and the Future of the West: Can the Liberal System Survive?*, FOREIGN AFF., Jan.–Feb. 2008, at 23; Evan S. Medeiros & M. Taylor Fravel, *China's New Diplomacy*, FOREIGN AFF., Nov.–Dec. 2003, at 22.

2. See generally Jerome Alan Cohen, *China and Intervention: Theory and Practice*, 121 U. PA. L. REV. 471 (1973); see also *infra* text accompanying notes 22–36.

3. Michael C. Davis, *The Reluctant Intervenor: The UN Security Council, China's Worldview, and Humanitarian Intervention*, in INTERNATIONAL INTERVENTION IN THE POST-COLD WAR WORLD 241, 243–44 (Michael C. Davis et al. eds., 2004) ("It is noteworthy that in the plethora of academic articles and books addressing humanitarian intervention the position of China on these issues is hardly mentioned.").

This Article examines China's state practice and official pronouncements in the following post-Cold War cases typically cited by academics when considering the international legal status of humanitarian intervention: the no-fly zones established in Iraq after the first Gulf War; the conflicts in Somalia, Haiti, Rwanda, Bosnia, Kosovo, and East Timor; the development of the "responsibility to protect"; and the conflict in Darfur.⁴ During these events, China was forced to decide whether to support, acquiesce in, or oppose outside intervention to relieve the suffering. Each of these events led Beijing to define and clarify its attitude toward core international legal principles, including state sovereignty and nonintervention.

This Article demonstrates that while China continues to champion a strong conception of state sovereignty and noninterference in interstate relations, its actions since the Cold War evince a willingness to acquiesce in, and even actively support, multilateral humanitarian interventions that obtain both Security Council authorization and target state consent. Furthermore, Beijing has adopted certain tenets of the concept of "the responsibility to protect," suggesting that China is not as inflexible on sovereignty and intervention as some suppose.⁵

This is not to say that China shows signs of supporting the further development of the international law of humanitarian intervention; rather, China is likely to remain a "persistent objector" to claims of a unilateral right of humanitarian intervention for the foreseeable future. On a more practical level, however, these trends suggest that Beijing may be willing to undertake, support, or acquiesce in military action to prevent or end atrocities, crimes against humanity, genocide, or other humanitarian catastrophes if its two preconditions to intervention—Security Council authorization and target state consent—are met. This concession may be of little comfort to those seeking a robust norm of humanitarian intervention, especially given China's ability to block Security Council authorizations and the high bar of target state consent. Yet signs of greater flexibility in Beijing's position—including its willingness to consider situations of humanitarian need as threats to international

4. See, e.g., SIMON CHESTERMAN, *JUST WAR OR JUST PEACE?: HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW* (2003); *HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS* (Jennifer M. Welsh ed., 2004); BRIAN D. LEPARD, *RETHINKING HUMANITARIAN INTERVENTION: A FRESH APPROACH BASED ON FUNDAMENTAL ETHICAL PRINCIPLES IN INTERNATIONAL LAW AND WORLD RELIGIONS* (2002); Tom J. Farer, *Humanitarian Intervention Before and After 9/11: Legality and Legitimacy*, in *HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS* (J. L. Holzgrefe & Robert O. Keohane eds., 2003).

5. See POSITION PAPER OF THE PEOPLE'S REPUBLIC OF CHINA ON THE UNITED NATIONS REFORMS (2005) [hereinafter POSITION PAPER], available at <http://www.china-un.org/eng/xw/t199101.htm> ("When a massive humanitarian crisis occurs, it is the legitimate concern of the international community to ease and defuse the crisis.").

peace and security and to use its growing global influence to secure target state consent—indicate that China might not stand in the way of multilateral action in future cases of extreme humanitarian suffering.

Ultimately, China's rising power cuts both ways, placing Beijing in a strong position to shape the future development of international norms on humanitarian intervention as well as to block or oppose future interventions. As a result, Beijing's position on humanitarian intervention cannot be ignored.

II. HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW

The legal status of humanitarian intervention remains unsettled under international law.⁶ For the purposes of this Article, humanitarian intervention is defined as the use of force by a state (or group of states) in another sovereign state's territory to protect the host state's citizens from gross human rights abuses, mass atrocities, crimes against humanity, or genocide. Thus defined, humanitarian intervention is in direct tension with the norms of state sovereignty and nonintervention that arose out of the settlement at Westphalia in 1648.⁷

The origins of modern humanitarian intervention can be traced to British and French interventions in the nineteenth century.⁸ However, there is little support for the claim that a customary international legal right of humanitarian intervention arose during

6. See CHESTERMAN, *supra* note 4; Jennifer M. Welsh, *Introduction to HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS*, *supra* note 4; see generally Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 100 AM. J. INT'L L. 107 (2006) (addressing the issue of whether international law should permit states to intervene to stop or ameliorate dire humanitarian crises without UN approval).

7. The principle of nonintervention is recognized as part of customary international law. See *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 202 (June 27) ("The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law.").

8. See GARY J. BASS, *FREEDOM'S BATTLE: THE ORIGINS OF HUMANITARIAN INTERVENTION* 5–8 (2008) (examining the idea's origins in Britain's intervention in Greece to prevent Turkish atrocities against Greek rebels and civilians in the 1820s, France's intervention in Syria to protect Christian minorities in the 1860s, and Britain's intervention in the Ottoman Empire to end the "Bulgarian Horrors" in the 1870s); see also MARTHA FINNEMORE, *THE PURPOSE OF INTERVENTION: CHANGING BELIEFS ABOUT THE USE OF FORCE* 58–66 (2003) (discussing the same cases, as well as European reactions to massacres of Armenians in the Ottoman Empire in the 1890s). For a comprehensive overview of the origins and development of the idea of humanitarian intervention, see CHESTERMAN, *supra* note 4, at 7–44.

the nineteenth or early twentieth century as a result of state practice and *opinio juris*.⁹

Even if a right of humanitarian intervention had developed by the early twentieth century, the enactment of the United Nations Charter cast serious doubt on the continued validity of any such right under international law.¹⁰ Article 2(1) of the Charter implicitly incorporates the customary international law principle of nonintervention by reaffirming the “sovereign equality” of all member states.¹¹ Additionally, Article 2(4) explicitly prohibits the use of force, with only two exceptions: the use of force in self-defense and the use of force pursuant to a Security Council-authorized enforcement action under Chapter VII of the Charter.¹² Furthermore, Article 2(7) incorporates a principle of noninterference by prohibiting the United Nations from intervening “in matters which are essentially within the domestic jurisdiction of any state.”¹³ Chapter VII, the only exception to this noninterference principle, authorizes the Security Council to declare any situation to be “a threat to international peace and

9. CHESTERMAN, *supra* note 4, at 43–44 (“More than anything, humanitarian intervention appears to occupy a lacuna in the primitive international legal regime of the time.”). It is well established that the formation of a new rule of customary international law requires that a certain behavior must (i) “amount to settled practice” and (ii) be accompanied by *opinio juris sive necessitatis*, or the stated belief that such acts were undertaken because they were believed to be obligatory under international law. See *Nicaragua*, 1986 I.C.J. ¶ 207 (“Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is ‘evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.’”).

10. CHESTERMAN, *supra* note 4, at 45–47.

11. U.N. Charter art. 2, para. 1.

12. *Id.* art. 2, para. 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”). The prohibition on the use of force is a *jus cogens* principle of international law. *Nicaragua*, 1986 I.C.J. ¶ 190. Article 51 of the Charter provides for an exception to the prohibition on the use of force for the “inherent right of individual or collective self-defense.” U.N. Charter art. 51. The other exception—Security Council-authorized enforcement actions—is embodied in Article 39: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” *Id.* art. 39.

13. *Id.* art. 2, para. 7.

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Id.

security” and thereafter take enforcement measures, including the use of force.¹⁴

Certain commentators argue, in light of both the Charter's constraints on the use of force and insufficient state practice and *opinio juris* in the post-Charter era to establish a new norm of customary international law, that international law does not recognize a right of humanitarian intervention.¹⁵ In part, opposition to the recognition of a right to humanitarian intervention arises out of a concern that granting such a right will lead to its abuse.¹⁶ Nonetheless, a significant number of scholars argue that a right of humanitarian intervention exists in the post-Charter era. Some proponents argue that Article 2(4) of the Charter left open a loophole for humanitarian intervention,¹⁷ while others argue that a right of humanitarian intervention has emerged as a norm of customary international law through sufficient state practice and *opinio juris* during the 1990s and 2000s.¹⁸ Still others posit a theory of “sovereignty as responsibility,” which holds that if a state proves unable or unwilling to prevent mass atrocities or genocide from taking place within its territory, certain rights of sovereignty are lost and constraints on the use of force are relaxed, allowing intervention in order to bring an end to humanitarian catastrophes.¹⁹

This Article does not seek to resolve the debate on the status of a claimed right of humanitarian intervention—or of the related “responsibility to protect”—under international law. Rather, this Article accepts such ideas as contested and focuses instead on the evolution of China's position on humanitarian intervention since the end of the Cold War. It thus aims not only to contribute to the general debate on the status of humanitarian intervention under international law but also to contribute to a better understanding of whether and under what conditions China might undertake or support such interventions. In the process, this Article also examines Chinese attitudes toward state sovereignty. Although some

14. *Id.* arts. 39, 41–42.

15. See, e.g., CHESTERMAN, *supra* note 4, at 226 (“[T]here is no ‘right’ to humanitarian intervention in either the UN Charter or customary international law.”). Professor Chesterman finds that “[t]here is, in short, minimal state practice and virtually no *opinio juris* that supports a general right of humanitarian intervention.” *Id.* at 235.

16. *Id.* at 231.

[I]t is *more* dangerous to hand states a ‘right’—even of such a limited nature—than simply to assert the cardinal principle of the prohibition of the use of force and let states seek a political justification for a particular action if they find themselves in breach of that norm.

Id.

17. *Id.* at 47–53.

18. *Id.* at 57–65.

19. *Id.* at 53–57.

commentators distinguish between a unilateral right of humanitarian intervention and enforcement actions with humanitarian objectives authorized by the Security Council,²⁰ this Article adopts the broader view of humanitarian intervention that encompasses both types of interventions.²¹

Part III briefly examines China's historical attitudes toward sovereignty and intervention, from its founding in 1949 until the end of the Cold War. Part IV examines China's state practice and official pronouncements during seven humanitarian crises that are frequently cited by commentators as evidence of a developing customary international law norm of humanitarian intervention. Part V addresses China's more recent responses to two developments in the 2000s: the evolution of "the responsibility to protect" and the humanitarian crisis in Darfur. Finally, Part VI analyzes the elements of continuity and change in China's post-Cold War attitudes toward humanitarian intervention, as well as the various determinants of its position on humanitarian intervention under international law.

III. HISTORICAL CHINESE ATTITUDES TOWARD INTERVENTION

Since its founding in 1949, the PRC's foreign policy has been characterized largely by adherence to a rigid conception of state sovereignty and steadfast insistence on the principle of noninterference in other states' internal affairs.²² This stance is unsurprising considering the experience of China during its "century of humiliation," when it was subjected to repeated interventions by foreign powers and significant infringements on its sovereignty.²³

20. *Id.* at 5.

21. See, e.g., FERNANDO TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* 234 (1997) (pointing to Security Council-authorized actions as evidence of a customary international law norm sanctioning unilateral intervention); W. Michael Reisman, *Hollow Victory: Humanitarian Intervention and Protection of Minorities*, 91 AM. SOC'Y INT'L L. PROC. 431, 431 (1997) (defining humanitarian intervention to include actions conducted by international organizations, such as the United Nations); Jennifer M. Welsh, *The Security Council and Humanitarian Intervention*, in *THE UNITED NATIONS SECURITY COUNCIL AND WAR: THE EVOLUTION OF THOUGHT AND PRACTICE SINCE 1945*, at 535, 535 (Vaughan Lowe et al. eds., 2008) (focusing on the Security Council's "authorization of the use of force for humanitarian purposes").

22. See generally Cohen, *supra* note 2. Interestingly, Professor Cohen found that while feudal states in pre-imperial China also generally accepted a principle of noninterference, they "frequently invoked [an] exception [that] permitted intervention against a ruler who oppressed his own people." *Id.* at 474 (citing Te-hsu Ch'eng, *International Law in Early China (1122-249 BC)*, 11 CHINESE SOC. & POL. SCI. REV. 44, 44-46 (1927)).

23. *Id.* at 476.

Certain experiences in the PRC's early history—including, in the 1950s, U.S. military intervention in the Taiwan Straits and covert support of the 1959 uprising in Tibet—reinforced Beijing's strict stance on sovereignty and nonintervention.²⁴

In the early 1950s, China articulated its anti-interventionist posture in a set of guideposts for interstate relations known as the "Five Principles of Peaceful Coexistence."²⁵ Now enshrined in China's Constitution, these principles include respect for sovereignty and territorial integrity, nonaggression, and noninterference in other states' internal affairs.²⁶ These principles continue to play a role, at least rhetorically, in China's foreign policy.²⁷

During its first decade, the PRC also began to develop a nascent policy on permissible foreign interventions, including the position that target state consent was a *sine qua non* for the legality of any intervention.²⁸ Beijing's support for wars of national liberation and

24. *Id.* at 477.

25. Chinese Premier and Foreign Minister Zhou Enlai first proposed these principles during meetings with Indian delegations between December 1953 and June 1954. SIMEI QING, FROM ALLIES TO ENEMIES: VISIONS OF MODERNITY, IDENTITY, AND U.S.–CHINA DIPLOMACY, 1945–1960, at 254 (2007).

26. The Preamble to the PRC Constitution states that:

China consistently carries out an independent foreign policy and adheres to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries.

XIANFA pmbl. para. 12 (2004).

27. See, e.g., Jiang Yu, Foreign Ministry Spokesperson, Consulate-General of China in N.Y., Press Conference on December 9, 2010 (Dec. 10, 2010), available at <http://newyork.china-consulate.org/eng/fyrth/t777253.htm>.

China has been following the situation in [Côte] d'Ivoire since the election. Adhering to the principle of non-interference in other[s'] internal affairs, China upholds respecting the sovereignty of [Côte] d'Ivoire and hope[s] parties in the country properly settle their disputes through dialogue and consultation to realize political reconciliation and jointly safeguard state stability and national solidarity.

Id.

28. Compare Cohen, *supra* note 2, at 482 (citing a Chinese legal scholar's statement that the Soviet Union's military intervention in Hungary in 1956 was lawful because the intervention came at the request of the formal Hungarian government), with *id.* at 488 (describing China's condemnations of the Soviet invasion of Czechoslovakia in 1968 as an illegal violation of Czechoslovak sovereignty). China's different positions on the legality of the Soviet interventions in Hungary and Czechoslovakia also can be explained as a manifestation of the Sino–Soviet split in the early 1960s, rather than as the development of a principled position on the requirement of target state consent to foreign intervention. See JONATHAN D. SPENCE, THE SEARCH FOR MODERN CHINA 553–59 (1999) (discussing the Sino–Soviet split).

its condemnation of racist regimes stand as limited exceptions to its relatively strict anti-interventionist stance during the Cold War.²⁹

In 1971, the PRC replaced the Taiwan-based Kuomintang government in China's seat at the United Nations and on the Security Council.³⁰ In the following decade, Beijing continued to espouse strict conceptions of sovereignty and noninterference. For example, the PRC opposed UN peacekeeping efforts by refusing to participate in Security Council deliberations or votes on peacekeeping, or to contribute money or resources to UN missions.³¹

In the early 1980s, as Deng Xiaoping launched his "reform and opening" program, hints of an erosion of the PRC's absolutist conception of sovereignty began to appear.³² For example, in a 1981 international law textbook, Chinese legal scholars Wang Tieya and Wei Min referred to the prevention of genocide as one of the international obligations of states and noted that "necessary measures to suppress these behaviors [including genocide] were consistent with generally recognized principles of international law and should not be considered as intervening in the internal affairs of a state."³³ Following the Tiananmen Square events of 1989, however, whatever space may have existed for advancing a more liberal conception of sovereignty narrowed, and the trauma of those events reinforced the Chinese leadership's absolutist conception of sovereignty.³⁴ Still, it should be noted that China officially maintained a somewhat more liberal stance toward intervention through 1991, when a PRC human rights white paper declared:

29. For a discussion of the PRC's support of the "liberation struggles" and an attempt to reconcile that posture with Beijing's generally anti-interventionist stance, see Cohen, *supra* note 2, at 489–505.

30. SPENCE, *supra* note 28, at 596.

31. M. Taylor Fravel, *China's Attitude Toward U.N. Peacekeeping Operations Since 1989*, 36 *ASIAN SURV.* 1102, 1103–04; see Bates Gill & James Reilly, *Sovereignty, Intervention and Peacekeeping: The View from Beijing*, *SURVIVAL*, Autumn 2000, at 41, 43–44 (noting that China participated in its first vote on peacekeeping in 1981); Pang Zhongying, *China's Changing Attitude to UN Peacekeeping*, 12 *INT'L PEACEKEEPING* 87, 89–90 (2005). During this period, however, the Security Council authorized no operations that could be considered humanitarian interventions, and the Council was largely quiet on three cases that commentators sometimes characterize as humanitarian interventions: India's 1971 intervention in Bangladesh (East Pakistan), Tanzania's 1978–79 intervention in Uganda, and Vietnam's 1978–79 intervention in Cambodia (Kampuchea). Although commentators often cite these cases as examples of humanitarian intervention due to the substantial humanitarian payoffs that supposedly resulted, none of the intervening states justified their actions on the basis of a unilateral right of humanitarian intervention, and relied instead on a justification of self-defense. CHESTERMAN, *supra* note 4, at 84.

32. Jianguo Wang, *China and the Universal Human Rights Standards*, 29 *SYRACUSE J. INT'L L. & COM.* 135, 146–47 (2001).

33. *Id.* at 146 (quoting GUOJI FA [INTERNATIONAL LAW] 268 (Wang Tieya & Wei Min eds., 1981)).

34. *Id.* at 147.

China has always held that to effect international protection of human rights, the international community should interfere with and stop acts that endanger world peace and security, such as gross human rights violations caused by colonialism, racism, foreign aggression and occupation, as well as apartheid, racial discrimination, genocide, slave trade and serious violation of human rights by international terrorist organizations.³⁵

However, outside of the circumstances specifically mentioned in the white paper, Beijing made clear that China remained

[f]irmly opposed to any country making use of the issue of human rights to sell its own values, ideology, political standards and mode of development, and to any country interfering in the internal affairs of other countries on the pretext of human rights, the internal affairs of developing countries in particular, and so hurting the sovereignty and dignity of many developing countries.³⁶

IV. CHINESE ATTITUDES TOWARD HUMANITARIAN INTERVENTION IN THE 1990S

This Part examines China's acts and official pronouncements during seven humanitarian crises of the 1990s. These cases are typically cited by scholars when considering the international legal status of humanitarian intervention: (A) the northern and southern no-fly zones over Iraq after the first Gulf War; (B) Somalia; (C) Haiti; (D) Rwanda; (E) Bosnia; (F) Kosovo; and (G) East Timor.

A. *Iraq: The Northern and Southern No-Fly Zones*

Following the UN-authorized, U.S.-led expulsion of Iraqi forces from Kuwait in 1991, the United States, the United Kingdom, and France established "no-fly zones" (NFZs) over northern and southern Iraq to prohibit Iraqi aircraft from entering those airspaces.³⁷ Both NFZs were established without explicit UN authorization.³⁸ The United States, the United Kingdom, and France justified their actions in part by alleging the continued validity of Security Council Resolution 678—authorizing member states, under Chapter VII, "to use all necessary means" to effect the withdrawal of Iraqi troops from

35. INFO. OFFICE OF THE STATE COUNCIL OF CHINA, WHITE PAPER ON HUMAN RIGHTS IN CHINA—PART X: ACTIVE PARTICIPATION IN INTERNATIONAL HUMAN RIGHTS ACTIVITIES (1991), available at <http://www.china.org.cn/e-white/7/7-L.htm>.

36. *Id.*

37. Jane E. Stromseth, *Iraq's Repression of Its Civilian Population: Collective Responses and Civilian Challenges*, in ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 77, 94 (Lori Fisler Damrosch ed., 1993).

38. Jules Lobel & Michael Ratner, *Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime*, 93 AM. J. INT'L L. 124, 126, 132–33 (1999).

Kuwait, as demanded previously in Resolution 660³⁹—in combination with Resolution 688—demanding an immediate end to Saddam Hussein's repression of Iraq's civilian population.⁴⁰ All three countries stressed the humanitarian objectives of the NFZs: the Northern Zone was designed to protect Iraq's Kurdish population, and the Southern Zone was designed to protect Iraqi Shiites and Marsh Arabs.⁴¹ The United Kingdom even went so far as to claim that an emerging principle of international law permitted military intervention to prevent humanitarian catastrophes.⁴²

Due to the parties' reliance on implied authorizations in previous Security Council resolutions, the case of the Iraqi NFZs did not present an unambiguous claim of a unilateral right of humanitarian intervention,⁴³ but it nonetheless represents an important test case for Chinese attitudes in the immediate post-Cold War period. Although China voted in favor of Resolution 660, demanding Iraq's unconditional withdrawal from Kuwait,⁴⁴ it abstained from voting on Resolution 678, which authorized military action to enforce

39. S.C. Res. 678, ¶ 2, U.N. Doc. S/RES/678 (Nov. 29, 1990); *see also* S.C. Res. 660, ¶ 2, U.N. Doc. S/RES/660 (Aug. 2, 1990) (demanding Iraqi withdrawal of troops from Kuwait).

40. S.C. Res. 688, ¶¶ 1–2, U.N. Doc. S/RES/688 (Apr. 5, 1991).

41. The Northern Zone—north of the 36th parallel and consisting of three Iraqi provinces—was established in April 1991 to protect Iraqi Kurds after Saddam Hussein used helicopter gunships to suppress a Kurdish uprising. The United States also sent ground troops into northern Iraq from April to July 1991 to establish safe havens for Kurdish refugees. In December 1996, France ended its patrols of the Northern Zone, arguing that changes in the mission had eliminated its humanitarian character. CHESTERMAN, *supra* note 4, at 196–200. The Southern Zone—south of the 32nd parallel and including Iraq's marshlands and the city of Basra—was established on August 27, 1992 to protect Shiites who had rebelled against Saddam Hussein's government. Michael Wines, *U.S. and Allies Say Flight Ban in Iraq Will Start Today*, N.Y. TIMES, Aug. 27, 1992, at A1. In 1996, the Southern Zone was extended north to the 33rd parallel in response to Iraqi intervention in battles between Kurdish factions near Irbil, thereby covering the entire southern third of the country. However, France refused to patrol the extended zone. CHESTERMAN, *supra* note 4, at 199; John F. Harris & John Mintz, *U.S. Warplanes Patrol Wider "No-Fly" Zone*, WASH. POST, Sept. 5, 1996, at A1.

42. Christine Gray, *The Use of Force and the International Legal Order*, in INTERNATIONAL LAW 589, 595 (Malcolm D. Evans ed., 2d ed. 2006) ("We believe that humanitarian intervention without the invitation of the country concerned can be justified in cases of extreme humanitarian need").

43. *See* Christine Gray, *From Unity to Polarization: International Law and the Use of Force Against Iraq*, 13 EUR. J. INT'L L. 1, 9–11, 16–18 (2002) (noting that the American and British governments claimed that the NFZs were established in furtherance of Resolution 688, and that "states did not treat the US, UK and French action with respect to the no-fly zones in Iraq as practice helping to establish a right of humanitarian intervention"). *But cf.* Christopher Greenwood, *International Law and the NATO Intervention in Kosovo*, 49 INT'L & COMP. L.Q. 926, 929–30 (2000) (citing the Iraqi NFZs as precedents for humanitarian intervention).

44. U.N. SCOR, 45th Sess., 2932d mtg. at 27, U.N. Doc. S/PV.2932 (Aug. 2, 1990).

Resolution 660's demand.⁴⁵ This abstention demonstrated Beijing's distinct reluctance to endorse the Security Council's authorization of the use of force by member states under Chapter VII. Notably, China also abstained from voting on Resolution 688, a non-Chapter VII resolution calling for Saddam to end the repression of Iraq's civilian population.⁴⁶ During the Security Council debate on Resolution 688, China expressed concern about the humanitarian situation in Iraq, as well as the flood of refugees into Turkey and Iran.⁴⁷ However, China objected that the resolution violated the principle of noninterference enshrined in Article 2(7) of the UN Charter, stating that "the Security Council should not consider or take action on questions concerning the internal affairs of any state."⁴⁸ Thus, even though Resolution 688 was not a Chapter VII measure, and despite the affirmation of all member states "to respect the sovereignty, territorial integrity and political independence of Iraq,"⁴⁹ China abstained.⁵⁰

Two factors help to explain China's abstention. First, China may have been especially sensitive about any erosion of the noninterference principle in 1991, less than two years after the events of Tiananmen Square. Second, Resolution 688 was unprecedented: it was the first time that the Security Council declared a humanitarian crisis to be a threat to international peace and security.⁵¹ Although Resolution 688 did not invoke Chapter VII, it stated that the exodus of refugees from Iraq "threaten[ed] international peace and security" in the region.⁵² China's abstention likely reflected concern that the Security Council's willingness to consider even the external effects of internal repression set a dangerous precedent.

Yet, in spite of China's abstention and its opposition to the Security Council's interference in Iraq's internal affairs, Beijing voiced no objections to the NFZs at the time of their establishment.⁵³ Later China did issue statements indicating its unease with the

45. U.N. SCOR, 45th Sess., 2963d mtg. at 64–65, U.N. Doc. S/PV.2963 (Nov. 29, 1990).

46. U.N. SCOR, 46th Sess., 2982d mtg. at 52, U.N. Doc. S/PV.2982 (Apr. 5, 1991).

47. *Id.* at 55–56.

48. *Id.*

49. S.C. Res. 688, *supra* note 40, pmb. para. 7.

50. U.N. SCOR, 46th Sess., 2982d mtg., *supra* note 46, at 52. According to one source, Resolution 688 contained no enforcement language "to persuade China to abstain rather than veto." BRIAN FREDERKING, *THE UNITED STATES AND THE SECURITY COUNCIL: COLLECTIVE SECURITY SINCE THE COLD WAR 90* (2007).

51. MAX HILAIRE, *UNITED NATIONS LAW AND THE SECURITY COUNCIL 218* (2005).

52. *Id.*

53. James Cockayne & David M. Malone, *The Security Council and the 1991 and 2003 Wars in Iraq*, in *THE UNITED NATIONS SECURITY COUNCIL AND WAR*, *supra* note 21, at 384, 393.

NFZs. For example, in August 1992, the Chinese Foreign Ministry spokesman noted China's "serious concern" over developments in southern Iraq and stated that no step should be taken that "jeopardize[d] Iraq's unification and territorial integrity."⁵⁴ Additionally, China reiterated its concern about Iraqi sovereignty and territorial integrity after a U.S. warplane shot down an Iraqi fighter in the Southern Zone in December 1992.⁵⁵ Nonetheless, China did not protest the United States' use of force to enforce the NFZ.⁵⁶ According to two commentators, "What [China] would neither authorize nor assist de jure, they would acquiesce in de facto."⁵⁷

Over time, however, Beijing's opposition to the NFZs grew more explicit, as Western justifications for continued enforcement of the NFZs shifted from humanitarianism to the containment of Saddam's regime.⁵⁸ Years later, in 2004, China expressed "its condemnation" of the establishment of the Iraqi NFZs, stating that the NFZs "violate[d] the UN Charter and norms of international relations and [were] in defiance of and trampling on Iraq's sovereignty."⁵⁹ In that statement, China referred to Western justifications for the NFZs—to prevent Saddam from suppressing domestic minorities in the north and to protect Iraqi Shiites in the south—as an "excuse" and a "pretense," respectively.⁶⁰ China's strong opposition to the NFZs, well after their establishment, almost certainly reflects Chinese opposition to the 2003 U.S.-led invasion of Iraq without UN authorization. At the time of their creation and throughout the 1990s, however, Beijing's position on the NFZs was much more muted.

B. Somalia

The case of Somalia provides further evidence of China's early post-Cold War views on humanitarian intervention. Significantly, China supported all Security Council resolutions on Somalia between January 1992 and November 1994, despite the fact that those resolutions dealt with the purely internal humanitarian situation in Somalia, in contrast with Resolution 688's focus on the external

54. *Iraq 'No-Fly Zone' China 'Concerned,'* XINHUA GEN. OVERSEAS NEWS SERVICE, Aug. 31, 1992.

55. *Spokesman on U.S. Warplane Shooting Down Iraqi Fighter,* XINHUA GEN. OVERSEAS NEWS SERVICE, Dec. 28, 1992.

56. James Cockayne & Davis Malone, *Creeping Unilateralism: How Operation Provide Comfort and the No-Fly Zones in 1991 and 1992 Paved the Way for the Iraq Crisis of 2003*, 37 SECURITY DIALOGUE 123, 133–34 (2006).

57. *Id.* at 129.

58. For a discussion of the changing justifications for the NFZs, see Cockayne & Malone, *supra* note 53, at 393.

59. *The Iraq Issue*, EMBASSY OF CHINA IN ISR. (Sept. 21, 2004), <http://il.china-embassy.org/eng/zt/dqwt/t159726.htm>.

60. *Id.*

humanitarian consequences of internal strife in Iraq.⁶¹ One of the Security Council's early actions in Somalia was to establish a Chapter VI peacekeeping mission—the United Nations Operation in Somalia (UNOSOM)—to monitor a ceasefire agreement signed in Mogadishu in March 1992.⁶² UNOSOM, however, quickly proved ineffective in ending the violence.⁶³ In December 1992, facing an increasingly dire humanitarian situation in Somalia, the Security Council adopted Resolution 794, which authorized a U.S.-led humanitarian intervention.⁶⁴

Resolution 794 set a groundbreaking precedent in two ways. First, it marked the Security Council's first Chapter VII authorization of the use of force without host state consent.⁶⁵ Second, it was the first time that the Security Council authorized the use of force based on purely humanitarian concerns.⁶⁶ The resolution's language demonstrates its unequivocal humanitarian purpose. "Determining that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitute[d] a threat to international peace and security," the Council, acting under Chapter VII, authorized member states "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."⁶⁷ Although China supported the UN-authorized, U.S.-led humanitarian intervention in Somalia—known as the United Task Force (UNITAF)⁶⁸—it expressed reservations about the Security Council authorizing member states to use force for humanitarian purposes.⁶⁹ More importantly, China made clear that its support for the intervention was predicated on the fact that the intervention was "an exceptional action in view of the unique

61. The Security Council adopted seventeen resolutions on the situation in Somalia during this period; all but one passed unanimously. Welsh, *supra* note 21, at 538–39.

62. See S.C. Res. 751, ¶ 3, U.N. Doc. S/RES/751 (Apr. 24, 1992) (requesting the Secretary-General to deploy a group of fifty observers).

63. CHESTERMAN, *supra* note 4, at 141–42.

64. S.C. Res. 794, ¶¶ 6–13, U.N. Doc. S/RES/794 (Dec. 3, 1992).

65. CHESTERMAN, *supra* note 4, at 142.

66. Welsh, *supra* note 21, at 539.

67. S.C. Res. 794, *supra* note 64, ¶ 10.

68. U.N. SCOR, 47th Sess., 3145th mtg. at 17–18, U.N. Doc. S/PV.3145 (Dec. 3, 1992).

Taking into account the long-term chaotic situation resulting from the present lack of a Government in Somalia, and in view of our deep sympathy with the Somali people in their anguish, we endorse the requests of most African countries and the recommendations of the Secretary-General, that is, that the United Nations should take prompt, strong and exceptional measures for the settlement of the Somali crisis.

Id. at 16–17.

69. *Id.* at 18.

situation in Somalia"—a clear reference to the absence of a functioning Somali government.⁷⁰

In March 1993, the Security Council adopted Resolution 814, which expanded UNOSOM's force size and mandate in order to take over responsibilities from UNITAF.⁷¹ In effect, Resolution 814 established UNOSOM II, the first UN peacekeeping operation authorized to undertake enforcement actions under Chapter VII.⁷² Again, in explaining its support for the operation, China cited "the unique situation of the absence of any effective, functioning government in Somalia" as the reason for its vote "in favour of the United Nations taking strong, exceptional measures in Somalia."⁷³ Additionally, China reiterated its reservations about the Security Council's novel invocation of Chapter VII in a peacekeeping context.⁷⁴ As China's positions on Resolutions 794 and 814 make clear, its support for both the UN-authorized, U.S.-led humanitarian intervention in 1992 and the 1993 Chapter VII peacekeeping mission, UNOSOM II, was dependent on the absence of a legitimate, functioning government in Somalia and, therefore, on the impossibility of obtaining host state consent. As a result, China's support for the interventions in Somalia demonstrated a willingness, at most, to countenance humanitarian intervention where there was no legitimate state authority to approve or reject foreign humanitarian action.

C. Haiti

Although the 1994 intervention in Haiti by a UN-authorized, U.S.-led multinational force was more than just a humanitarian mission,⁷⁵ China's stance on two important Security Council

70. *Id.* In fact, in an apparent concession to the views of China and like-minded states, Resolution 794 made explicit reference to the "unique character of the present situation in Somalia," the "complex and extraordinary nature of the situation in Somalia," and the "exceptional response" of the international community. S.C. Res. 794, *supra* note 64, pmbl. China also called for the mission to cease promptly upon the establishment of a secure environment for the delivery of humanitarian relief.

71. HILAIRE, *supra* note 51, at 50.

72. S.C. Res. 814, ¶¶ 5-14, U.N. Doc. S/RES/814 (Mar. 26, 1993).

73. U.N. SCOR, 48th Sess., 3188th mtg. at 21, U.N. Doc. S/PV.3188 (Mar. 26, 1993).

74. *Id.* at 22 ("It is our understanding that this authorization is based on the needs of the unique situation in Somalia and should not constitute a precedent for United Nations peace-keeping operations."). China reiterated its resistance to the Council's authorization of the use of force for UNOSOM II's operations during a Council debate on the extension of its mandate. See U.N. SCOR, 49th Sess., 3385th mtg. at 5-6, U.N. Doc. S/PV.3385 (May 31, 1994) (stating that UNOSOM II's "humanitarian mandate remains unchanged, and the principle of using non-coercive measures should be observed in the performance of that mandate").

75. S.C. Res. 940, ¶¶ 4-10, U.N. Doc. S/RES/940 (July 31, 1994).

resolutions regarding the Haiti intervention provides insight into its early post-Cold War position on the principle of noninterference. Haiti plunged into chaos following a September 1991 *coup d'état* that drove its democratically elected president, Jean-Bertrand Aristide, into exile.⁷⁶ By 1993, humanitarian conditions had deteriorated drastically, leading to an exodus of refugees that put immense pressure on the Security Council to address the ongoing political and humanitarian crisis.⁷⁷

In June 1993, acting under Chapter VII, the Security Council unanimously adopted Resolution 841, imposing a fuel and arms embargo on Haiti and freezing the financial assets of the new Haitian government.⁷⁸ During the Security Council's debate on that resolution, Beijing characterized the crisis in Haiti as "essentially a matter which falls within the internal affairs of that country, and therefore [one that] should be dealt with by the Haitian people themselves."⁷⁹ Still, China supported the resolution based on "the unique and exceptional situation in Haiti"—an apparent reference to the fact that the sanctions had been requested by the "legitimate" Haitian permanent representative to the United Nations (i.e., the representative of Aristide's exiled government) in a letter to the UN Secretary-General.⁸⁰ China also indicated that the Security Council's consideration of the matter was proper given similar requests by the Organization of American States.⁸¹ As in the case of Somalia, China emphasized that its support did not constitute a change in its position on the principle of noninterference.⁸²

On July 31, 1994, the Security Council, acting under Chapter VII, adopted Resolution 940, authorizing a U.S.-led multinational force "to use all necessary means to facilitate the departure from Haiti of the military leadership . . . [and] the prompt return of the

76. CHESTERMAN, *supra* note 4, at 152.

77. *Id.* at 152–55.

78. S.C. Res. 841, ¶¶ 5–14, U.N. Doc. S/RES/841 (June 16, 1993).

79. U.N. SCOR, 48th Sess., 3238th mtg. at 20, U.N. Doc. S/PV.3238 (June 16, 1993).

80. *Id.* at 21. The Organization of American States originally established these sanctions in 1991. The Haitian permanent representative to the United Nations sought to make them "universal and mandatory" in his request to the Secretary-General. Welsh, *supra* note 21, at 542.

81. U.N. SCOR, 48th Sess., 3238th mtg., *supra* note 79, at 20.

82. *Id.* at 21.

The Chinese delegation, as its consistent position, does not favour the Security Council's handling [of] matters which are essentially internal affairs of a Member State, nor does it approve of resorting lightly to such mandatory measures as sanctions by the Council. We wish to point out that the favourable vote the Chinese delegation cast just now does not mean any change in that position.

Id.

legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti.”⁸³ The Security Council’s language makes clear that Resolution 940 was motivated by more than simply humanitarian aims. Although Resolution 940 cited grave concerns about “the significant further deterioration of the humanitarian situation in Haiti,” the Security Council’s objectives extended to “the restoration of democracy in Haiti and the prompt return of the legitimately elected President, Jean-Bertrand Aristide, within the framework of the Governors Island Agreement.”⁸⁴ In authorizing this unprecedented mission to reestablish a democracy, the Security Council highlighted “the unique character of the present situation in Haiti and its deteriorating, complex and extraordinary nature, requiring an exceptional response.”⁸⁵

China abstained from voting on Resolution 940.⁸⁶ Up to that point, China had supported all Security Council resolutions on Haiti, including all sanctions measures.⁸⁷ Here, however, China strongly objected to the Security Council’s invocation of Chapter VII to authorize member states to use force to resolve the situation in Haiti, and it noted that the resolution was “disconcerting because this would obviously create a dangerous precedent.”⁸⁸ As with Resolutions 678 and 688 on Iraq, China emphasized its preference for “a peaceful solution” over “the resort to pressure at will or even the use of force.”⁸⁹

83. S.C. Res. 940, *supra* note 75, ¶ 4. On September 19, 1994, a U.S.-led multinational force entered Port au Prince in Operation Uphold Democracy per Resolution 940. On March 31, 1995, the UN Mission in Haiti (UNMIH) replaced the U.S.-led force, although U.S. troops remained on the island until March 1996 under the command of UNMIH in Operation New Horizons (in which the U.S. commander was also the commander of the UN forces).

84. *Id.* pmb. paras. 4, 8.

85. *Id.* ¶ 2.

86. U.N. SCOR, 49th Sess., 3413d mtg. at 12, U.N. Doc. S/PV.3413 (July 31, 1994).

87. Prior to the adoption of Resolution 940, all Security Council resolutions on Haiti were adopted unanimously. *See* S.C. Res. 841, *supra* note 78, ¶¶ 5–8 (establishing a trade embargo on arms and petroleum products); S.C. Res. 861, ¶ 1, U.N. Doc. S/RES/861 (Aug. 27, 1993) (suspending Resolution 841’s trade embargo); S.C. Res. 862, ¶ 2, U.N. Doc. S/RES/862 (Aug. 31, 1993) (authorizing deployment of an “advance team” to Haiti to prepare for a larger mission); S.C. Res. 867, ¶¶ 1–2, U.N. Doc. S/RES/867 (Sept. 23, 1993) (establishing UNMIH); S.C. Res. 873, ¶ 1, U.N. Doc. S/RES/873 (Oct. 13, 1993) (terminating the suspension of Resolution 841’s trade embargo); S.C. Res. 875, ¶ 1, U.N. Doc. S/RES/875 (Oct. 16, 1993) (calling for strict enforcement of Resolution 841’s embargo); S.C. Res. 905, ¶ 2, U.N. Doc. S/RES/905 (Mar. 18, 1994) (extending UNMIH’s mandate); S.C. Res. 917, ¶¶ 2–3, U.N. Doc. S/RES/917 (May 6, 1994) (expanding sanctions against Haiti); S.C. Res. 933, ¶ 1, U.N. Doc. S/RES/933 (June 30, 1994) (further extending UNMIH’s mandate).

88. U.N. SCOR, 49th Sess., 3413d mtg. at 10, U.N. Doc. S/PV.3413 (July 31, 1994).

89. *Id.*

Yet, while noting that military action in Haiti did not conform to the UN Charter's preference for the peaceful resolution of disputes, China refrained from invoking sovereignty or noninterference principles in the Security Council debate.⁹⁰ This is especially puzzling given that Resolution 940 represented the first and only time that the Security Council has authorized the use of force to restore democracy in a member state.⁹¹ One explanation, however, may be that the intervention came at the request of the "legitimate" government of Haiti in exile,⁹² thus providing an element of consent.

China sought to clarify its position in November 1994, when it explained its favorable vote on Resolution 964, which authorized the strengthening of an advance team of the UN peacekeeping mission, the UN Mission in Haiti (UNMIH).⁹³ In a statement before the Security Council, China's representative highlighted the principle of noninterference:

China has consistently . . . opposed interference in the internal affairs of other countries and the use or threat of the use of force in international relations. We expounded this position when the Council adopted [R]esolution 940 (1994), which authorized military action in Haiti. Still less should [R]esolution 964 (1994), which has just been adopted, be understood as an affirmation of this so-called formula.⁹⁴

In light of this record, China's position on the intervention in Haiti perhaps should be viewed as an exceptional case in which China's muted opposition to, or acquiescence in, the intervention can be attributed to the presence of the consent of Haiti's "legitimate" government in exile. In any case, the example of Haiti demonstrates Beijing's concern that such intervention could set a precedent that would lead to the eventual erosion of the noninterference principle.

90. *Id.*

91. Sebastian von Einsiedel & David M. Malone, *Haiti*, in *THE UN SECURITY COUNCIL: FROM THE COLD WAR TO THE 21ST CENTURY* 467, 467 (David M. Malone ed., 2004).

92. MICHAEL BYERS, *WAR LAW: UNDERSTANDING INTERNATIONAL LAW AND ARMED CONFLICT* 32 (2005).

93. U.N. SCOR, 49th Sess., 3470th mtg. at 5, U.N. Doc. S/PV.3470 (Nov. 29, 1994).

94. *Id.* Similarly, in the context of China's favorable vote on Resolution 944, which lifted sanctions against Haiti after Aristide's return pursuant to the Governors Island Agreement, China's UN representative said:

The Chinese delegation would like to point out that it has reservations on some elements in [R]esolution 944 concerning the sending of a multinational force to Haiti. This is unacceptable to us. China has all along faithfully abided by the purposes and principles of the United Nations Charter and is opposed to interfering in the internal affairs of other countries and resorting to force or threat of force in international relations. It is our consistent view that the only way to a lasting peaceful settlement lies in dialogue and negotiation.

U.N. SCOR, 49th Sess., 3430th mtg. at 6, U.N. Doc. S/PV.3430 (Sept. 29, 1994).

D. Rwanda

Unique among the cases examined in this Article, Rwanda is, first and foremost, an instance of *nonintervention* rather than intervention—shamefully so, considering the international community's inaction in light of its awareness of the unfolding genocide and the scale of human tragedy involved.⁹⁵

In October 1993, China voted with a unanimous Security Council to establish the UN Assistance Mission in Rwanda (UNAMIR), a Chapter VI peacekeeping force with the mandate to monitor a ceasefire agreement between the Rwandan government and the Tutsi-led Rwandan Patriotic Front (RPF); both parties consented.⁹⁶ Shortly after genocidal violence erupted in early April 1994, the Security Council unanimously adopted Resolution 912, which infamously reduced UNAMIR forces from 2,500 to 270 troops.⁹⁷ Although the Security Council record is silent on China's views here, it is notable that Beijing—like other members of the Security Council—showed no inclination to characterize the unfolding events as a genocide, instead acquiescing in the Security Council's characterization of the crisis as a civil war.⁹⁸

In a subsequent reversal of course, in May 1994, the Security Council unanimously adopted Resolution 918, which authorized UNAMIR's expansion to 5,500 troops and enlarged its mandate to include the protection of refugees and civilians at risk and the establishment of humanitarian "safe areas."⁹⁹ Voting in favor of the expanded mandate, China cited the "increasingly grave" humanitarian situation and noted that "the situation in Rwanda has worsened quickly, with civil war engulfing the whole country and its people being plunged into an abyss of misery, creating a huge exodus of refugees into neighboring countries."¹⁰⁰

95. For sustained critiques of the international community's failure to respond to the Rwandan genocide, see PHILLIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* (1998); SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* 329–89 (2002); Samantha Power, *Bystanders to Genocide: Why the United States Let the Rwandan Tragedy Happen*, *ATLANTIC MONTHLY*, Sept. 2001, at 84.

96. S.C. Res. 872, ¶¶ 2–3, U.N. Doc. S/RES/872 (Oct 5, 1993).

97. S.C. Res. 912, ¶ 8, U.N. Doc. S/RES/912 (Apr. 21, 1994); U.N. Secretary-General, *Special Rep. of the Secretary-General on the U.N. Assistance Mission for Rwanda*, ¶ 16, U.N. Doc. S/1994/470 (Apr. 20, 1994).

98. See Welsh, *supra* note 21, at 545 ("The most powerful states in the Council . . . voiced concern that outside military forces would have little chance of success in the context of civil conflict.")

99. S.C. Res. 918, ¶ 5, U.N. Doc. S/RES/918 (May 17, 1994).

100. U.N. SCOR, 49th Sess., 3377th mtg. at 9, U.N. Doc. S/PV.3377 (May 16, 1994). China reaffirmed its support for UNAMIR's humanitarian mandate by voting in favor of Resolution 925 in early June 1994. See S.C. Res. 925, ¶ 10, U.N. Doc. S/RES/925 (June 8, 1994) (requesting that UNAMIR continue to work closely with the

However, due in part to the ghosts of the failed peacekeeping mission in Somalia, the expanded UNAMIR force never materialized.¹⁰¹ Instead, in late June 1994, the Security Council adopted Resolution 929, authorizing the deployment of a multinational French-led force.¹⁰² By that time, the genocide had largely run its course, with estimates of 500,000 to one million Tutsis and moderate Hutus slaughtered.¹⁰³ Adopted under Chapter VII, Resolution 929 authorized member states to use "all necessary means to achieve the humanitarian objectives" set out in the resolution, including to secure and protect displaced persons, refugees, and civilians at risk.¹⁰⁴

China abstained, offering several reasons for its vote.¹⁰⁵ First, China clung to the characterization of the crisis as a civil war and argued that negotiation between the parties was the "only way of solving the crisis," emphasizing that "[r]esort to armed force or mandatory measures would only worsen the situation."¹⁰⁶ Second, clearly demonstrating China's preference for a traditional peacekeeping force over a member state-led force with Chapter VII enforcement powers, Beijing argued for the deployment of an expanded UNAMIR in lieu of authorizing military intervention by a member state for humanitarian purposes.¹⁰⁷ Third, China noted the lack of consent of the conflicting parties to the deployment of the

UN Department of Humanitarian Affairs); U.N. SCOR, 48th Sess., 3388th mtg. at 12, U.N. Doc. S/PV.3388 (June 8, 1994).

In order to seek an early solution to the crisis in Rwanda, the Chinese delegation supports the continued presence in that country of the United Nations Assistance Mission for Rwanda (UNAMIR) and its performance of its proper role, so as to alleviate the suffering of the Rwandese people, to help the Rwandese parties to the conflict reach a cease-fire at an early date and to bring about national reconciliation within the framework of the Arusha Peace Agreement, eventually leading to peace and stability throughout the country.

Id.

101. See Rep. of the Independent Inquiry Into the Actions of the United Nations During the 1994 Genocide in Rwanda, in letter dated Dec. 15, 1999 from the U.N. Secretary-General addressed to the President of the Security Council, at 25, U.N. Doc. S/1999/1257 (Dec. 16, 1999) ("By [July 25], over two months after [R]esolution 918 (1994) was adopted, UNAMIR still had only 550 troops, a tenth of the authorized strength."); Power, *supra* note 95, at 90 (discussing how the intervention in Somalia influenced later thinking regarding intervention in Rwanda).

102. S.C. Res. 929, ¶¶ 1–3, U.N. Doc. S/RES/929 (June 22, 1994).

103. This figure is an estimate only; the exact number of victims of the Rwandan genocide is unknown. See, e.g., POWER, *supra* note 95, at 334 ("[S]ome 800,000 Tutsi and politically moderate Hutu were murdered.").

104. S.C. Res. 929, *supra* note 102, ¶ 3.

105. U.N. SCOR, 49th Sess., 3392d mtg. at 4, U.N. Doc. S/PV.3392 (June 22, 1994). Brazil, New Zealand, Nigeria, and Pakistan also abstained from voting on Resolution 929. *Id.* at 5.

106. *Id.* at 4.

107. *Id.*

multinational force.¹⁰⁸ Stating that China has “always believed . . . in securing the cooperation of all parties” and noting that “[s]uch cooperation is an indispensable condition for the success of United Nations peace-keeping operations,” China’s representative explained that the French-led force “cannot guarantee the cooperation of the parties to the conflict.”¹⁰⁹ In the end, despite Rwanda’s unprecedented humanitarian crisis, Beijing proved unwilling to support the Security Council’s authorization of a member state-led humanitarian intervention in the absence of consent of the parties concerned.

E. Bosnia

The international intervention in Bosnia from 1992 to 1995 was neither initially nor later primarily a humanitarian intervention.¹¹⁰ Nonetheless, at times UN peacekeeping operations in Bosnia during this period demonstrated characteristics of humanitarian intervention, and an examination of Beijing’s position is therefore useful for understanding Chinese attitudes toward sovereignty and intervention in the early to mid-1990s.

In February 1992, the Security Council adopted Resolution 743, establishing the UN Protection Force (UNPROFOR) to oversee ceasefire agreements signed at Geneva in late 1991 and Sarajevo in early 1992.¹¹¹ China voted in favor of the initial UNPROFOR resolution.¹¹² In order to understand China’s position on subsequent resolutions enlarging UNPROFOR’s mandate, it is important to note that Resolution 743 was not a Chapter VII enforcement measure: the Security Council established UNPROFOR as an ordinary Chapter VI

108. *Id.*

109. *Id.*

110. As defined earlier in this Article, “humanitarian intervention” is the use of force by a state (or group of states) in another sovereign state’s territory for the purposes of protecting the other state’s citizens from gross human rights abuses, mass atrocities, crimes against humanity, or genocide. *See supra* text accompanying notes 6–7. Initially, the UN peacekeeping force in Bosnia was *not* authorized to use force except in self-defense. S.C. Res. 743, U.N. Doc. S/RES/743 (Feb. 21, 1992) (neither referring to Chapter VII nor otherwise authorizing the use of force, even in self-defense). Additionally, while the original mandate of the UN force included humanitarian assignments, it was established as “an interim arrangement to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis.” *Id.* ¶ 5; *see also* Nicholas Morris, *Humanitarian Intervention in the Balkans, in HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS, supra* note 4, at 98, 103. As described *infra* notes 115–18, the Security Council repeatedly enlarged the force’s mandate to encompass the protection of civilians from ethnic cleansing and mass atrocities, including authorizing the UN peacekeeping units to use force in the fulfillment of this expanded mandate.

111. S.C. Res. 743, *supra* note 110, ¶ 8.

112. U.N. SCOR, 47th Sess., 3055th mtg. at 4, U.N. Doc. S/PV.3055 (Feb. 21, 1992).

peacekeeping mission, with the consent of the Federal Republic of Yugoslavia (FRY).¹¹³ UNPROFOR's original mandate included maintaining conditions for successful peace talks and securing three demilitarized "safe havens," known as UN Protected Areas (UNPAs), in the former Yugoslav republic of Croatia.¹¹⁴

Faced with mass civilian casualties, ethnic cleansing, and a burgeoning refugee population, the Security Council regularly expanded UNPROFOR's mandate over the next three years to encompass increasingly complex operations.¹¹⁵ These operations included the protection of aid workers and humanitarian convoys and the establishment and protection of "safe areas" around Sarajevo and five Bosnian towns, including Srebrenica.¹¹⁶ This "mission creep" blurred the line between traditional peacekeeping and "peace enforcement" operations.¹¹⁷ Moreover, it interposed UNPROFOR

113. Resolution 743 did, however, state "that the situation in Yugoslavia continues to constitute a threat to international peace and security as determined in [R]esolution 713 (1991)." S.C. Res. 743, *supra* note 110, *pmbl.* para. 5. Resolution 713 called on all UN member states to implement a "general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia." S.C. Res. 713, ¶ 6, U.N. Doc. S/RES/713 (Sept. 25, 1991).

114. S.C. Res. 743, *supra* note 110, ¶ 5. The UNPAs were established in Eastern Slavonia, Western Slavonia, and Krajina.

115. MICHAEL W. DOYLE & NICHOLAS SAMBANIS, *MAKING WAR AND BUILDING PEACE: UNITED NATIONS PEACE OPERATIONS 165-66* (2006).

116. See S.C. Res. 758, ¶ 8, U.N. Doc. S/RES/758 (June 8, 1992) (enlarging UNPROFOR's mandate and strength, and calling on all parties to create conditions for delivery of humanitarian supplies to Sarajevo and other destinations, including establishment of a security zone around Sarajevo's airport); S.C. Res. 761, ¶¶ 4-5, U.N. Doc. S/RES/761 (June 29, 1992) (authorizing the deployment of additional personnel to ensure the "security and functioning" of Sarajevo's airport to facilitate the delivery of humanitarian aid); S.C. Res. 776, ¶ 2, U.N. Doc. S/RES/776 (Sept. 14, 1992) (increasing UNPROFOR's strength and enlarging its mandate to include protection of International Committee of the Red Cross convoys); S.C. Res. 819, ¶¶ 1-14, U.N. Doc. S/RES/819 (Apr. 16, 1993) (declaring Srebrenica a "safe area"); S.C. Res. 824, ¶¶ 3-6, U.N. Doc. S/RES/824 (May 6, 1993) (declaring that Sarajevo and other "threatened areas," including, Tuzla, Žepa, Goražde, Bihać, and Srebrenica, should be treated as "safe areas" by all parties); S.C. Res. 836, ¶¶ 4-11, U.N. Doc. S/RES/836 (June 4, 1993) (enlarging UNPROFOR's mandate to include protection of designated "safe areas"). In particular, Resolution 836—a Chapter VII resolution—authorized UNPROFOR,

acting in self-defense, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas of the freedom of movement of UNPROFOR or of protected humanitarian convoys.

Id. ¶ 9 (emphasis added). Effectively, this enlargement of UNPROFOR's mandate allowed it to use force to protect the "safe areas." *Id.*

117. See generally ALEX J. BELLAMY, ET AL., *UNDERSTANDING PEACEKEEPING 193-202* (2d ed. 2010) (describing "wider" or "Chapter 6½" peacekeeping as "fall[ing] somewhere between the pacific and consensual provisions of Chapter VI of the UN Charter and the enforcement measures envisaged by Chapter VII," and discussing such peacekeeping in the context of Bosnia); Trevor Findlay, *The New Peacekeepers and the*

troops between conflicting parties, as well as between hostile forces and civilians, in situations where the consent of some or all parties had eroded or was nonexistent.¹¹⁸ In other words, UNPROFOR operations frequently exhibited characteristics of humanitarian intervention, and China's position on the expansion of UNPROFOR's mandate during this period therefore sheds light on the evolution of China's attitudes toward humanitarian intervention in the post-Cold War era.

China voted in favor of a number of resolutions enlarging UNPROFOR's mandate throughout 1992, including those that expanded its mandate to include the protection of Sarajevo's airport to ensure the security of humanitarian airlift operations,¹¹⁹ the monitoring of "pink zones" controlling access to the UNPAs,¹²⁰ the assumption of border control functions,¹²¹ and the demilitarization of Prevlaka Peninsula near Dubrovnik.¹²² However, this support for an enlarged mandate clashed with both China's disinclination to support Chapter VII enforcement actions and its insistence on obtaining the conflicting parties' consent to any enlargement of UNPROFOR's mandate.

In August 1992, China abstained from the vote on Resolution 770, a Chapter VII enforcement action that called on all member states to "take nationally or through regional agencies or arrangements all measures necessary," including the use of force, to facilitate the delivery of humanitarian assistance to Sarajevo and other parts of Bosnia and Herzegovina.¹²³ Although China endorsed the objective of facilitating humanitarian relief, it disagreed with the

New Peacekeeping, in CHALLENGES FOR THE NEW PEACEKEEPERS 1, 1-31 (Trevor Findlay ed., 1996) (describing the evolution of peacekeeping from "traditional" or "first generation" operations to "wider" or "second generation" peacekeeping missions); Nugroho Wisnumurti, *The United Nations and Peace Enforcement: Prescription for Disorder or Path Towards a New World Order?*, 3 BROWN J. WORLD AFF. 67, 67-69 (1996) (describing the "guiding principles" of "first generation" peacekeeping as "nonintervention in the internal affairs of states, neutrality, non-use of force except in self-defense, and above all, the consent of the states involved," and stating that "[t]he defining characteristic of the concept of peace enforcement is the very antithesis" of traditional peacekeeping: "[i]t does not require the consent of one or more parties to some or all of the decisions of the Security Council").

118. See BELLAMY, *supra* note 117, at 193-202, 280-88 (describing the peacekeeping mission in Bosnia as an example of "wider" or "Chapter 6½" peacekeeping); Wisnumurti, *supra* note 117, at 71-72 (describing the challenges faced by UNPROFOR as the UN Security Council expanded its mandate from traditional peacekeeping to "peace enforcement").

119. S.C. Res. 761, *supra* note 116, ¶¶ 1-3.

120. S.C. Res. 762, ¶ 3, U.N. Doc. S/RES/762 (June 30, 1992).

121. S.C. Res. 769, ¶¶ 1-2, U.N. Doc. S/RES/769 (Aug. 7, 1992).

122. S.C. Res. 779, ¶ 2, U.N. Doc. S/RES/779 (Oct. 6, 1992). The Prevlaka Peninsula is located in Croatia.

123. S.C. Res. 770, ¶ 2, U.N. Doc. S/RES/770 (Aug. 13, 1992). India and Zimbabwe also abstained from voting.

Security Council's authorization of the use of force by member states to fulfill the mandate.¹²⁴

In September 1992, China similarly abstained from voting on Resolution 776, which expanded UNPROFOR's mandate to include the protection of International Committee of the Red Cross humanitarian convoys.¹²⁵ Although Resolution 776 did not itself invoke Chapter VII, its reference to Resolution 770 led China to object again to the use of force for humanitarian purposes.¹²⁶ In particular, China's representative argued that the use of force "will only complicate the situation, sharpen differences, intensify hatreds, and make it more difficult to solve the problem."¹²⁷ But China was not only concerned that UNPROFOR ran "the risk of plunging into armed conflict."¹²⁸ It also emphasized that the expansion of UNPROFOR's mandate had "not received the express consent of the parties concerned in Bosnia and Herzegovina."¹²⁹

As fighting intensified in Bosnia in early 1993, the Security Council moved to provide UNPROFOR with greater powers to address increasingly complex conditions on the ground.¹³⁰ In the face of reports of "ethnic cleansing" and deteriorating humanitarian conditions, China softened its position on the enlargement of UNPROFOR's mandate. For example, in April 1993, China voted in favor of Resolution 819, a Chapter VII measure designating Srebrenica and its surroundings as a "safe area."¹³¹ Similarly, in May 1993, China voted in favor of Resolution 824, a Chapter VII resolution designating Sarajevo and the towns of Goražde, Tuzla, Žepa, and Bihać as "safe areas."¹³²

124. U.N. SCOR, 47th Sess., 3106th mtg. at 50, U.N. Doc. S/PV.3106 (Aug. 13, 1992).

125. S.C. Res. 776, *supra* note 116, ¶ 2. India and Zimbabwe also abstained from voting.

126. U.N. SCOR, 47th Sess., 3114th mtg. at 11–12, U.N. Doc. S/PV.3114 (Sept. 14, 1992).

127. *Id.* at 10. China's representative further stated, "We are concerned that linking this resolution with [R]esolution 770 (1992) will change the non-mandatory nature of UNPROFOR as the United Nations peace-keeping operation." *Id.* at 12.

128. *Id.*

129. *Id.*

130. See John F. Burns, *Serbs Intensify Sarajevo Attack; U.N. Fears A Final All-Out Push*, N.Y. TIMES, Mar. 23, 1993, at A1 (describing UNPROFOR's struggle to contain the escalating violence in Bosnia); John F. Burns, *Vicious 'Ethnic Cleansing' Infects Croat-Muslim Villages in Bosnia*, N.Y. TIMES, Apr. 21, 1993, at A1 (same); Chuck Sudetic, *Serbian Forces Said to Overrun Muslim Villages*, N.Y. TIMES, June 3, 1993, at A7 (same).

131. U.N. SCOR, 48th Sess., 3199th mtg. at 3, U.N. Doc. S/PV.3199 (Apr. 16, 1993); S.C. Res. 819, *supra* note 116, ¶¶ 1–14. Notably, Resolution 819 explicitly reaffirmed "the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina." *Id.* pmb. para. 3.

132. S.C. Res. 824, *supra* note 116, ¶¶ 3–6.

China also supported the enlargement of UNPROFOR's humanitarian mandate in 1993, when it voted in favor of several resolutions authorizing the expanded use of force. First, in February 1993, China voted in favor of Resolution 807, which invoked Chapter VII to provide for UNPROFOR's self-defense.¹³³ However, China still expressed unease with the Security Council's reference to Chapter VII, and it noted that the situation in Bosnia was "an exceptional case and therefore does not constitute a precedent for future United Nations peace-keeping operations."¹³⁴ Second, China similarly voted in favor of Resolution 836, a Chapter VII measure authorizing UNPROFOR "to take the necessary measures, including the use of force," to protect safe areas from attack and to ensure the freedom of movement of UN and humanitarian convoys.¹³⁵ Notably, Resolution 836 authorized member states to use air power in support of UN peacekeepers in and around safe areas.¹³⁶ During the Security Council debate on Resolution 836, China explained its vote by calling the situation in Bosnia a "great threat to peace and security in the region" and noting with concern the drastic deterioration of humanitarian conditions.¹³⁷ Under such conditions, China stated, the establishment of safe areas "may as well be tried as a temporary measure . . . even though it cannot provide a fundamental solution to the conflict."¹³⁸ China, reiterating its reservations about invoking Chapter VII to authorize the use of force, explicitly noted that its favorable vote was due to "humanitarian consideration[s]."¹³⁹

Finally, China voted in favor of Resolution 958, an enforcement action authorizing member states to use "all necessary measures, through the use of air power, in an[d] around the safe areas in the Republic of Bosnia and Herzegovina," to support UNPROFOR in the performance of its mandate.¹⁴⁰ Again, China emphasized that its

133. S.C. Res. 807, pmbl. para. 7, U.N. Doc. S/RES/807 (Feb. 19, 1993).

134. U.N. SCOR, 48th Sess., 3174th mtg. at 21, U.N. Doc. S/PV.3174 (Feb. 19, 1993). Thereafter, the PRC continued to express reservations about the applicability of Chapter VII to UN peacekeeping operations and to note that the invocation of Chapter VII for UNPROFOR operations did not constitute a precedent for future UN peacekeeping missions. *See, e.g.*, U.N. SCOR, 48th Sess., 3189th mtg. at 16, U.N. Doc. S/PV.3189 (Mar. 30, 1993) ("It is our view that the application of Chapter VII is due to the special and specific needs of Croatia and should not constitute a precedent for the peace-keeping operations of the United Nations.").

135. S.C. Res. 836, *supra* note 116, ¶ 9 (adopted by a 13-2 vote, with Pakistan and Venezuela opposing the resolution).

136. *Id.* ¶ 10.

137. U.N. SCOR, 48th Sess., 3228th mtg. at 48, U.N. Doc. S/PV.3228.

138. *Id.*

139. *Id.* at 49.

140. S.C. Res. 958, pmbl. para. 6, U.N. Doc. S/RES/958 (Nov. 19, 1994). On November 21, NATO launched air strikes in accordance with Resolution 958. *See* Michael R. Gordon, *NATO Set to Bomb Serbs in Croatia*, N.Y. TIMES, Nov. 21, 1994, at A1.

support was due to the resolution's humanitarian objective—in this case, the resolution was intended to protect civilians in a safe area, Bihać, that had recently come under attack.¹⁴¹ And again, China reiterated its reservations concerning the invocation of Chapter VII and emphasized that “[a]ir power should be used only for the purpose of self-defense.”¹⁴²

Despite these affirmative votes, China's support for enforcement resolutions with humanitarian objectives remained limited. For example, in October 1992, China abstained from voting on Resolution 781, which established a no-fly zone (NFZ) over Bosnia to prevent attacks by Serbian warplanes.¹⁴³ Significantly, Resolution 781 represented the first time that the Security Council imposed an NFZ over another member state's sovereign territory. In explaining its abstention from voting on Resolution 781, China noted that it did not oppose “in principle” the establishment of an NFZ to facilitate humanitarian relief operations and protect civilians, but it emphasized that “the consent of all relevant parties” was absent.¹⁴⁴ Similarly, in March 1993, China abstained from voting on Resolution 816, which invoked Chapter VII to authorize member states to enforce the NFZ using “all necessary measures.”¹⁴⁵ In explaining its abstention, China again emphasized the lack of consent of the “parties concerned” and also noted its “reservations on the invocation of Chapter VII to authorize countries to use force in implementing the no-fly zone.”¹⁴⁶

The requirement of consent also factored into China's votes to extend UNPROFOR's mandate. In one Security Council debate, China stated that a “precondition” for the continued deployment of UN peacekeeping forces was “the prior request or consent from the host countries or the parties concerned.”¹⁴⁷ Still, China's favorable votes on a number of enforcement resolutions—especially those with humanitarian objectives—indicated a degree of flexibility in its position on consent, as resolutions adopted under Chapter VII implicitly do not require the consent of the parties concerned.¹⁴⁸

141. U.N. SCOR, 49th Sess., 3461st mtg. at 7, U.N. Doc. S/PV.3461 (Nov. 19, 1994).

142. *Id.*

143. S.C. Res. 781, ¶ 1, U.N. Doc. S/RES/781 (Oct. 9, 1992).

144. U.N. SCOR, 47th Sess., 3122d mtg. at 7, U.N. Doc. S/PV.3122 (Oct. 9, 1992).

145. S.C. Res. 816, ¶ 4, U.N. Doc. S/RES/816 (Mar. 31, 1993). On April 12, NATO commenced operations to enforce the Bosnian NFZ. William Drozdiak, *NATO to Patrol Bosnian Skies Starting Monday*, WASH. POST, Apr. 9, 1993, at A1.

146. U.N. SCOR, 48th Sess., 3191st mtg. at 22, U.N. Doc. S/PV.3191 (Mar. 31, 1993).

147. U.N. SCOR, 48th Sess., 3286th mtg. at 8, U.N. Doc. S/PV.3286 (Oct. 4, 1993).

148. Rosalyn Higgins, *A General Assessment of United Nations Peace-Keeping*, in UNITED NATIONS PEACE-KEEPING 1, 5 (Antonio Cassese ed., 1978) (stating that “a

Nonetheless, when China perceived that proposed actions impinged on sovereignty and territorial integrity, its support for those actions became contingent on the consent of the parties.¹⁴⁹ For example, in December 1995, when China voted in favor of establishing the Implementation Force (IFOR)—the NATO-led multinational force deployed to Bosnia following the 1995 London peace agreement¹⁵⁰—it attributed its support to “the urgent wishes of the party concerned and the fact that this draft resolution calls for extraordinary action in extraordinary circumstances.”¹⁵¹ As the case of the Bosnian crisis shows, China was grappling with defining the boundaries of its adherence to the principle of noninterference,

textual reading of the Charter leads to the view that ‘host State’ consent is not necessarily needed if there is a threat to the peace, breach of the peace, or act of aggression,” and further stating that “an argument can be made that where a situation so threatens international peace, the consent of a host State is not *stricto sensu* required under Article 39 [of Chapter VII] or for even the operation of enforcement measures”); Marianne von Grünigen, *Neutrality and Peace-Keeping, in UNITED NATIONS PEACE-KEEPING, supra*, at 125, 136 (“One of the fundamental principles which distinguish peace-keeping operations from the enforcement measures envisaged in Chapter VII of the Charter is the consent of all interested parties, especially of the host State, on whose territory the Force will be stationed.”); Yoel Arnon Tsur, *The United Nations Peace-Keeping Operations in the Middle East From 1965 to 1976, in UNITED NATIONS PEACE-KEEPING, supra*, at 183, 207 (“The Security Council, if it wished, could have converted [the United Nations Emergency Force] into a coercive force under Chapter VII of the United Nations Charter, i.e. a force whose stationing does not depend on the host country’s consent.”).

149. China repeatedly demanded deference to sovereignty and territorial integrity during Security Council debates. *See, e.g.*, U.N. SCOR, 50th Sess., 3575th mtg. at 8, U.N. Doc. S/PV.3575 (Sept. 8, 1995) (“On the question of Bosnia and Herzegovina, the Chinese delegation has always maintained that its sovereignty, territorial integrity and political independence should be respected by the international community.”); U.N. SCOR, 49th Sess., 3454th mtg. at 13, U.N. Doc. S/PV.3454 (Nov. 8, 1994) (“I wish to emphasize that the sovereignty and territorial integrity of the Republic of Bosnia and Herzegovina should be respected by the international community.”); U.N. SCOR, 49th Sess., 3428th mtg. at 24, U.N. Doc. S/PV.3428 (Sept. 23, 1994) (“Since the very beginning of the Bosnian conflict, we have consistently emphasized that the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina should be respected by the international community”); U.N. SCOR, 49th Sess., 3367th mtg. at 54–55, U.N. Doc. S/PV.3367 (Apr. 21, 1994) (“We reaffirm that the sovereignty and territorial integrity of the Republic of Bosnia and Herzegovina should be respected”); U.N. SCOR, 49th Sess., 3356th mtg. at 10, U.N. Doc. S/PV.3356 (Mar. 31, 1994) (“The sovereignty and territorial integrity of Croatia and Bosnia and Herzegovina, as well as other countries concerned in the region, should be fully respected.”); U.N. SCOR, 49th Sess., 3344th mtg. at 11, U.N. Doc. S/PV.3344 (Mar. 4, 1994) (“The sovereignty, territorial integrity and political independence of Bosnia and Herzegovina, a State Member of the United Nations, should be respected by the international community.”); U.N. SCOR, 48th Sess., 3200th mtg. at 31–32, U.N. Doc. S/PV.3200 (Apr. 17, 1993) (emphasizing “the importance of ensuring the sovereignty and territorial integrity of Bosnia and Herzegovina”).

150. U.N. SCOR, 50th Sess., 3607th mtg. at 13–14, U.N. Doc. S/PV.3607 (Dec. 15, 1995).

151. *Id.*

demonstrating both a greater flexibility on intervention and a lingering reluctance to sanction the use of force for humanitarian purposes in contexts of eroded consent.

F. Kosovo

NATO's 1999 unilateral military intervention in Kosovo marked the boldest claim to a freestanding right of humanitarian intervention to date. It also marked the high point of China's opposition to the idea of humanitarian intervention. Following the Federal Republic of Yugoslavia's (FRY) rejection of the Rambouillet Accord in early 1999, NATO launched a bombing campaign designed to drive Serbian forces from Kosovo in order to make way for an international peacekeeping force that would protect both Kosovar Albanian and Serbian communities in Kosovo and allow refugees to return home.¹⁵² NATO's bombing campaign ran from March 24 to June 10, 1999, during which time ethnic cleansing in Kosovo escalated and added to the refugee problem.¹⁵³ At no point did NATO receive UN authorization for its military intervention.¹⁵⁴ On June 12, FRY President Slobodan Milošević finally acceded to conditions that paved the way for a NATO peacekeeping force—the Kosovo Force (KFOR)—to enter the province.¹⁵⁵

Of all NATO members, the United Kingdom most vocally proclaimed a unilateral right of humanitarian intervention.¹⁵⁶ The

152. Javier Solana, *NATO's Success in Kosovo*, FOREIGN AFF., Nov.–Dec. 1999, at 114, 116–17.

153. William Booth & James Rupert, *Exodus Swells, Straining Capacity of Refugee Camps*, WASH. POST, Apr. 18, 1999, at A1; Peter Finn, *Refugees Flee Across Border By Thousands*, WASH. POST, Mar. 29, 1999, at A1; Bradley Graham, *Bombing Spreads; Kosovo Exodus Grows*, WASH. POST, Mar. 29, 1999, at A1; Thomas W. Lippman, *NATO Commits Troops, Aircraft to Help Feed, Shelter Refugees; Allies Discuss a Force to Ensure Safe Return*, WASH. POST, Apr. 4, 1999, at A1; Thomas W. Lippman, *New Serbian Backlash Feared*, WASH. POST, Mar. 25, 1999, at A32; James Rupert, *Refugees Report Roadside Slaughter*, WASH. POST, Apr. 29, 1999, at A1; R. Jeffrey Smith & William Booth, *Yugoslavia Steps Up Expulsions*, WASH. POST, Apr. 17, 1999, at A1; R. Jeffrey Smith, *New Wave of Kosovo Exiles Tells of Atrocities by Serbs*, WASH. POST, Apr. 15, 1999, at A1; Daniel Williams, *Brutal Conditions Enveloping Kosovo*, WASH. POST, Mar. 27, 1999, at A1.

154. See generally Louis Henkin, *NATO's Kosovo Intervention*, 93 AM. J. INT'L L. 824, 825–26 (1999) (discussing the reasons why NATO did not seek explicit authorization of the Security Council).

155. Thomas W. Lippman, *Yugoslavs Begin Kosovo Retreat*, WASH. POST, June 11, 1999, at A1; R. Jeffrey Smith, *Kosovo Pullout Set to Start Today*, WASH. POST, June 10, 1999, at A1; Daniel Williams & William Drozdiak, *NATO Peace Force Hastens Into Kosovo*, WASH. POST, June 12, 1999, at A1; Daniel Williams, *Yugoslavs Yield to NATO Terms*, WASH. POST, June 4, 1999, at A1.

156. Professor Brownlie, however, notes that Kosovo is not a clear-cut example of humanitarian intervention due to the mixed motives expressed by NATO member states. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 742–43 (7th ed. 2008).

U.K. Secretary of Defense at the time stated that “[i]n international law, in exceptional circumstances and to avoid a humanitarian catastrophe, military action can be taken, and it is on that legal basis that military action was taken.”¹⁵⁷ Similarly, on the day that NATO commenced its bombing campaign, the U.K. permanent representative to the United Nations argued that NATO’s intervention was legal and that in situations “of overwhelming humanitarian necessity, military intervention is legally justifiable.”¹⁵⁸ The United States provided similar justifications for NATO’s intervention, although, unlike the United Kingdom, it did not argue explicitly for a freestanding right of humanitarian intervention.¹⁵⁹ Separately, Germany and France took the position that the NATO campaign did not set a precedent for a right of humanitarian intervention.¹⁶⁰

There is a preliminary and major difficulty in classifying the action. This is because the authenticity of the subsequent claims that the action had humanitarian motives is substantially undermined by the fact that, beginning in October 1998, the threats of force were linked directly to a collateral political agenda, that is, the acceptance by Yugoslavia of various *political* ‘demands’ concerning the status of Kosovo, these ‘demands’ being presented under threat of a massive bombing campaign. This background has been ignored by many commentators.

Id. As to the status of humanitarian intervention under international law at that time, Professor Brownlie writes, “The position in 1999, when the operations took place, was that there was little or no authority and little or no state practice to support the right of individual States to use force on humanitarian grounds in international law.” *Id.* at 743–44. Michael Matheson, former legal advisor for the U.S. Department of State, concludes that NATO’s legal justification for its air campaign was based on “the unique combination of a number of factors,” including

the failure of the FRY to comply with Security Council demands under Chapter VII; the danger of a humanitarian disaster in Kosovo; the inability of the Council to make a clear decision adequate to deal with that disaster; and the serious threat to peace and security in the region posed by Serb actions.

Michael J. Matheson, *Justification for the NATO Air Campaign in Kosovo*, 94 AM. SOC’Y INT’L PROC. 301, 301 (2000).

157. MALCOLM N. SHAW, *INTERNATIONAL LAW* 1157 (6th ed. 2008).

158. BROWNLIE, *supra* note 156, at 743.

159. *Id.*

160. Gray, *supra* note 42, at 595–96 (“As regards Kosovo, there was little express support from states for an autonomous doctrine of humanitarian intervention, other than from the UK.”). Professor Gray also writes,

Most States arguing in the Security Council and in the ICJ did not rely on humanitarian intervention alone as an autonomous justification for the use of force; they seemed to rely on a combination of humanitarian and implied authorization by the Security Council. The Netherlands and others stressed that the action followed directly from Security Council Resolution 1203; it could not be described as unilateral.

Id. A statement by NATO’s Secretary-General in March 1999 provided diverse justifications for the campaign, including the FRY’s refusal to accept the terms of the

For China, however, the story was not as simple as that of the Serbian state systematically cleansing Kosovo of ethnic Albanians. From China's perspective, Serbia was defending its sovereignty against internal challenges—a position that China almost certainly viewed with sympathy given its own internal challenges to sovereignty, including in Tibet, Xinjiang, and Taiwan. Thus, China was adamant that the situation in Kosovo was an internal affair of the FRY. For example, in a statement before the General Assembly in December 1998, China stated that “Kosovo is a part of the [FRY], and respect for the [FRY's] sovereignty and territorial integrity and noninterference in its internal affairs under any pretext are in conformity with the principles of the United Nations Charter.”¹⁶¹

China repeated this sentiment regularly at the United Nations, including in defense of its abstention from voting on Resolution 1160, in which the Security Council determined, for the first time, that the conflict in Kosovo constituted a threat to international peace and security and imposed an arms embargo on the FRY under Chapter VII.¹⁶² China's statement before the Security Council evinced sensitivity to the supposed “internationalization” of a domestic secessionist movement under the guise of responding to a humanitarian crisis, and its fear that the resolution might set a precedent for international intervention in its own affairs led Beijing to oppose the Security Council's designation of the situation in Kosovo as a threat to international peace and security.¹⁶³

Rambouillet Accord or comply with other demands of the “international community,” in addition to arguing that the FRY's failure to meet these demands made NATO's intervention “necessary to avert a humanitarian catastrophe.” Linda D. Kozaryn, *NATO Orders Air Strikes to End “Humanitarian Catastrophe,”* AM. FORCES PRESS SERVICE, Mar. 24, 1999 (quoting Javier Solana, NATO Security-General, Statement (Mar. 23, 1999)), available at <http://www.defense.gov/news/newsarticle.aspx?id=42000>.

161. U.N. GAOR, 53d Sess., 85th plen. mtg. at 22, U.N. Doc. A/53/PV.85 (Dec. 9, 1998).

162. S.C. Res. 1160, ¶ 8, U.N. Doc. S/RES/1160 (Sept. 23, 1998). In the Security Council meeting on Resolution 1160, China's representative, Shen Guofang, stated that “Kosovo is an integral part of the territory” of the FRY and that “[t]he question of Kosovo is, in its essence, an internal matter” of the FRY, and he noted that China does “not think that the situation in Kosovo endangers regional and international peace and security.” U.N. SCOR, 53d Sess., 3868th mtg. at 11, U.N. Doc. S/PV.3868 (Mar. 31, 1998). China also abstained from Resolution 1199 for the same reasons. See U.N. SCOR, 53d Sess., 3930th mtg. at 1, 3, U.N. Doc. S/PV.3930 (Sept. 23, 1998) (explaining that China's abstention was based on concerns about infringing Kosovo's sovereignty and the Council's invocation of Chapter VII). For other PRC statements calling the situation in Kosovo an internal affair of the FRY, see U.N. GAOR, 52d Sess., 70th plen. mtg. at 32, U.N. Doc. A/52/PV.70 (Dec. 12, 1997) (“We believe that Kosovo is part of the Federal Republic of Yugoslavia, which is a sovereign country whose sovereignty and territorial integrity should be respected.”); U.N. GAOR, 51st Sess., 82d plen. mtg. at 29–30, U.N. Doc. A/51/PV.82 (Dec. 12, 1996) (“Kosovo is part of the territory of the Federal Republic of Yugoslavia, which, as a sovereign State, is entitled to respect for its territorial integrity and sovereignty.”).

163. U.N. SCOR, 53d Sess., 3930th mtg., *supra* note 162, at 3.

China objected again when, in fall 1998, NATO threatened military action against the FRY to encourage a ceasefire and speed the deployment of a monitoring and verification mission in Kosovo.¹⁶⁴ In an October 1998 Security Council debate, China stated clearly its position that NATO's threats of military action constituted unlawful interference in the FRY's internal affairs, and it condemned NATO for acting without consulting with or seeking the authorization of the Security Council.¹⁶⁵ NATO's actions, China stated, "violated the purposes, principles and relevant provisions of the United Nations Charter, as well as international law and widely acknowledged norms governing relations between States."¹⁶⁶ In particular, China noted that NATO's challenge to the Security Council's authority "created an extremely dangerous precedent in international relations," and it reiterated its position that the question of Kosovo must be settled in a manner that respected the sovereignty and territorial integrity of the FRY.¹⁶⁷

In the lead-up to NATO's military campaign, China decried the "double standards" of Western claims of a right of humanitarian intervention.¹⁶⁸ In a January 1999 Security Council statement, which reflected China's self-designated role as spokesperson of the developing world, China lambasted the international community for paying "great attention to the humanitarian situation in the former Yugoslavia" while unconscionably forgetting "the hundreds of thousands of our African brothers and sisters who also require the international community's special care."¹⁶⁹ To China, NATO's claims

[M]any countries in the region are multi-ethnic. If the Security Council becomes involved in a dispute without being requested to do so by the countries of the region—or goes even further and unfairly applies pressure on or threatens actions against the Government of the country concerned—it would create a bad precedent and have wider negative implications.

Id.

164. U.N. SCOR, 53d Sess., 3937th mtg. at 14, U.N. Doc. S/PV.3937 (Oct. 24, 1998). China maintained that it was "not in principle opposed to a technical resolution [on] the Kosovo question, but [was] opposed to [the] exercise of pressure on the FRY that amount[ed] to interference in its domestic affairs." *Id.* China also noted that the resolution contained no authorization to use or threaten to use force in the FRY. *Id.*

165. *Id.* China abstained from voting on Resolution 1203, which endorsed agreements for a ceasefire as well as for the establishment of the Kosovo Verification Mission (an unarmed contingent of peace monitors from the Organization for Security and Cooperation in Europe), based on its opposition to NATO's threats of military action. S.C. Res. 1203, ¶¶ 1, 7–8, U.N. Doc. S/RES/1203 (Oct. 24, 1998).

166. U.N. SCOR, 53d Sess., 3937th mtg., *supra* note 164, at 14.

167. *Id.* China also made clear its position that Resolution 1203 did "not entail any authorization to use force or to threaten to use force against the Federal Republic of Yugoslavia" and stated that it should not be interpreted as doing so. *Id.*

168. U.N. SCOR, 54th Sess., 3968th mtg. at 7, U.N. Doc. S/PV.3968 (Jan. 21, 1999).

169. *Id.*

of a right of humanitarian intervention were merely a pretense, and it warned that "in international relations, there is a tendency to politicize humanitarian questions and to use them as a pretext to interfere in the internal affairs of sovereign countries. This can only arouse great concern."¹⁷⁰

When NATO launched its bombing campaign in the FRY in March 1999, China's condemnation was immediate. In a March 24 Security Council meeting, China denounced NATO's intervention as "a blatant violation of the United Nations Charter and of the accepted norms of international law."¹⁷¹ China reiterated that the Kosovo situation was "an internal matter" of the FRY and that its settlement "should be based on respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia."¹⁷² Furthermore, China stated that it "oppose[d] interference in the internal affairs of other States, under whatever pretext or in whatever form."¹⁷³ China's rhetoric also took an ideological turn in response to these events, as when China objected "to the use or threat of use of force in international affairs and to power politics whereby the strong bully the weak."¹⁷⁴ China further criticized NATO's usurpation of the Security Council's exclusive prerogative to identify threats to international peace and security and to authorize corresponding enforcement actions, including the use of force.¹⁷⁵

On March 26, China voted in favor of a draft resolution, submitted by Belarus, India, and Russia, condemning NATO's attack as a violation of the UN Charter.¹⁷⁶ The measure failed, with only China, Namibia, and Russia voting in favor.¹⁷⁷ In one sense, the draft resolution's failure lent legitimacy to the principle that intervention without Security Council authorization is permissible in cases of overwhelming humanitarian need. Still, while the United Nations never condemned NATO's intervention, it is equally important to note that NATO's intervention never received any

170. *Id.*

171. U.N. SCOR, 53d Sess., 3988th mtg. at 12, U.N. Doc. S/PV.3988 (Mar. 24, 1999). China reiterated this position before the Security Council two days later. U.N. SCOR, 53d Sess., 3989th mtg. at 9, U.N. Doc. S/PV.3989 (Mar. 26, 1999) ("The Chinese Government strongly opposes such an act, which constitutes a blatant violation of the principles of the Charter of the United Nations and of international law, as well as a challenge to the authority of the Security Council.")

172. U.N. SCOR, 53d Sess., 3988th mtg., *supra* note 171, at 12.

173. *Id.*

174. *Id.*

175. *Id.* ("We are firmly opposed to any act that violates this principle and that challenges the authority of the Security Council.")

176. U.N. SCOR, 53d Sess., 3989th mtg., *supra* note 172, at 6. Specifically, the draft resolution stated that NATO's unilateral use of force constituted a "flagrant violation" of Articles 2(4), 24, and 53 of the UN Charter. *Id.* at 3.

177. *Id.* at 6.

formal UN endorsement.¹⁷⁸ Condemnation was left to individual states, such as China and Russia, or groups of states, such as the G-77.¹⁷⁹

In June 1999, China issued its fullest denunciation of NATO's intervention in Kosovo in response to the Security Council's adoption of Resolution 1244, a Chapter VII resolution authorizing member states and relevant international organizations to establish an international security presence in Kosovo under UN auspices.¹⁸⁰ China did not block the resolution but abstained from voting.¹⁸¹ In its statement before the Security Council, China repeated its position that, in the absence of UN authorization, NATO's military strikes against the FRY "seriously violated the Charter . . . and norms of international law" and thus set "an extremely dangerous precedent in the history of international relations."¹⁸² China's permanent representative declared, "This war, waged in the name of humanitarianism . . . in fact produced the greatest humanitarian catastrophe in post-Second-World-War Europe and . . . seriously undermined peace and stability in the Balkans."¹⁸³ Again, China emphasized that the settlement of the Kosovo question should be based on "respect for the sovereignty and territorial integrity" of the FRY.¹⁸⁴

China's position on the ethnic dimension of NATO's intervention was particularly striking:

We are not in favour of discrimination against or the oppression of any ethnic group. At the same time, we are also opposed to any act that would create division between different ethnic groups and undermine

178. On the status of the doctrine of humanitarian intervention after Kosovo, Professor Shaw writes, "It can be concluded that the doctrine of humanitarian intervention in a crisis situation was invoked and not condemned by the United Nations, but it received meager support. It is not possible to characterize the legal situation as going beyond this." SHAW, *supra* note 157, at 1157.

179. A September 1999 G-77 statement reads: "The Ministers [of the G-77] stressed the need to maintain clear distinctions between humanitarian assistance and other activities of the United Nations. They rejected the so-called right of humanitarian intervention, which had no basis in the UN Charter or in international law." *Ministerial Declaration of the Twenty-Third Annual Meeting of the Ministers for Foreign Affairs of the Group of 77*, ¶ 69 (Sept. 24, 1999). The G-77 statement represented the views of 132 states.

180. S.C. Res. 1244, ¶ 7, U.N. Doc. S/RES/1244 (June 10, 1999).

181. China abstained rather than vetoing the resolution because NATO had suspended its bombing campaign, the FRY agreed to a peace plan, and the draft resolution "reaffirmed the purposes and principles of the United Nations Charter, the primary responsibility of the Security Council for the maintenance of international peace and security and the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia." U.N. SCOR, 54th Sess., 4011th mtg. at 9, U.N. Doc. S/PV.4011 (June 10, 1999).

182. *Id.* at 8.

183. *Id.*

184. *Id.*

national unity. Fundamentally speaking, ethnic problems within a State should be settled in a proper manner by its own Government and people, through the adoption of sound policies. They must not be used as an excuse for external intervention, much less used by foreign States as an excuse for the use of force.¹⁸⁵

Additionally, China emphasized that the principles of respect for sovereignty and noninterference in other states' internal affairs had not eroded in the post-Cold War era:

Since the end of the cold war, the international situation has undergone major changes, but those principles are by no means outdated. On the contrary, they have acquired even greater relevance. At the threshold of the new century, it is even more imperative for us to reaffirm those principles. In essence, the "human rights over sovereignty" theory serves to infringe upon the sovereignty of other States and to promote hegemonism under the pretext of human rights. This totally runs counter to the purposes and principles of the United Nations Charter. The international community should maintain vigilance against it.¹⁸⁶

Given both the ready analogy of Kosovo to Taiwan and NATO's willingness to circumvent the Security Council and thereby nullify Beijing's ability to veto the use of force, NATO's intervention in the FRY likely cut especially close to Chinese sensitivities about claims of a unilateral right of humanitarian intervention. While Kosovo marked the high point of Chinese opposition to humanitarian intervention in the post-Cold War era, the particular sensitivities it raised remain relevant to China's position today.

G. *East Timor*

China's support for the UN-authorized, Australian-led humanitarian intervention in East Timor in 1999, as well as the subsequent UN peacekeeping operation, offers an interesting counterpoint to its opposition to NATO's intervention in Kosovo earlier that year. Following a May 1999 agreement between Indonesia and Portugal on how to settle the status of East Timor, the Security Council, with China's support and Indonesia's consent, established the UN Mission for East Timor (UNAMET) in order to assist with a referendum that would decide whether the East Timorese desired independence or a relationship of special autonomy with Indonesia.¹⁸⁷ Nearly 80 percent of East Timorese voters

185. *Id.* at 8–9.

186. *Id.* at 9.

187. S.C. Res. 1246, ¶ 1, U.N. Doc. S/RES/1246 (June 11, 1999) (adopted unanimously). UNAMET consisted of a civilian police contingent to advise the Indonesian police force on security, military liaison officers to advise the Indonesian armed forces, and civilian personnel to monitor the freedom and fairness of the scheduled referendum. The Security Council twice extended UNAMET's mandate. S.C. Res. 1257, ¶ 1, U.N. Doc. S/RES/1257 (Aug. 3, 1999) (extending UNAMET's mandate

endorsed independence in the UN-sponsored plebiscite.¹⁸⁸ Almost immediately, armed militias, backed by the Indonesian military, began a campaign of violence to reverse the decision.¹⁸⁹

As violence spread and the refugee population grew, it became apparent that the Indonesian government was unwilling or unable to control the situation or protect East Timorese civilians and UNAMET convoys from attack.¹⁹⁰ Initially, Jakarta resisted international pressure either to improve security or to accept an international peacekeeping force.¹⁹¹ For its part, China took the position that any international intervention would require the consent of the Indonesian government. In a Security Council debate on September 11, 1999, China noted its grave concern "over the continuing violence and resulting humanitarian crisis in East Timor."¹⁹² However, China stated its two preconditions for support of an international intervention: "The deployment of any peacekeeping force should be at the request of the Indonesian Government and endorsed by the Security Council."¹⁹³

On September 12, in a dramatic reversal of its position three days before,¹⁹⁴ the Indonesian government consented to the

through Sept. 30, 1999); S.C. Res. 1262, ¶ 1, U.N. Doc. S/RES/1262 (Aug. 27, 1999) (further extending UNAMET's mandate through Nov. 30, 1999).

188. Seth Mydans, *In East Timor, Decisive Vote for a Break from Indonesia*, N.Y. TIMES, Sept. 4, 1999, at A1.

189. Welsh, *supra* note 21, at 551; Seth Mydans, *Timorese Flee as Militias Seem to Gain Upper Hand*, N.Y. TIMES, Sept. 3, 1999, at A9; Seth Mydans, *Violence as East Timor Awaits Vote Count*, N.Y. TIMES, Sept. 2, 1999, at A8; Seth Mydans, *Militias Raise Tensions After Timor Votes*, N.Y. TIMES, Sept. 1, 1999, at A10.

190. Barbara Crossette, *As Support for Intervention Grows, Indonesia Persuades U.N. to Delay Evacuation of Mission*, N.Y. TIMES, Sept. 9, 1999, at A8; Seth Mydans, *Jakarta Concedes a Loss of Control Over Timor Forces*, N.Y. TIMES, Sept. 12, 1999, at A1; Philip Shenon, *President Asserts Jakarta Must Act or Admit Troops*, N.Y. TIMES, Sept. 10, 1999, at A1.

191. Barbara Crossette, *U.N. Says Jakarta's Opposition to Peacekeepers Is Weakening*, N.Y. TIMES, Sept. 12, 1999, at A14; Barbara Crossette, *Annan Warns Indonesians that Inaction May Lead to Criminal Charges*, N.Y. TIMES, Sept. 11, 1999, at A6; Barbara Crossette, *U.N. Says a Quarter of East Timorese Have Fled*, N.Y. TIMES, Sept. 8, 1999, at A1; Barbara Crossette, *Security Council Presses Indonesia to Restore Order*, N.Y. TIMES, Sept. 6, 1999, at A8; Mark Landler, *The Fate of East Timor: The Indonesian View; Jakarta Military Is Taking Central Role in Crisis*, N.Y. TIMES, Sept. 10, 1999, at A14; Seth Mydans, *Indonesia Says No to Timor Peacekeepers*, N.Y. TIMES, Sept. 9, 1999, at A8; David E. Sanger, *Indonesia Is Warned It Could Lose Western Aid*, N.Y. TIMES, Sept. 8, 1999, at A12.

192. U.N. SCOR, 54th Sess., 4043d mtg. at 13, U.N. Doc. S/PV.4043 (Sept. 11, 1999).

193. *Id.*; see also Chen Yali, *China: No Violence in East Timor*, CHINA DAILY, Sept. 10, 1999, at 4 ("The international community may help in stabilizing the situation if the Indonesian Government so demands. But before a request is made, any outside intervention should take caution so the infringement upon national sovereignty that was obvious in the Kosovo case is not repeated.")

194. Mydans, *supra* note 191, at A8.

deployment of international peacekeepers in East Timor.¹⁹⁵ Beijing praised Jakarta's decision as "rational, respectable and responsible,"¹⁹⁶ and on September 15, China voted in favor of Resolution 1264, a Chapter VII measure authorizing the establishment of an Australian-led, multinational peacekeeping force—the International Force in East Timor (INTERFET)—to restore peace and security in East Timor.¹⁹⁷ Two days later, China announced its intention to contribute up to two hundred civilian police to a future UN mission in East Timor, marking China's first participation in a UN peacekeeping operation since 1992, in Cambodia.¹⁹⁸ China deployed the police contingent after the Security Council, in Resolution 1272, authorized the establishment of the UN Transitional Administration in East Timor (UNTAET).¹⁹⁹

Some commentators suggest that Beijing's support for humanitarian intervention in East Timor demonstrated a relaxation of its position on sovereignty and noninterference in other states' internal affairs.²⁰⁰ This interpretation, however, ignores the fact that the intervention received both Indonesia's consent and the Security Council's authorization, both of which were prerequisites for China's

195. Seth Mydans, *Indonesia Invites a U.N. Force to Timor*, N.Y. TIMES, Sept. 13, 1999, at A1.

196. Xi Mi, *China: Positive Gesture Made*, CHINA DAILY, Sept. 15, 1999, at 4.

The outburst of violence in East Timor after its recent vote has somewhat tarnished Indonesia's image. . . . If it does not take prompt action, the next victim will not only be the East Timor people, but also Indonesia's own fundamental interests. . . . [Jakarta] has now decided to honor a pledge by inviting international peacekeepers to East Timor. This decision, painful as it might be, is rational, respectable and responsible.

Id.

197 S.C. Res. 1264, ¶ 3, U.N. Doc. S/RES/1264 (Sept. 15, 1999). Resolution 1264 also reaffirmed the sovereignty and territorial integrity of Indonesia. *Id.*

198. *China: Nation to Send Police to E. Timor*, CHINA DAILY, Sept. 17, 1999, at 1.

199. S.C. Res. 1272, ¶ 1, U.N. Doc. S/RES/1272 (Oct. 25, 1999).

200. These commentators appear to mistakenly view the UN intervention in East Timor as a violation of Indonesian sovereignty and therefore conclude that China's participation in the UNTAET mission indicates a softening of Beijing's position toward humanitarian intervention. See, e.g., ALLEN CARLSON, UNIFYING CHINA, INTEGRATING WITH THE WORLD: SECURING CHINESE SOVEREIGNTY IN THE REFORM ERA 176 (2005) (citing China's "quiet, supportive role in facilitating humanitarian intervention in East Timor" and its support for Security Council Resolutions 1264 and 1272 only months after its vocal opposition to NATO's action in Kosovo as evidence that "Chinese foreign policy circles at this time basically accepted the legitimacy of human rights and humanitarian intervention"); Evan A. Feigenbaum, *China's Challenge to Pax Americana*, WASH. Q., Summer 2001, at 31, 34 ("In mid-1999, the UN experience in East Timor signaled that China's orthodox view of sovereignty might be less intractable than Beijing's rhetoric would otherwise indicate. China sent observers, for example, to participate in a UN peace enforcement operation that violated what was still sovereign Indonesian territory.")

support.²⁰¹ To be sure, Indonesia's dramatic about-face indicates that significant pressure was applied in order to convince Jakarta to accept an international peacekeeping force. Thus, to the extent that China proved willing to accept "induced" consent as legitimate consent to intervention, the case of East Timor reflects a degree of flexibility in China's previously strict insistence on noninterference, although this flexibility is less evident than some commentators have suggested.²⁰²

V. CHINESE ATTITUDES TOWARD HUMANITARIAN INTERVENTION IN THE 2000S

This Part examines China's acts and official pronouncements with respect to (A) efforts to redefine humanitarian intervention as "the responsibility to protect" following NATO's intervention in Kosovo and (B) the humanitarian crisis in Darfur.

A. *The Responsibility to Protect*

NATO's intervention in Kosovo catalyzed a fresh debate about the permissibility of humanitarian intervention under international law. In particular, the stridency of opposition to NATO's actions prompted advocates of humanitarian intervention to rethink their approach. A decade after the end of the Cold War, they sought to reconceptualize humanitarian intervention and build international consensus around the concept's legitimacy.²⁰³ The result was a concept called "the responsibility to protect" (R2P).²⁰⁴

201. See Feigenbaum, *supra* note 200, at 34 (recognizing that the intervention accommodated "China's mostly nonnegotiable principles of sovereignty"—consent of the sovereign and UN authorization—thereby preserving China's "orthodoxy intact"); Gill & Reilly, *supra* note 31, at 46 (finding China's "two core conditions of host nation acquiescence and Security Council approval met").

202. The term "induced consent" is borrowed from Welsh, *supra* note 21, at 552.

203. See Gareth Evans, *From Humanitarian Intervention to the Responsibility to Protect*, 24 WIS. INT'L L.J. 703, 708 (2006).

We sought to turn the whole weary debate about the right to intervene on its head and to re-characterize it not as an argument about any right at all but rather about a responsibility—one to protect people at grave risk—with the relevant perspective being not that of the prospective interveners but, more appropriately, of those needing support.

Id. (footnote omitted); see also Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT'L L. 99, 102–03 (2007) ("The commission [on state sovereignty] proposed dealing with this problem by recharacterizing sovereignty, that is, by conceiving of sovereignty as responsibility rather than control.").

204. Professor Shaw notes that "the responsibility to protect" "may be seen as an effort to redefine the principles of humanitarian intervention in a way that seeks to

A statement before the UN General Assembly in October 1999 by China's permanent representative, Qin Huasan, most clearly lays out China's position on humanitarian intervention at that time.²⁰⁵ Qin's speech was in large part a reaction to a September 1999 speech by UN Secretary-General Kofi Annan that implored the international community to reach a consensus on how to approach humanitarian intervention.²⁰⁶ In his speech, Qin called for "vigilance" against "such arguments as 'humanitarian intervention' and 'human rights over sovereignty' that [have] cropped up recently [and] set human rights

minimize the motives of the intervening powers." SHAW, *supra* note 157, at 1158. Similarly, Professor Alvarez writes, "The concept sought to deflect attention from the controverted 'right' of some states to intervene, to the duties of all states to protect their own citizens from avoidable catastrophes, and for third parties to come to the rescue." José E. Alvarez, *The Schizophrenias of R2P*, in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE 275, 275 (Philip Alston & Euan Macdonald eds., 2008). For more comprehensive overviews of "the responsibility to protect," see ALEX J. BELLAMY, RESPONSIBILITY TO PROTECT: THE GLOBAL EFFORT TO END MASS ATROCITIES 31-45 (2009); GARETH EVANS, THE RESPONSIBILITY TO PROTECT: ENDING MASS ATROCITY CRIMES ONCE AND FOR ALL 38-50 (2008).

205. U.N. GAOR, 54th Sess., 27th plen. mtg. at 12, U.N. Doc. A/54/PV.27 (Oct. 6, 1999).

206. See Press Release, U.N. Secretary-General, Secretary-General Presents His Annual Report to the General Assembly, U.N. Press Release SG/SM/7136 (Sept. 20, 1999).

To those for whom the greatest threat to the future of the international order is the use of force in the absence of a Security Council mandate, one might ask – not in the context of Kosovo – but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defense of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?

Id. In a more immediate response to Annan's September 20 speech, Chinese Foreign Minister Tang Jiaxuan took issue with the idea of humanitarian intervention, denouncing again the illegality of NATO's intervention in Kosovo, calling it an "ominous precedent," and criticizing the increased tendency toward interventionism it represented. U.N. GAOR, 54th Sess., 8th plen. mtg. at 16, U.N. Doc. A/54/PV.8 (Sept. 22, 1999). Noting that a "cold war mentality still lingers on" and that "[h]egemonism and power politics have manifested themselves in new expressions," Tang warned that "if the notion of 'might is right' should prevail, a new gunboat policy would wreak havoc, [and] the sovereignty and independence by virtue of which some small and weak countries protect themselves would be jeopardized." *Id.* at 15-16. Tang also stated:

The history of China and other developing countries shows the sovereignty of a country is the prerequisite for and the basis of the human rights that the people of that country can enjoy. When the sovereignty of a country is put in jeopardy, its human rights can hardly be protected effectively. Sovereign equality, mutual respect for State sovereignty and non-interference in the internal affairs of others are the basic principles governing international relations today. In spite of the major changes in the post-Cold-War international situation, these principles are by no means out of date.

Id. at 16.

against sovereignty.”²⁰⁷ While acknowledging that the world had changed profoundly since the end of the Cold War, Qin argued that “the principles of respect for State sovereignty and noninterference in internal affairs are far from outdated” and that any willful weakening of these principles “will undoubtedly have dangerous consequences in international relations.”²⁰⁸

Qin, reflecting both on China’s history as a victim of foreign intervention and its status as a voice of the developing world, also warned of the risk of such a doctrine being cynically manipulated by powerful, intervening states:

In today’s world only a very small number of rich, large and strong countries have both the ambition and the power to interfere in other countries’ affairs. For small and weak countries, sovereignty is their last defence against foreign bullying. If this defence were to be broken, acts of the rich bullying the poor and the strong bullying the weak would be given the green light, and there would be no peace in the world.²⁰⁹

Qin also criticized the application of “different standards in different regions” when it came to the exercise of humanitarian intervention, and he suggested that such double standards betrayed the ulterior motives of Western states in promoting a right of humanitarian intervention.²¹⁰ Calling humanitarian intervention a “new concept” (as opposed to a norm or principle of international law), Qin stated China’s position that any further development of this concept “should be based on the Charter of the United Nations and basic norms governing international relations”—an implicit reference to respect for sovereignty and noninterference in internal affairs.²¹¹ Similarly, Qin clearly stated China’s position that unilateral interventions and enforcement actions that bypassed the Security Council unequivocally violated the UN Charter and international law.²¹²

207. U.N. GAOR, 54th Sess., 27th plen. mtg., *supra* note 205, at 12.

208. *Id.*

209. *Id.*

210. *Id.* (“Maybe under the fig-leaf of humanitarian intervention some are actually seeking to promote their own strategic, military or economic interests. This, if true, is what the people of the world should watch out for.”).

211. *Id.*

212. *Id.* This point was also made by Chinese President Jiang Zemin in a special address to the Security Council in September 2000. See U.S. SCOR, 55th Sess., 4194th mtg. at 7, U.N. Doc. S/PV.4194 (Sept. 7, 2000).

Willful use of force and interference in the internal affairs of other countries in the name of humanitarianism not only run counter to the purposes and principles of the United Nations Charter, but will also cause severe negative consequences. Under the United Nations Charter, the Security Council is entrusted with the primary responsibility for the maintenance of international peace and security. . . . It is against the will of the vast number of United

It was in this post-Kosovo climate that the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) launched a series of roundtables worldwide to build consensus on the contours of a right of humanitarian intervention and make the doctrine less susceptible to abuse by grounding it in a normative legal framework.²¹³ One such roundtable was held on June 14, 2001, at the China Institute of International Studies in Beijing, and the rapporteur's report from that meeting demonstrates a strong current of Chinese opposition.²¹⁴ Chinese interlocutors argued that humanitarian intervention was "a total fallacy" that lacked any legal basis under international law, particularly in light of the UN Charter's restrictions on the use of force.²¹⁵ Additionally, Chinese participants rejected the notion of "human rights transcending sovereignty" as a Western philosophy that represented "highly politicized thinking with ulterior political motives" and failed to take into account non-Western views.²¹⁶ Chinese participants further noted that, in practice, Western powers had employed double standards on international human rights issues; to some, it was "clear that certain Western powers [had] played with noble principles to serve their own hegemonic interests."²¹⁷ They also objected to humanitarian intervention on a more pragmatic level, arguing that it had proved "counterproductive to halting massive killings in targeted countries, for it can facilitate interventionists exploiting the legality for their own purposes and encourage warring parties inside a country to take an irresponsible stand in mediation processes."²¹⁸

Nations Member States to act however one likes and bypass the Security Council on major issues pertaining to international peace and security.

Id. Additionally, a July 2001 joint statement of the PRC and Russia declared that "China and Russia will make joint efforts to strengthen the leading role of the United Nations and its Security Council in international affairs and oppose any attempt to undermine the basic norms of international relations by resorting to such arguments as 'humanitarian intervention' and 'limited sovereignty' and so on." Press Release, Ministry of Foreign Affairs of China, Joint Statement Signed by the Chinese and Russian Heads of States (July 16, 2001), available at <http://www.fmprc.gov.cn/eng/wjdt/2649/t15772.htm>.

213. Evans, *supra* note 203, at 706–12.

214. INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY [ICISS], THE RESPONSIBILITY TO PROTECT: RESEARCH, BIBLIOGRAPHY, BACKGROUND 391–94 (2001). For a list of Chinese participants present at the roundtable, see *id.* at 391. As one participant in the ICISS initiative noted, "The Chinese government had opposed *The Responsibility to Protect* throughout the ICISS process and insisted that all questions relating to the use of force defer to the Security Council." Alex J. Bellamy, *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, 20 ETHICS & INT'L AFF. 143, 151 (2006).

215. ICISS, *supra* note 214, at 392.

216. *Id.*

217. *Id.*

218. *Id.*

Although Chinese participants rejected humanitarian intervention, they strongly endorsed an alternative concept of “humanitarian assistance,” and they argued for a clear distinction between the two in order to keep the latter “free of ulterior political motives.”²¹⁹ They also suggested that humanitarian assistance be defined by respect for state sovereignty, including the prerequisite of obtaining all parties’ consent prior to undertaking humanitarian actions; the requirement of Security Council authorization in all cases involving military personnel; impartiality on the part of any third parties involved; and application of the principle of nonuse of force, except in self-defense in the course of peacekeeping operations.²²⁰

In December 2001, six months after the Beijing roundtable, the ICISS published *The Responsibility to Protect*, a report promoting the idea of “sovereignty as responsibility” and concluding that when a population is suffering serious harm, and the state in question is unwilling or unable to avert it or is itself the perpetrator, the principle of nonintervention yields to an international “responsibility to protect.”²²¹ The ICISS report divided the R2P into three component responsibilities: the responsibility to prevent, the responsibility to respond, and the responsibility to rebuild.²²² Furthermore, the report laid out six criteria for military intervention for humanitarian purposes: just cause, right intention, last resort, legitimate authority, proportional means, and a reasonable prospect of success.²²³

Despite the goal of ICISS of achieving consensus on a new normative framework for humanitarian intervention, the report’s conclusions still appeared to conflict with China’s long-standing commitment to noninterference in other states’ internal affairs, and the repackaging of humanitarian intervention as the R2P seemed to do little to address China’s core concerns. However, in a nod to China’s position, the ICISS report concluded that the Security Council was the most appropriate body to authorize such interventions.²²⁴ Moreover, the report suggested that the international community should focus on making the Security Council work better than it had in the past.²²⁵ Just as importantly, the report did not argue for a unilateral right of humanitarian

219. *Id.* at 393.

220. *Id.* at 393–94. The Chinese interlocutors also proposed, *inter alia*, that the international community reaffirm the principles of respect for state sovereignty and noninterference in internal affairs as stated in Article 3(4) of the UN Charter. *Id.*

221. ICISS, *THE RESPONSIBILITY TO PROTECT: REPORT 69* (2001).

222. *Id.* at xi.

223. *Id.* at xii–xiii.

224. *Id.* at 49.

225. *Id.*

intervention, but rather discussed the R2P solely within the framework of the United Nations.²²⁶

Although aspirational at the time of its promulgation in 2001, the R2P gained traction in subsequent years. In December 2004, the UN Secretary-General's sixteen-member High-Level Panel on Threats, Challenges and Change (HLP) endorsed

the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.²²⁷

The HLP's report further stated that “[t]he principle of nonintervention in internal affairs cannot be used to protect genocidal acts or other atrocities, such as large-scale violations of international humanitarian law or large-scale ethnic cleansing, which can properly be considered a threat to international security and as such provoke action by the Security Council.”²²⁸ It is important to note that the HLP conceived of the R2P as “exercisable by the Security Council,” thus envisioning humanitarian intervention as falling within an existing exception to the prohibition on the use of force—actions authorized by the Council—rather than as a new exception.²²⁹ Notably, Qian Qichen, China's former Foreign Minister, was a member of the HLP.²³⁰ Although Qian's support for the HLP's recommendations reportedly was “passive” at the time, it later would

226. *Id.* at xii–xiii.

227. High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, ¶ 203, U.N. Doc. A/59/565 (Dec. 2, 2004) (emphasis omitted).

[The R2P] lies, first and foremost, with each individual State . . . [I]f national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations.

U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 135, U.N. Doc. A/59/2005 (Mar. 21, 2005).

228. High-Level Panel on Threats, Challenges and Change, *supra* note 227, ¶ 200.

229. Kofi Annan approved of this formulation in his 2005 report, *In Larger Freedom*. See U.N. Secretary-General, *supra* note 227, ¶ 126 (“The task is not to find alternatives to the Security Council as a source of authority but to make it work better.”); see also *id.* ¶ 135 (noting that when a national authority fails in its duty to protect its population—and when international “diplomatic, humanitarian and other methods” likewise fail—“the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required”).

230. High-Level Panel on Threats, Challenges and Change, *supra* note 227, Annex II.

prove important in securing Beijing's support for the endorsement of the R2P.²³¹

In January 2005, Chinese Ambassador Wang Guangya applauded the HLP's conclusion that "individual sovereign States" continue to be "the front-line actors in dealing with all the threats we face."²³² Most significantly, Wang agreed that "[s]overeign states have the *primary* responsibility of protecting their own citizens," apparently conceding that Beijing accepted that the international community has a residual responsibility to protect civilian populations if a sovereign state fails to fulfill its primary responsibility.²³³ Wang also made clear China's position that any residual responsibility, if it existed, lay with the Security Council.²³⁴ While stating that the United Nations must place a "particular emphasis on timely assistance in serious humanitarian crises," Wang cautioned:

[I]t is inadvisable to make hasty judgment that the State concerned is unable or unwilling to protect its own citizens and rush to intervene. The basic principles of sovereign equality and non-interference in internal affairs of other States as stated in the Charter have to be strictly respected. The matter should be carefully judged and handled by the Security Council in view of the specific circumstances. In deciding on coercive actions, the Security Council should exercise particular caution and deal with situations on a case-by-case basis and not by any hard and fast rules.²³⁵

Thus, China signaled a growing willingness to accept the broad outlines of the R2P, albeit with strong caveats that any intervention must receive Security Council approval and that the Security Council

231. EVANS, *supra* note 204, at 45.

[T]he support that mattered most for the future of [the HLP's] recommendations – fairly passive though it was at the time – was probably that from . . . Qian Qichen; without his immense prestige back in Beijing, it is difficult to believe that, given the traditional strength of its concerns about nonintervention, China would have been quite as relaxed on this issue as it proved to be at the World Summit.

Id.

232. Wang Guangya, Chinese Ambassador to the United Nations, Statement on the Report of the High-Level Panel (Jan. 27, 2005), *available at* www.china-un.org/eng/zghlhg/zzhgg/t181639.htm.

233. *Id.* (emphasis added). The speeches of China's representative Zhang Yishan during Security Council debates in 2005 on the protection of civilians in armed conflict also reflect China's acceptance of this tenet of the R2P. See U.N. SCOR, 60th Sess., 5319th mtg. at 29, U.N. Doc. S/PV.5319 (Dec. 9, 2005) ("Individual states have the primary responsibility to protect their own citizens."); U.N. SCOR, 60th Sess., 5209th mtg. at 16, U.N. Doc. S/PV.5209 (June 21, 2005) ("[T]he primary responsibility for protecting civilians lies with the Governments concerned.")

234. Guangya, *supra* note 232 ("The purposes and principles of the UN Charter should continue to be safeguarded and the rights and responsibilities of sovereign States continue to be respected. We believe that this is an important guideline.")

235. *Id.*

should respond to humanitarian crises cautiously and on a case-by-case basis. The latter caveat indicated Beijing's preference that the Security Council's approach to humanitarian intervention should remain ad hoc and exceptional rather than become "normalized."

China proved reluctant to accept the further crystallization of the R2P into a formal international legal norm, and it likewise opposed the formulation and adoption of specific criteria for determining when, where, and how humanitarian intervention should take place.²³⁶ In other words, to the extent that China countenanced humanitarian intervention, it sought to regulate humanitarian intervention in the realm of politics, rather than law, and to confine humanitarian intervention to a political forum that it could control through the exercise of its permanent veto power. Still, in perhaps the most significant signal of China's growing acceptance of the R2P, Beijing included a section entitled "The Responsibility to Protect" in its June 2005 position paper on UN reform.²³⁷ In that paper, China stated that "[e]ach state shoulders the primary responsibility to protect its own population," but it also explicitly acknowledged that "[w]hen a massive humanitarian crisis occurs, *it is the legitimate concern of the international community to ease and defuse the crisis.*"²³⁸ The position paper also stated that international responses to humanitarian crises "should strictly conform to the UN Charter" and should respect "the opinions of the country and the

236. See Alex J. Bellamy, *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention*, 19 ETHICS & INT'L AFF. 31, 36 (2005) (noting that, in addition to China, the United States, the United Kingdom, France, and Russia also were reticent to formalize criteria for intervention under the rubric of the R2P); see also Jennifer M. Welsh, *Implementing the Responsibility to Protect: Where Expectations Meet Reality*, 24 ETHICS & INT'L AFF. 415, 425 (2010) ("Russia and China, joined by three nonpermanent members (Algeria, the Philippines, and Brazil) reminded the Council [in 2006] that the [World Summit] Outcome Document had given the general assembly the mandate for continuing discussion of RtoP (a sure recipe for ensuring very slow movement on implementation)").

[T]he Security Council should approach the concept of the responsibility to protect—and especially its application—with great prudence. The Final Document of the 2005 World Summit devoted a lengthy section to a very careful description of the responsibility to protect civilians from massacres, war crimes, genocide and crimes against humanity. It also indicated that that concept should be further considered by the General Assembly. Many members are currently deeply concerned about the concept of the responsibility to protect, and the relevant discussions should therefore be pursued in the United Nations. The Security Council is in no position to interpret or expand the concept of the responsibility to protect at will, much less to abuse it.

U.N. SCOR, 63d Sess., 5898th mtg. at 9, U.N. Doc. S/PV.5898 (May 27, 2008).

237. POSITION PAPER, *supra* note 5; see also James Traub, *The World According to China*, N.Y. TIMES, Sept. 3, 2006, (Magazine), at 24, 27 (reporting that China's UN ambassador conceded that the R2P had become a matter of international law but also noted that "you have to decide how to apply this").

238. POSITION PAPER, *supra* note 5 (emphasis added).

regional organization concerned.”²³⁹ The paper further reiterated China’s position that decisions to intervene should fall to the Security Council alone²⁴⁰—a position not at odds with the evolving doctrine of the R2P.²⁴¹

The R2P gained its first official recognition in the landmark 2005 World Summit Outcome document, a consensus document agreed upon by all 191 nations.²⁴² Significantly, the document stated that “[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”²⁴³ However, the Outcome document made clear that the R2P was not a legal exception to the Security Council’s primacy in matters of the use of force:

In this context, we are prepared to take collective action, in a timely and decisive manner, *through the Security Council, in accordance with the Charter, including Chapter VII*, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.²⁴⁴

Earlier in 2005, there had been indications that China might resist an endorsement of the R2P in the Outcome document.²⁴⁵ Additionally, Chinese President Hu Jintao’s speech at the September

239. *Id.* This language has been echoed in statements by China’s UN representatives. See U.N. SCOR, 61st Sess., 5577th mtg. at 7–8, U.N. Doc. S/PV.5577 (Dec. 4, 2006) (“[I]n accordance with the Charter of the United Nations and international humanitarian law, the responsibility to protect civilians lies primarily with the Governments of the countries concerned.”). China’s representative also noted that the international community or other external parties “should not infringe upon the sovereignty and territorial integrity of the countries concerned, nor should they enforce intervention by circumventing the Governments of such countries.” *Id.*; see also U.N. SCOR, 61st Sess., 5476th mtg. at 9, U.N. Doc. S/PV.5476 (June 28, 2006) (“The primary responsibility to protect civilians lies, first, with the Governments concerned. The international community and other parties, while providing support and assistance, should not undermine the sovereignty and territorial integrity of the countries concerned.”); U.N. SCOR, 60th Sess., 5319th mtg., *supra* note 233, at 30 (stating that all efforts to protect civilians in armed conflict “should not violate the principles enshrined in the Charter; nor should they infringe upon the sovereignty and territorial integrity of Member States”).

240. POSITION PAPER, *supra* note 5.

241. ICISS, *supra* note 227, at 49.

242. 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 139, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

243. *Id.* ¶ 138.

244. *Id.* ¶ 139 (emphasis added).

245. In response to an Outcome document draft in June 2005, Chinese Ambassador Wang Guangya indicated that “differences of views” continued to exist about the R2P, that “further consultations [were] necessary,” and that “prudence [was] required for the statement on this question in the draft.” Wang Guangya, Chinese Ambassador to the United Nations, Statement at the Informal Meeting of the General Assembly on the Draft Outcome Document of the September Summit (June 21, 2005), available at <http://www.china-un.org/eng/ldhy/ld59/t200664.htm>.

2005 World Summit suggested a hard line on the R2P, when he argued that “we should all oppose acts of encroachment on other countries’ sovereignty, forceful interference in a country’s internal affairs, and willful use or threat of military force.”²⁴⁶ In the end, however, China acceded to the Outcome document’s endorsement of the R2P, but not before Beijing’s wariness about the concept influenced the document’s drafting.²⁴⁷ In December 2005, China reaffirmed its acceptance of the broad outlines of the R2P, but it referred to the R2P as a “concept” rather than an emerging norm.²⁴⁸

In a significant step, the Security Council, in April 2006, incorporated the R2P into Resolution 1674 by reaffirming paragraphs 138 and 139 of the Outcome document, which recognized the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.²⁴⁹ Resolution 1674 thereby committed the Security Council to protect civilians in armed conflict.²⁵⁰ Although China supported Resolution 1674, it later asserted that the version of the R2P articulated in the resolution was “not the same as the simple concept of the responsibility to protect, about which many countries continue to have concerns.”²⁵¹ This is a puzzling statement, although it could be interpreted as China’s acceptance of the applicability of the R2P in situations of severe humanitarian need, but not in situations that fail to rise to that level.²⁵²

246. Hu Jintao, President of China, Speech at the United Nations Summit (Sept. 14, 2005), available at <http://www.fmprc.gov.cn/ce/ceun/eng/zt/shnh60/t212915.htm>.

247. See Bellamy, *supra* note 214, at 166 (“[T]he document’s drafters separated the sections on the use of force and the responsibility to protect (they were conjoined in ‘In Larger Freedom’) in order to reassure China and India.”). Additionally, Bellamy writes,

Between “In Larger Freedom” and the first drafts of the outcome document, the commitment to criteria was reduced to a commitment to continue discussing criteria. Then, in the final version, even this commitment was removed. To all intents and purposes, this appears to have been a major diplomatic victory for the anti-interventionists (especially China and Russia), who had opposed criteria from the outset, believing that they opened up the possibility for abuse.

Id.

248. U.N. SCOR, 60th Sess., 5319th mtg., *supra* note 233, at 30 (“The consensus opinion of the international community, as well as its justifiable demand, is that swift steps must be taken to mitigate and put an end to large-scale humanitarian crises and gross violations of human rights.”).

249. S.C. Res. 1674, ¶ 4, U.N. Doc S/RES/1674 (Apr. 28, 2006).

250. *Id.* The R2P was also reaffirmed and incorporated into Resolution 1706 in August 2006. See S.C. Res. 1706, ¶¶ 1, 8–9, U.N. Doc. S/RES/1706 (Aug. 31, 2006) (enlarging the mandate for the UN Mission in Sudan (UNMIS) and urging member states to deploy assistance in order to secure the effective implementation of the Darfur Peace Agreement).

251. U.N. SCOR, 61st Sess., 5476th mtg., *supra* note 239, at 10.

252. China stated that the “simple” R2P concept was the one elaborated on in the Outcome document, and noted, “In-depth discussion of the issue should continue in

China, retreating somewhat from this lukewarm acceptance of the R2P, has since urged the Security Council to approach the concept "with caution" and argued that the Outcome document gave only a "very cautious" endorsement of the R2P.²⁵³ Furthermore, China has stressed that it would be inappropriate "to expand, willfully interpret or even abuse this concept," which Resolution 1674 "only reaffirmed in principle . . . without any further elaboration."²⁵⁴ In this vein, Beijing has indicated a preference that further discussions of the R2P take place in the General Assembly, as provided for in the Outcome document, rather than in the Security Council.²⁵⁵ However, despite this backpedaling, China's interaction with the developing concept of the R2P demonstrates its embrace of certain elements of the R2P, albeit with a continued reluctance to see the concept crystallize into a rule of international law.²⁵⁶ As the case of Darfur suggests, this socialization process may have affected China's approach to humanitarian crises in practice.

B. Darfur

No event has focused as much attention on Chinese attitudes toward humanitarian intervention as the crisis in Darfur, in western Sudan. Darfur presents an interesting case for the analysis of

the General Assembly so that differing opinions can be heard and doubts cleared up. In that role, the Security Council cannot and should not replace the General Assembly." *Id.* Again, China's insistence that any further discussion of the R2P should take place in the General Assembly rather than the Security Council likely reflected its opposition to the formulation and adoption of specific criteria for intervention under the concept's rubric. *See supra* note 236 and accompanying text.

253. U.N. SCOR, 61st Sess., 5577th mtg., *supra* note 239, at 8.

254. *Id.*

255 *Id.*; *see also* U.N. SCOR, 62d Sess., 5703d mtg. at 17, U.N. Doc. S/PV.5703 (June 22, 2007).

At present, there are still differing understandings and interpretations of this concept among Member States. The Security Council should therefore refrain from invoking the concept of the responsibility to protect. Still less should that concept be misused. The Security Council should respect and support the General Assembly in continuing to discuss the concept in order to reach broad consensus.

Id.

256. For one of the PRC's most recent statements related to the R2P, *see* U.N. SCOR, 64th Sess., 6066th mtg. at 7, U.N. Doc. S/PV.6066 (Jan. 14, 2009).

Governments bear the primary responsibility for protecting their civilians. While the international community and external forces can provide constructive support, they must follow the provisions of the Charter, fully respecting the wishes and refraining from undermining the sovereignty and territorial integrity of the countries concerned, and even more so from forceful intervention.

Id.

China's evolving position on humanitarian intervention because it demonstrates elements of both flexibility and intransigence in China's position. Although China insisted that any military intervention in Darfur receive Khartoum's consent, it also demonstrated a greater willingness to use its influence over the Sudanese government to secure that consent. In doing so, China showed a softening of its stance on noninterference, while keeping intact its insistence on host state consent. Although it is too soon to determine whether this reluctant activism represents a shift in China's posture on humanitarian intervention, the case nonetheless demonstrates Beijing's willingness to take a less ideological and more pragmatic approach to the resolution of humanitarian crises.

In early 2003, rising tensions in the Darfur region of western Sudan erupted in armed clashes between Sudanese government forces and rebel groups.²⁵⁷ The conflict spread in the following year, as government-allied Arab Janjaweed militias raided Darfuran villages and refugee camps in a campaign of village burning, rape, and civilian massacres.²⁵⁸ By December 2003, conditions had deteriorated so drastically that UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Jan Egeland declared Darfur "one of the worst humanitarian crises in the world."²⁵⁹ In a Security Council briefing in April 2004, Egeland stated that the government-backed Janjaweed militias were engaging in a coordinated, "scorched-earth" campaign of ethnic cleansing against Darfur's black African population.²⁶⁰

In July 2004, the Security Council finally took action and adopted Resolution 1556, declaring the situation in Darfur a "threat to international peace and security and to stability in the region."²⁶¹ Adopted under the Council's Chapter VII powers, Resolution 1556 endorsed the African Union's (AU) proposed deployment of a protection force to Darfur and demanded that Khartoum disarm the Janjaweed militias and bring to justice those responsible for violations of human rights and international humanitarian law, as well as other atrocities.²⁶² Resolution 1556 also imposed an arms

257. See generally Samantha Power, *Dying in Darfur: Can the Ethnic Cleansing in Sudan Be Stopped?*, NEW YORKER, Aug. 30, 2004, at 56 (discussing the violence in Darfur).

258. *Id.*

259. *Humanitarian and Security Situations in Western Sudan Reach New Lows*, UN Agency Says, UN NEWS SERV. (Dec. 5, 2003), <http://www.un.org/apps/news/story.asp?NewsID=9094&Cr=sudan&Cr1=&Kw1=Humanitarian+and+security+situations+in+western+Sudan+reach+new+laws&Kw2=&Kw3=>.

260. *Sudan: Envoy Warns of Ethnic Cleansing as Security Council Calls for Ceasefire*, UN NEWS SERV. (Apr. 2, 2004), <http://www.un.org/apps/news/story.asp?NewsID=10307&Cr=sudan&Cr1=&Kw1=Sudan&Kw2=&Kw3=>.

261. S.C. Res. 1556, pmbl. para. 21, U.N. Doc. S/RES/1556 (July 30, 2004).

262. *Id.* ¶ 6.

embargo on the Janjaweed and other militias operating in Darfur.²⁶³ Finally, the Security Council stated its intention to consider further actions, including actions pursuant to Article 41 of the UN Charter, in the event of Khartoum's noncompliance.²⁶⁴

China abstained from the vote on Resolution 1556.²⁶⁵ During the Security Council debate, China's representative, Zhang Yishan, argued that resolving the Darfur crisis required, *inter alia*, "a comprehensive agreement based on respect for the Sudan's sovereignty and territorial integrity."²⁶⁶ Echoing Resolution 1556's language—as well as that of the R2P²⁶⁷—Zhang noted that "China believe[d] that the Government of the Sudan bears primary responsibility for resolving the Darfur situation and that the international community should make every effort to assist the Government of the Sudan."²⁶⁸ Nonetheless, China abstained because of the resolution's mandatory provisions, citing concern that the measures would undermine diplomatic efforts and only complicate the situation in Darfur.²⁶⁹

China repeated this mantra when it abstained from voting on subsequent Darfur-related resolutions, always objecting that pressure on Khartoum would undermine progress toward a political settlement and make matters worse.²⁷⁰ Interestingly, however, China did not

263. *Id.* ¶ 7.

264. *Id.* ¶ 6.

265. U.N. SCOR, 59th Sess., 5015th mtg. at 3, U.N. Doc. S/PV.5015 (July 30, 2004).

266. *Id.* at 2. Chinese efforts appear to have secured a clause in Resolution 1556 affirming the Council's "commitment to the sovereignty, unity, territorial integrity, and independence of Sudan." S.C. Res. 1556, *supra* note 261, pmb. para. 4.

267. See S.C. Res. 1556, *supra* note 261, pmb. para. 9 ("Recalling in this regard that the Government of Sudan bears the primary responsibility to respect human rights while maintaining law and order . . ."); ICISS, *supra* note 221, at xi ("[T]he primary responsibility for the protection of its people lies with the state itself.").

268. U.N. SCOR, 59th Sess., 5015th mtg., *supra* note 265, at 2.

269. *Id.*

270. See U.N. SCOR, 61st Sess., 5423d mtg. at 3, U.N. Doc. S/PV.5423 (Apr. 25, 2006). In explaining China's abstention on Resolution 1672, which placed travel restrictions and financial sanctions on individuals involved in the Darfur conflict, China's representative said:

If, as a result of the Security Council's sanctions resolution, any party to the Abuja talks has second thoughts about signing such a peace accord, the conflict in the Darfur region will inevitably be prolonged or even intensify. The Security Council would have to assume responsibility for such an eventuality.

Id. China also abstained on Resolution 1591, which imposed further travel and financial asset sanctions. U.N. SCOR, 60th Sess., 5153d mtg. at 5, U.N. Doc. S/PV.5153 (Mar. 29, 2005) ("[J]ust maintaining pressure without regard for the complexity of the issue and the specific circumstances of the Darfur crisis could end up further complicating the situation and making it even more difficult to resolve."). Likewise, China abstained on Resolution 1564, which threatened sanctions if Khartoum declined to accept an expanded AU mission in Darfur and failed to end the violence. U.N. SCOR,

object that the pressure on Khartoum infringed Sudanese sovereignty, and its rhetoric reflected pragmatic concerns rather than ideological disagreement over the noninterference principle. For example, during one Security Council debate, China's representative argued that the international community "should increase humanitarian assistance to Darfur rather than create a situation that could lead to the closing of the door to relief and assistance."²⁷¹

Still, sovereignty and noninterference norms were important to Beijing's position on Darfur. Although China strongly supported the deployment of the African Union Mission in Sudan (AMIS) as well as the expansion and strengthening of the AU peacekeeping force,²⁷² the AMIS deployed to Darfur with Khartoum's consent.²⁷³ In a Security Council meeting a day after the May 2006 signing of the Darfur Peace Agreement, China's Foreign Minister Li Zhaoxing stated that "the consent and cooperation of the Sudanese Government are prerequisites for the deployment of a United Nations operation."²⁷⁴ Not once did China countenance the possibility of unilateral humanitarian intervention or even a UN peace enforcement operation.²⁷⁵ Rather, Beijing sought to limit the mandate of any future UN mission to monitoring the implementation of a peace agreement upon the consent of the parties involved.²⁷⁶ In explaining its May 2006 vote in favor of Resolution 1679, which endorsed the African Union's decision to transition to a UN peacekeeping force in Darfur as soon as possible,²⁷⁷ China stated that despite the resolution's invocation of Chapter VII, deployment of a UN force to Darfur would nonetheless require "the agreement and cooperation of the Sudanese Government."²⁷⁸ In a Security Council meeting in

59th Sess., 5040th mtg. at 4–5, U.N. Doc. S/PV.5040 (Sept. 18, 2004) ("It has been our consistent view that, instead of helping to solve complicated problems, sanctions may make them even more complicated. . . . [T]he Security Council and the international community should focus on encouraging the Sudanese Government to continue to cooperate, rather than doing the opposite.").

271. U.N. SCOR, 59th Sess., 5040th mtg., *supra* note 270, at 4.

272. *See id.* at 5 ("We support expanding the African Union's deployment in Darfur . . .").

273. Paul D. Williams, *Military Responses to Mass Killing: The African Union Mission in Sudan*, 13 INT'L PEACEKEEPING 168, 176 (2006).

274. U.N. SCOR, 61st Sess., 5434th mtg. at 7, U.N. Doc. S/PV.5434 (May 9, 2006).

275. *See, e.g.*, U.N. SCOR, 61st Sess., 5439th mtg. at 3, U.N. Doc. S/PV.5439 (May 16, 2006) ("[O]ur country's Minister for Foreign Affairs, Mr. Li Zhaoxing, laid out China's position at last week's Security Council meeting of foreign ministers. We believe that, if the United Nations is to deploy a peacekeeping operation in Darfur, the agreement and cooperation of the Sudanese Government must be obtained.").

276. U.N. SCOR, 60th Sess., 5153d mtg., *supra* note 270, at 5.

277. S.C. Res. 1679, ¶ 3, U.N. Doc. S/RES/1679 (May 16, 2006).

278. U.N. SCOR, 61st Sess., 5439th mtg., *supra* note 275, at 3.

August 2006, China stated again that its support for a UN force in Darfur was contingent on Khartoum's consent.²⁷⁹

In August 2006, China's strict insistence on the Sudanese government's consent to any intervention in Darfur led it to abstain from voting on Resolution 1706.²⁸⁰ Resolution 1706 expanded the size and mandate of the UN Mission in Sudan (UNMIS)—which, with Khartoum's consent, had already deployed in Southern Sudan to monitor a separate peace agreement there²⁸¹—to include a deployment to Darfur to support both the implementation of the Darfur Peace Agreement of May 2006 and the N'djamena Ceasefire Agreement.²⁸² By threatening its veto, China reportedly managed to secure a clause in Resolution 1706 stating that the Security Council “invite[d] the consent of the Government of National Unity [the Sudanese government] for this deployment.”²⁸³ Nonetheless, that language proved insufficient to gain China's support, as did the Security Council's reaffirmation of its “strong commitment to the sovereignty, unity, independence, and territorial integrity of Sudan, which would be unaffected by transition to a United Nations operation in Darfur.”²⁸⁴ To China, that language failed to state with sufficient clarity that Khartoum's consent was a *sine qua non* for the deployment of a UN force. In particular, Beijing sought language that “required,” rather than “invited,” the Sudanese government's consent prior to authorizing a UN deployment.²⁸⁵ In any case,

279. U.N. SCOR, 61st Sess., 5519th mtg. at 5, U.N. Doc. S/PV.5519 (Aug. 31, 2006) (“The transition of AMIS to a United Nations mission is a good and pragmatic approach. Such a transition can be possible and the mission can be deployed only when the consent of the Government of National Unity [of Sudan] is obtained.”).

280. *Id.* at 2.

281. Security Council Resolution 1590 established UNMIS to monitor and support the implementation of the 2005 Comprehensive Peace Agreement that ended the civil war between north and south Sudan. S.C. Res. 1590, ¶ 1, U.N. Doc. S/RES/1590 (Mar. 24, 2005).

282. S.C. Res. 1706, *supra* note 250, ¶ 8. Additionally, Resolution 1706 authorized the use of “all necessary means” to protect UN personnel, humanitarian workers, and civilians under threat of physical violence. *Id.* ¶ 12.

283. *Id.* ¶ 1 (emphasis added); see also Stephen Rademaker, *Unwitting Party to Genocide: The International Criminal Court Is Complicating Efforts to Save Darfur*, WASH. POST, Jan. 11, 2007, at A25 (discussing how China's veto threat created the need to provide for the Sudanese government's consent before deploying UN peacekeepers).

284. S.C. Res. 1706, *supra* note 250, pmbl. para. 3.

285. U.N. SCOR, 61st Sess., 5519th mtg., *supra* note 279, at 5.

However, we have consistently urged the sponsors to clearly include ‘with the consent of the Government of National Unity’ in the text of the resolution, which is a fixed and standardized phrase utilized by the Council when deploying United Nations missions. We also urged the sponsors to carefully reconsider the timing of the vote. Regrettably, they failed to earnestly heed China's sincere efforts. Due to our principled reservations on the timing of the vote and on the text itself, China could not but abstain from the voting.

Khartoum's consent was not forthcoming, rendering 1706 a resolution *manqué*.²⁸⁶

By late fall, the May 2006 Darfur peace deal was unraveling, and violence was escalating and spilling across the border into neighboring Chad.²⁸⁷ Pressure was mounting on China to play a constructive role in the humanitarian crisis, and there were signs that Beijing was reevaluating its position.²⁸⁸ First, during an emergency Security Council meeting in November 2006, China's representative Wang Guangya reportedly played a critical role in gaining Khartoum's acceptance of a plan to deploy a hybrid UN-AU force in Darfur.²⁸⁹ Then, in February 2007, President Hu Jintao visited Khartoum and reportedly pressured Sudanese President Omar Hassan al-Bashir to cooperate with the United Nations and permit the deployment of a UN peacekeeping force in Darfur.²⁹⁰ In April, Chinese Assistant Foreign Minister Zhai Jun visited Khartoum for more talks with the Sudanese government, resulting in an agreement for the deployment of three thousand UN peacekeepers to Darfur, including a contingent of Chinese military engineers.²⁹¹ Additionally, under pressure from the international community and facing a campaign to designate the 2008 Beijing Olympics the

Id.

286. See U.N. SCOR, 61st Sess., 5520th mtg. at 11, U.N. Doc. S/PV.5520 (Sept. 11, 2006) (“[W]e should continue to seek the consent and cooperation of the Sudanese Government regarding the deployment of United Nations peacekeeping troops.”); Daniel B. Schneider, *U.N. Council Votes to Send Troops to Darfur; Sudan Objects*, N.Y. TIMES, Sept. 1, 2006, at A3 (noting that following the adoption of Resolution 1706, China continued to insist that any UN deployment in Darfur be predicated on Sudan's consent and cooperation, and that no UN peacekeeping operation should be imposed).

287. U.N. SCOR, 61st Sess., 5520th mtg., *supra* note 286, at 19 (“Because of those factions, violence has resumed, especially in the north, on the borders with Chad.”).

288. See Jim Yardley, *China Defends Sudan Policy and Criticizes Olympics Tie-In*, N.Y. TIMES, Mar. 8, 2008, at A7 (“Calls for political leaders to boycott the Olympics have mostly gone unheeded, but the criticism has pushed Beijing to take a more active, and public, role in resolving the Darfur conflict.”); see also *China Presses Sudan Over Darfur*, N.Y. TIMES, June 12, 2008, at A11 (stating that China's diplomacy toward Sudan was “unusually strong, given China's close ties to Sudan, where it is a major investor in the oil industry and to whom it sells arms”); Lydia Polgreen, *China, in New Role, Uses Ties to Press Sudan on Troubled Darfur*, N.Y. TIMES, Feb. 23, 2008, at A9 (“China has begun shifting its position on Darfur, stepping outside its diplomatic comfort zone to quietly push Sudan to accept the world's largest peacekeeping force, diplomats and analysts say.”).

289. Colum Lynch, *China Filling Void Left by West in U.N. Peacekeeping*, WASH. POST, Nov. 24, 2006, at A12 (reporting that China's UN ambassador, Wang Guangya, “played a critical role in persuading the Sudanese government to allow an expanded U.N. presence in the Darfur region” and quoting U.S. special envoy to Sudan, Andrew Natsios, praising Wang's efforts to secure Khartoum's cooperation).

290. Howard W. French, *Chinese Leader to Visit Sudan for Talks on Darfur Conflict*, N.Y. TIMES, Jan. 25, 2007, at A6.

291. Stephanie Kleine-Ahlbrandt & Andrew Small, *China's New Dictatorship Diplomacy: Is Beijing Parting with Pariahs?*, FOREIGN AFF., Jan.-Feb. 2008, at 38, 47.

“Genocide Olympics,” China appointed a special envoy to Darfur, Liu Guijin, in May 2007.²⁹² Beijing’s newly constructive role also reportedly was a key factor in obtaining President al-Bashir’s June 2007 consent to the deployment of a hybrid UN–AU peacekeeping force in Darfur.²⁹³

On July 31, 2007, China joined a unanimous Security Council in adopting Resolution 1769, which authorized the deployment of that hybrid peacekeeping force, the UN Assistance Mission in Darfur (UNAMID).²⁹⁴ In its statement before the Security Council, China made clear that Khartoum’s consent was crucial to its vote.²⁹⁵ Thus, on one level, the case of Darfur demonstrates that consent to intervention remains one of China’s baselines, while on another level, it demonstrates a distinct shift in China’s role in addressing humanitarian crises. After initially shielding Sudan from international pressure, China later proved willing to use its diplomatic leverage with Khartoum to secure Sudan’s consent to the deployment of a UN peacekeeping force, a shift that signaled a moderation of China’s position on the principle of noninterference in practice. How this shift plays out in China’s response to future humanitarian crises remains to be seen.

VI. ANALYSIS: CONTINUITY AND CHANGE IN CHINESE ATTITUDES TOWARD HUMANITARIAN INTERVENTION

The story that emerges from the cases above is one of China grappling with a much-changed post-Cold War world—as well as its own rapidly evolving position within that world—as it sought to define and redefine its approach to core international legal principles, such as state sovereignty and nonintervention. From its founding in 1949 until the late 1980s, few events led the PRC to reexamine its largely anti-interventionist stance. It was only with the Security Council’s adoption of a more activist agenda in the 1990s that China

292. *Id.*

293. *A Hopeful Wind of Change*, ECONOMIST, May 12, 2007, at 50, 50; Helene Cooper, *Darfur Collides with Olympics, and China Yields*, N.Y. TIMES, Apr. 13, 2007, at A1; Lydia Polgreen & Warren Hoge, *Sudan Relents on Peacekeepers in Darfur*, N.Y. TIMES, Jun. 13, 2007, at A3; *Too Few, Too Late?*, ECONOMIST, Apr. 21, 2007, at 52, 52.

294. U.N. SCOR, 62d Sess., 5727th mtg. at 10, U.N. Doc. S/PV.5727 (July 31, 2007); *see also* U.N. SCOR, 62d Sess., 5784th mtg. at 15, U.N. Doc. S/PV.5784 (Nov. 27, 2007) (“It has been China’s consistent position that a political settlement of the question of Darfur should be sought through dialogue and consultation on the basis of respect for the sovereignty and territorial integrity of the Sudan.”).

295. U.N. SCOR, 62d Sess., 5727th mtg., *supra* note 294, at 10 (“The consensus reached by the United Nations–African Union–Sudan tripartite dialogue mechanism on the hybrid operation is the political prerequisite on the basis of which this resolution is adopted.”).

was forced to develop and articulate a more nuanced policy toward humanitarian intervention.²⁹⁶ During this period, the contours of China's position grew clearer as Beijing confronted concrete humanitarian crises and decided whether to support, acquiesce in, or oppose outside intervention to ameliorate the suffering.

Two lines of interpretation have arisen regarding China's record on humanitarian intervention in the 1990s and 2000s. The first claims that China's position on sovereignty and intervention since the end of the Cold War has proved inflexible and unyielding.²⁹⁷ Commentators adopting this view often reduce China's position on humanitarian intervention to labels such as "anti-interventionist" or "strict sovereignist."²⁹⁸

The second line of interpretation is typified by the scholarship of Allen Carlson, who credits China with a much-changed position on humanitarian intervention since the end of the Cold War and concludes that "many Chinese elites have now come to accept the general legitimacy of multilateral intervention to resolve particularly prominent humanitarian crises."²⁹⁹ Indeed, Carlson argues that even in the immediate aftermath of NATO's intervention in Kosovo, "Chinese policy circles . . . basically accepted the legitimacy of human rights and humanitarian intervention."³⁰⁰ It is important to note, however, that Carlson's analysis relies heavily on the work of Chinese foreign policy analysts and scholars rather than on official government statements, and his conclusion relates to the former group, not the latter.³⁰¹ In contrast, this Article focuses on China's

296. Allen Carlson, *Helping to Keep the Peace (Albeit Reluctantly): China's Recent Stance on Sovereignty and Multilateral Intervention*, 77 PAC. AFF. 9, 11–13 (2004).

297. See, e.g., Olivier Corten, *Human Rights and Collective Security: Is There an Emerging Right of Humanitarian Intervention?*, in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE, *supra* note 204, at 87, 133–34 ("Some, like China, stick to an extremely restrictive interpretation [of sovereignty and noninterference], according to which even dramatic humanitarian situations in a civil war context cannot be termed a threat to peace within the meaning of Chapter VII of the Charter."); Feigenbaum, *supra* note 200, at 32 ("China's stance on sovereignty [during the 1990s] remained rigid in rhetoric and almost always inflexible in practice.").

298. Others take the view "that China is opposed to international intervention simply because, itself a gross violator of human rights, it wishes to perpetuate its authoritarian rule and, by defending national sovereignty, hopes to shield itself from international criticism." Jia Qingguo, *China*, in HUMANITARIAN INTERVENTION: THE EVOLVING ASIAN DEBATE 19, 20 (Watanabe Koji ed., 2003) ("[S]uch an understanding fails to capture the complexity of the problem.").

299. Carlson, *supra* note 296, at 24–25.

300. CARLSON, *supra* note 200, at 176.

301. See, e.g., Carlson, *supra* note 296, at 11, 18 ("In other words, while the official Chinese discourse was designed to delegitimize such normative change in the international arena, some foreign policy elites were increasingly convinced of, and perhaps even internalized, these new norms."). For a similar but more extensive analysis by Carlson that relies predominantly on Chinese scholarship rather than official PRC statements, see CARLSON, *supra* note 200, at 146–83.

official statements and acts in order to discern patterns of state practice and *opinio juris*. Although international law recognizes the work of eminent publicists as evidence of emerging legal norms,³⁰² such scholarship cannot be said to constitute *opinio juris* and is insufficient, particularly in light of Beijing's persistent statements to the contrary, to demonstrate China's acceptance of the legitimacy of a right of humanitarian intervention under international law.³⁰³

Although it would be wrong to conclude that China has recognized a right of humanitarian intervention, it would be equally mistaken to conclude that China's position on humanitarian intervention has demonstrated little or no flexibility since the end of the Cold War.³⁰⁴ To be sure, China's official rhetoric has been laced with statements defending sovereignty and the principles of noninterference and nonintervention. Since the end of the Cold War, China has argued variously that humanitarian intervention causes more harm than good,³⁰⁵ that it promotes the interests of the intervening state rather than the target state's population,³⁰⁶ and that it violates the UN Charter and general principles of international law.³⁰⁷

Yet, China has also acquiesced in or actively supported a number of humanitarian interventions in the last two decades, including the Iraqi no-fly zones, Haiti, Somalia, Bosnia, and East Timor. Moreover, China has shown greater flexibility on the principle of noninterference through its willingness to use its political leverage with Khartoum to secure Sudan's consent to deploy a hybrid UN–AU peacekeeping force in Darfur.³⁰⁸ Additionally, China has demonstrated a significant shift in its position on sovereignty by accepting the basic tenets of the R2P, even if Beijing has proved

302. Statute of the International Court of Justice, art. 38(1), June 26, 1945, 33 U.N.T.S. 993.

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply . . . (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Id.; RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 103(2) (1986) ("In determining whether a rule has become international law, substantial weight is accorded to . . . (c) the writings of scholars . . .").

303. See CHESTERMAN, *supra* note 4, at 210–15 (discussing the 1999 NATO campaign in Kosovo, and noting China's opposition to such intervention as a violation of the UN Charter).

304. See, e.g., Carlson, *supra* note 296, at 10 ("[T]he conventional wisdom about Chinese intransigence on intervention (and sovereignty) is inaccurate. On the contrary, a subtle yet significant change in the Chinese stance on these issues has taken place during the last fifteen years.").

305. Gill & Reilly, *supra* note 31, at 46.

306. See, e.g., *supra* note 210 and accompanying text.

307. See, e.g., *supra* notes 165–67, 171 and accompanying text.

308. Lynch, *supra* note 289.

reluctant to allow the concept to harden into a norm of international law and has prevented its implementation by resisting the promulgation of criteria that would trigger application of the R2P.³⁰⁹

Because China has not always objected to humanitarian intervention in practice, it is useful to reexamine the conditions under which China is willing to countenance such interventions. The cases analyzed above indicate two baseline conditions. First, China invariably insists that any international intervention in response to a humanitarian crisis is solely the province of the Security Council and that the legality of any intervention depends on authorization by the Security Council, after a determination that the situation constitutes a threat to international peace and security.³¹⁰ To some, this condition suggests Beijing's opposition to the idea of humanitarian intervention. However, this conclusion overlooks the distinction between a unilateral right and a multilateral right of humanitarian intervention. China's position is best understood as rejecting claims to a unilateral right of humanitarian intervention while, in practice, acquiescing to the exercise of a multilateral right through the Security Council. Here, one can see an evolution in China's willingness to accept the Security Council's expanded conception of what constitutes a threat to international peace and security under Article 39 of Chapter VII of the Charter. Moreover, China has shown a greater willingness to authorize the use of force for humanitarian objectives under the auspices of UN peacekeeping missions.

China's insistence on the Security Council's primacy in authorizing humanitarian interventions was most apparent in Beijing's harsh condemnation of the illegality of NATO's 1999 intervention in Kosovo.³¹¹ This baseline condition continues to shape China's interaction with the concept of the R2P, particularly regarding the question of with whom the residual R2P resides after national authorities prove unwilling or unable to prevent or end mass atrocities or gross violations of human rights.³¹² This insistence on

309. See *supra* notes 233, 237–38, 256 and accompanying text.

310. Studies of China's attitudes toward UN peacekeeping operations since 1989 identify the same two preconditions for Chinese support and participation: Security Council authorization and host state consent. See Gill & Reilly, *supra* note 31, at 44 (noting a possible third precondition, "the *a priori* achievement of a political settlement before sending troops"); see also Fravel, *supra* note 31, at 1115–19 (discussing China's bases for supporting or opposing various peacekeeping operations); Stefan Stähle, *China's Shifting Attitude Toward United Nations Peacekeeping Operations*, 195 CHINA Q. 631, 645 (2008) ("China was obviously willing to condone [peacekeeping operations] as long as two conditions could be met: authorization by the [Security Council] and consent of the parties concerned."); Pang, *supra* note 31 (discussing Beijing policymakers' increasingly flexible view of principles of state sovereignty and noninterference in the context of UN peacekeeping operations).

311. See *supra* notes 164–67 and accompanying text.

312. China's apparent acquiescence in the unilateral establishment of the northern and southern no-fly zones in Iraq in 1992–93 is best viewed in the context of

the primacy of the Security Council in responding to humanitarian crises is unsurprising. China's adoption of such a position safeguards its interests by allowing it to retain control over any outcome by way of its status as a permanent, veto-wielding Security Council member.³¹³ At the same time, however, China's position carries political risks. By insisting that the Security Council is the sole legitimate actor in this arena, China risks focusing attention on its position anytime it obstructs Security Council action, with attendant consequences for China's international image and reputation. Darfur is a case in point.³¹⁴

China's second requirement for supporting humanitarian intervention is consent of the host state or the parties to the conflict. The prerequisite of consent essentially derives from China's insistence that respect for sovereignty and the principle of noninterference is fundamental to international law. China's expressions of this position can be found in its statements in the cases of Rwanda,³¹⁵ the enlargement of UNPROFOR's mandate in Bosnia,³¹⁶ NATO's intervention in Kosovo,³¹⁷ the intervention in East Timor,³¹⁸ and, most recently, in Darfur.³¹⁹

In spite of its strong rhetoric, China has demonstrated flexibility on its requirement of consent. For example, China voted in favor of enforcement resolutions that expanded UNPROFOR's mandate in Bosnia to include the establishment of "safe areas" and authorized the use of force to protect civilians in physical danger.³²⁰ In these cases, the conflicting parties' consent to UNPROFOR's enlarged

Beijing's efforts to break out of its post-Tiananmen diplomatic isolation and not as acceptance of a unilateral right to intervene in another state's affairs for humanitarian purposes. See Carlson, *supra* note 296, at 13 (citing Kim, *supra* note 30, at 422-24).

313. U.N. Charter arts. 23, 27 (providing that all resolutions must be adopted by the concurring vote of all permanent members of the Security Council, which includes China, effectively giving the permanent members a veto over the adoption of any resolution).

314. See *supra* notes 288-94 and accompanying text.

315. See *supra* text accompanying notes 108-09.

316. See U.N. SCOR, 47th Sess., 3114th mtg., *supra* note 126, at 12 (abstaining on Resolution 776, in part because "enlarging the mandate of UNPROFOR has not received the express consent of the parties concerned in Bosnia and Herzegovina"); *supra* text accompanying notes 146-47.

317. See U.N. SCOR, 53d Sess., 3937th mtg., *supra* note 164, at 14 (arguing that action should "be completed through full consultation and cooperation with the Federal Republic of Yugoslavia Serbian Government").

318. See U.N. SCOR, 54th Sess., 4043d mtg., *supra* note 192, at 13 ("The deployment of any peacekeeping force should be at the request of the Indonesian Government . . .").

319. See U.N. SCOR, 61st Sess., 5434th mtg., *supra* note 274, at 7 ("[T]he consent and cooperation of the Sudanese Government are prerequisites for the deployment of a United Nations operation.").

320. See *supra* notes 131-32 and accompanying text.

mandate was unclear, eroding, or nonexistent.³²¹ Additionally, the case of Somalia demonstrates an important exception to Beijing's requirement of consent, albeit a limited exception because host state consent proved impossible to secure due to Somalia's lack of an effective, functioning government.³²²

In general, the cases examined above demonstrate that, except in narrow circumstances involving a failed state with no effective government, China is likely to continue to insist on host state consent to any humanitarian intervention. However, as indicated by Beijing's diplomacy on East Timor and Darfur, China may prove more willing in the future to use its economic and diplomatic leverage to secure host state consent to intervention, thereby blurring China's position on noninterference.³²³

In effect, China's two baselines for humanitarian intervention place it in direct opposition to those who claim a right of unilateral humanitarian intervention.³²⁴ Indeed, Beijing's consistent position on these two preconditions to intervention discredits the argument that a "norm" of unilateral humanitarian intervention has emerged since the end of the Cold War. It also means that such a norm is unlikely to emerge any time soon, as China is likely to continue to be a persistent objector to any claim of such a unilateral right.

China's position does not place it in the minority regarding the status of humanitarian intervention under international law, although its position as a permanent member of the Security Council perhaps endows Beijing's views with greater visibility and weight than those of other objectors. If anything, China's opposition to claims of a right of unilateral intervention reflects the sentiment of much of the international community, especially the developing world.³²⁵

Moreover, China's position does not place it on the wrong side of the "evolving norm" of the R2P, the discussion of which has largely supplanted efforts to promote a right of humanitarian intervention

321. See *supra* notes 115–18 and accompanying text.

322. CHESTERMAN, *supra* note 4, at 142.

323. See *supra* notes 202, 287–93 and accompanying text.

324. See *supra* notes 156–58 and accompanying text.

325. For example, China was not alone in condemning the assertions of a unilateral right of humanitarian intervention at the turn of the century. In addition to China, the following states condemned claims of a unilateral right to humanitarian intervention in the wake of NATO's intervention in Kosovo: Algeria, Barbados, Belarus, Cyprus, Colombia, Costa Rica, Cuba, Egypt, Ecuador, India, Indonesia, Iraq, Jordan, Libya, Laos, Malaysia, Mexico, Mongolia, Namibia, North Korea, Norway, Peru, the Philippines, Qatar, Russia, Singapore, South Africa, Syria, Venezuela, and Vietnam. Corten, *supra* note 297, at 124. Additionally, other states did not condemn the idea of humanitarian intervention outright but rather insisted that any intervention should be authorized by the UN Security Council. These states included Brazil, Gambia, Iran, Jamaica, Liechtenstein, Mali, Moldova, Pakistan, Sierra Leone, South Korea, and Tunisia. *Id.* at 124–25.

since NATO's intervention in Kosovo in 1999.³²⁶ As noted above, Beijing has adopted some of the rhetoric of the R2P as well as its basic tenets, including the idea that the R2P resides primarily with national governments and secondarily with the international community.³²⁷ This is a significant change in China's position, as Beijing formerly endorsed a more absolutist conception of sovereignty and resisted attempts to make sovereignty conditional on a state's internal situation.³²⁸

Additionally, China's view that the international community's residual responsibilities can be exercised only through the Security Council is reflected in the work of both the High-Level Panel³²⁹ and the 2005 World Summit Outcome document.³³⁰ This, of course, remains contested territory, and it remains unclear whether Security Council inaction opens the door to action by individual member states. Still, on the one hand, China's position is not necessarily at odds with the future development of the R2P, even if its position inevitably narrows the concept's reach. On the other hand, there are

326. See Bellamy, *supra* note 214, at 152 (noting divided opinion among states on the validity of the R2P); Gareth Evans, President, Int'l Crisis Grp. and Co-Chair of the ICISS, *The Responsibility to Protect: Rethinking Humanitarian Intervention*, Address to the Am. Soc'y of Int'l Law's Panel on "Rethinking Collective Action," 98th Annual Meeting (Apr. 1, 2004), available at <http://www.gevans.org/speeches/speech103.html> (noting the ongoing debate on the R2P); see also Evans, *supra* note 203, at 714–15 (discussing the process by which the R2P gained acceptance); *supra* Part V.A (providing a general overview of the R2P).

327. See *supra* notes 233, 237–38, 256 and accompanying text.

328. See *supra* notes 22–36 and accompanying text.

329. See High-Level Panel on Threats, Challenges and Change, *supra* note 227, ¶ 203.

We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.

Id.

330. See 2005 World Summit Outcome, *supra* note 242, ¶ 139.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, 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.

Id.

signs that China is reticent to further engage with the concept of the R2P, and Beijing continues to resist efforts to flesh out clear criteria for when and how the Security Council should act if individual states fail to live up to their responsibilities.³³¹

Thus, it is too simplistic to view China as opposed to any and all humanitarian intervention *per se*. Rather, China has opposed the emergence of a right to unilateral humanitarian intervention and instead has sought to channel any intervention through the Security Council after obtaining the target state's consent. Notably, as shown in this Article, China has chosen not to block certain humanitarian interventions by the United Nations, and it has endorsed others. This pattern suggests that China's insistence on Security Council authorization is not merely an extension of its earlier advocacy of strict conceptions of sovereignty and nonintervention; it appears that Beijing also seeks to retain influence over when, where, and how such interventions take place. Moreover, as noted above, China has shown greater flexibility on the principle of noninterference in practice, especially in Darfur.³³²

In order to understand the development of Chinese attitudes toward humanitarian intervention since the end of the Cold War, it is helpful to consider the determinants of China's position, which may help to predict future developments in its position. These determinants can be grouped into four categories: historical factors, ideological factors, domestic political factors, and international systemic factors.³³³

The first two categories of determinants are, to a large degree, related. First, China's position on sovereignty and intervention has been significantly shaped by its historical experience during its "century of humiliation"—the period from roughly 1839 to 1949 that was characterized by repeated invasions of foreign armies, bullying by imperialist states, and infringements on sovereignty through unequal treaties.³³⁴ The PRC's adoption of a strict anti-

331. See *supra* Part V.A.

332. U.N. SCOR, 59th Sess., 5040th mtg., *supra* note 270, at 4.

333. For a similar typology, see Jia, *supra* note 298, at 25 ("China's stance on international intervention is based on four factors: the nature of the existing international system; China's experience with the outside world in modern times; its international status; and its domestic politics.").

334. See Gill & Reilly, *supra* note 31, at 42.

China's adherence to strict Westphalian norms of state sovereignty derives from its traumatic entry into international society during the tumultuous late imperial period, roughly extending from the first Opium War in 1839 to the fall of the last dynasty in 1912. From its earliest years in the 1920s, the Chinese Communist Party used its defense of China's sovereignty to buttress its nationalist credentials and advance its broader state-building project.

Id.; Carlson, *supra* note 296, at 11 ("[T]he shadow of the past loss of Chinese sovereignty during the 'century of humiliation' caused elites to be particularly leery of

interventionist stance upon its founding in 1949 reflected the sense that China could prevent a recurrence of past humiliations only through a strong defense of sovereignty.³³⁵ One can observe the continuing salience of China's historical experience in the September 1999 General Assembly statement of Chinese Ambassador Tang Jiaxuan, in which he declared that the idea of humanitarian intervention is merely a pretext for power politics and warned that its embrace would entail the triumph of "might is right," ultimately leading to a new era of "gunboat diplomacy" that would allow strong countries to impose their will on the weak.³³⁶ To a significant degree, the Chinese Communist Party incorporated this historical experience into its founding ideology, which was partially premised on nationalistic credentials gained by standing up to foreign intervention in the 1930s and 1940s.³³⁷

Second, an ideological mistrust of Western motivations—a legacy of historical experience as well as Communism's opposition to Western imperialism—continues to color Chinese attitudes toward humanitarian intervention, albeit to a lesser degree than in the past. One can observe the continuing salience of this ideology in Chinese claims that humanitarian intervention is a pretextual tool of imperialism and hegemony, cynically manipulated by self-interested great powers.³³⁸

Third, certain characteristics of China's domestic political system influence Beijing's position on humanitarian intervention. Michael Davis, for example, suggests that China's one-party, non-democratic political system "is fundamentally at odds, both in principle and practically, with the sovereignty deprecating features of a substantial

humanitarian intervention and to weight their policy decisions and internal debates toward the defence of a conventional interpretation of sovereignty."); Jia, *supra* note 298, at 26–27 ("If, under the existing international system, China asserts its national sovereignty, it is in part because of its historical experience in foreign relations in modern times has made doing so imperative.").

335. Jia, *supra* note 298, at 27–28.

336. U.N. GAOR, 54th Sess., 8th plen. mtg. at 16, U.N. Doc. A/54/PV.8 (Sept. 22, 1999) ("The history of China and other developing countries shows the sovereignty of a country is the prerequisite for and the basis of the human rights that the people of that country can enjoy.").

337. See EDWARD FRIEDMAN, NATIONAL IDENTITY AND DEMOCRATIC PROSPECTS IN SOCIALIST CHINA 117–18 (1995) ("This grand narrative of patriotic history is given its modern origin in 1839, with a failed popular defense against Britain's barbaric attempt to force civilized Chinese to buy British opium.").

338. Carlson makes the interesting point that such ideological or historical heuristics have led the Chinese to overstate the implications of international interventions elsewhere in the world for China's own sovereignty. Carlson, *supra* note 296, at 16 ("In other words, the loss or gain of sovereign rights by other actors was always seen through this prism of China's own sovereignty in a way that often overemphasized the possible implications of intervention elsewhere for China's own sovereignty claims.").

humanitarian intervention regime.”³³⁹ According to this theory, as long as China remains non-democratic, it will continue to obstruct the development of a norm of humanitarian intervention and will resist any erosion of the principles of nonintervention and noninterference.³⁴⁰ Domestic political reform, however, may increase China’s engagement with the concept and make Beijing more accommodating to the development of a right of humanitarian intervention as an international legal norm.³⁴¹

Furthermore, the Chinese Communist Party’s focus on economic development and growth as a critical source of legitimacy may influence China’s position on humanitarian intervention. Although the opposite claim can also be made, intervention for humanitarian purposes could destabilize target countries or regions and thereby jeopardize Chinese investments and China’s economic growth. Shades of these concerns are evident in China’s argument that intervention should avoid aggravating conflicts and, thus, should be a last resort.³⁴²

In addition to regime type and domestic political objectives, the PRC’s multiethnic character also may influence Beijing’s attitudes toward humanitarian intervention.³⁴³ The Chinese state consists of close to sixty nationalities, several of which, including Tibetans and Uighurs, have demanded greater autonomy and even independence.³⁴⁴ China’s multiethnic character makes it especially sensitive to issues of national sovereignty and intervention—without a strong stand on these principles, Beijing risks emboldening certain of its own populations to foment a conflict or crisis that could justify outside intervention. One can observe these concerns in China’s fear that intervention in Bosnia and Kosovo would lead to a slippery slope

339. Davis, *supra* note 3, at 249.

340. Davis concludes:

[T]his, at most, points to a sustained nonintervention principle with limited exceptions on an ad hoc basis It is doubtful that China would agree to formal standards for such limited exceptions but, faced with continuing humanitarian crises, may permit such to arise from practice. It has already to a limited extent tolerated such practice.

Id.

341. *Id.* at 248–51.

342. See, e.g., U.N. SCOR, 60th Sess., 5153d mtg, *supra* note 270, at 5 (cautioning that ratcheting up pressure on the Sudanese government “could end up further complicating the situation and making it even more difficult to resolve”).

343. See Davis, *supra* note 3, at 242 (“China’s current status as an authoritarian unitary state with several restless peripheral communities clearly shapes China’s present resistance to humanitarian intervention.”).

344. Amanda Lilly, *A Guide to China’s Ethnic Groups*, WASH. POST, July 8, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/08/AR2009070802718.html>; see generally GOVERNING CHINA’S MULTIETHNIC FRONTIERS (Morris Rossabi ed., 2004) (discussing the status of minority groups in China).

of increased interference in the internal affairs of other multiethnic states.³⁴⁵

Similarly, the PRC's long-standing goal of reunifying Taiwan with the mainland makes Beijing wary of outside interference in its relations across the Taiwan Straits.³⁴⁶ A strong stand on sovereignty and nonintervention serves Beijing's purposes here too. One can observe the salience of the PRC's goal of reunification in China's special sensitivity to NATO's intervention in Kosovo,³⁴⁷ which spoke most directly to its sensitivities about its own "breakaway province," Taiwan. While future humanitarian crises may not always involve questions of secession and independence, the PRC may nonetheless view the establishment of a norm of humanitarian intervention as a further slide down a slippery slope toward greater interference in what it perceives to be its internal affairs.

Finally, both the nature of the international system and China's place within it influence Beijing's attitudes toward humanitarian intervention. At least until recently, China's status as a weaker power—first in a bipolar, Cold War world, and then in a largely unipolar one after the Soviet Union's collapse—made an absolutist stance on sovereignty and nonintervention useful for preventing China from becoming a target of intervention or interference itself. China's historical positioning of itself as a defender of developing countries' rights also plays a role in Beijing's attitudes toward humanitarian intervention.³⁴⁸

In contrast, China's present status as a rising great power works in the opposite direction. Given China's status as a permanent member of the Security Council and its growing military and economic power, it is arguably irrational for Beijing to fear foreign intervention outside of the context of Taiwan. Additionally, China's growing power and increasing global integration are likely to lead to more expansive views of its national interests. The extent to which China's economic and political interests are increasingly affected by instability abroad potentially could change Beijing's calculus on the utility of a strict anti-interventionist stance.³⁴⁹

345. See *supra* notes 134, 163.

346. See Feigenbaum, *supra* note 200, at 41 ("China insists on an orthodox approach to sovereignty on a global scale for fear of the precedent any change would set with respect to Taiwan.").

347. See *supra* note 162.

348. See Jia, *supra* note 298, at 21 (noting that China's position reflects the fact that humanitarian intervention "more often than not serves the interests of the strong and damages the sovereign rights and interests of weaker states, reflecting Western domination of world affairs").

349. See Gill & Reilly, *supra* note 31, at 46 ("China frequently justifies its resistance to humanitarian intervention with the argument that such interventions might foster domestic turbulence, civil wars, and even regional conflict."); see also Feigenbaum, *supra* note 200, at 32–33 (noting that China has become

Furthermore, China's growing desire to be recognized as a great power and responsible international actor means that image and reputational concerns will influence Beijing's position on humanitarian intervention to a much greater extent.³⁵⁰ This, combined with China's greater participation and enmeshment in multilateral institutions and sovereignty-limiting regimes, might accelerate the diffusion of norms regarding humanitarian intervention. Such norm diffusion already appears to have begun, as demonstrated by China's acceptance of the basic tenets of the R2P.³⁵¹ As a result, China's increasing participation in UN peacekeeping operations and more active international role may create a feedback loop that shapes China's worldview, with the result being that the Chinese government may no longer consider it conscionable or politically possible to fail to act in the face of mass atrocities or genocide.³⁵²

VII. CONCLUSION

The direction in which—and the extent to which—Chinese attitudes toward humanitarian intervention continue to evolve will depend on the relative salience of the various determinants identified above in future humanitarian crises, as well as how those determinants interact with each other in the specific contexts of future humanitarian crises. Recent trends suggest that, while historical experience will continue to influence China's position on intervention, the influence of ideology will decrease.

“uncharacteristically flexible in recent years on certain aspects of political sovereignty,” but that “these subtleties are utterly lacking on topics concerning Taiwan”).

350. See Carlson, *supra* note 296, at 14 (attributing change in Chinese attitudes toward intervention to “broader reputational and image concerns that shifted and evolved over the course of” the 1990s).

351. See *supra* notes 233, 237–38, 256 and accompanying text.

352. See CARLSON, *supra* note 200, at 148, 183 (“[I]nternational norms on human rights and sovereign authority and on the transgression of conventional sovereign boundaries gained a foothold in China's foreign policy establishment through its long-term involvement in argumentative human rights discourses.”); EVANS, *supra* note 204, at 73 (“[T]here are also grounds for believing that, as China's participation and stature in global institutions grows, and as its governance becomes increasingly sophisticated, its leaders simply will not see the commission of mass atrocity crimes as a remotely permissible option.”); Kleine-Ahlbrandt, *supra* note 291, at 2 (arguing that the West's heightened expectations for China's global role have motivated significant changes in the PRC's foreign policy in recent years and shifted debates in Beijing “from how to defend the principle of noninterference to the conditions under which intervention is justified”). For more theoretical treatments of the process of norm diffusion and socialization in the area of human rights and humanitarian intervention, see FINNEMORE, *supra* note 8, at 52–84; Martha Finnemore, *Constructing Norms of Humanitarian Intervention*, in *THE CULTURE OF NATIONAL SECURITY: NORMS AND IDENTITY IN WORLD POLITICS* 153 (Peter J. Katzenstein ed., 1996); Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887, 894–909 (1998).

Government statements redolent with historical and ideological referents reached a fever pitch immediately after NATO's intervention in Kosovo, particularly following the bombing of the Chinese embassy in Belgrade.³⁵³ This indicates that historical and ideological determinants are likely to prove most salient when China feels most threatened or slighted by a proposed or actual intervention, including situations in which nationalist sentiments run high. But on the whole, the cases above demonstrate a trend toward pragmatism and away from ideology in China's position on humanitarian intervention. Most recently, China's stance on Darfur reflected a decidedly pragmatic focus on its economic and political self-interest and less of a concern about the legal and precedential effect of interference and humanitarian intervention in Sudan.³⁵⁴ In other words, with respect to Darfur, China acted more like a great power—with concrete material and reputational interests at stake—than an ideological obstructionist.

Furthermore, despite China's historical insecurities, its rising political, economic, and military power should make the PRC more confident that it can resist intervention in its own affairs and, perhaps, more willing to embrace the development of the law of humanitarian intervention. Additionally, to the extent that future humanitarian crises look sufficiently dissimilar to situations the PRC perceives as challenges to its own sovereignty, such as those of Taiwan or Tibet, China may be less likely to fear that intervention elsewhere might lead to interference at home. China's willingness to contemplate humanitarian intervention may also increase as its ability to project military power abroad grows. Finally, China's growing participation in UN peacekeeping operations and increasing integration in multilateral security and economic institutions are likely to force Beijing to grapple with the responsibilities attendant to its great-power status, including the future shape and legal status of concepts like the R2P.

At present, however, there is no reason to expect China to relax its status as a "persistent objector" to claims of a right of unilateral humanitarian intervention. A strong presumption against intervention continues to be China's default position. Still, China's willingness to support multilateral interventions upon Security Council approval and target state consent—as well as its willingness to apply significant diplomatic pressure to secure that consent—suggests that China may continue to liberalize its position on the role of the United Nations in intervening to end mass atrocities or gross

353. See *supra* note 337–38 and accompanying text.

354. See *supra* Part V.B (describing China's willingness to use its economic and diplomatic leverage over the Sudanese government in order to secure its consent to intervention).

violations of human rights. Over the course of the coming decade, it should become apparent whether the current trends will prevail.³⁵⁵

355. The UN-authorized intervention in the civil conflict in Libya between pro-Qaddafi government forces and anti-government rebels is proving to be the most immediate test case. See Elisabeth Bumiller & David D. Kirkpatrick, *Allied Airstrikes Pound Libyan Ground Forces*, N.Y. TIMES, Mar. 23, 2011; David D. Kirkpatrick, Steven Erlanger, & Elisabeth Bumiller, *Allies Open Air Assault on Qaddafi's Forces in Libya*, N.Y. TIMES, Mar. 19, 2011. So far, China's votes on two Libya-related Security Council resolutions indicate a further liberalization of its position on noninterference and humanitarian intervention. First, China voted with a unanimous Security Council to impose sanctions on Colonel Qaddafi and other top Libyan leaders and to refer the situation in Libya to the International Criminal Court (ICC). S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011). Notably, Resolution 1970 explicitly invoked the R2P. *Id.* pmbl. para. 9 ("[r]ecalling the Libyan authorities' responsibility to protect its populations"). China's support for Resolution 1970 is significant, not only because of the ICC referral but also because the Security Council acted in response to political violence and violations of human rights in Libya that resembled, at least superficially, the PRC's Tiananmen Square crackdown in 1989. See Jason Dean, *China's Vote on Libya Signals Possible Shift*, WALL ST. J., Feb. 28, 2011 (describing China's vote as "an unusual endorsement by Beijing of sanctions against another government over the treatment of its people"). Second, China chose to abstain on, rather than veto, Resolution 1973, a Chapter VII resolution that authorized, without the Qaddafi government's consent, the establishment of a no-fly zone over Libya and the use of "all necessary measures" to protect civilians from attack. S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011); see also U.N. SCOR, 66th Sess., 6498th mtg. at 3, U.N. Doc. S/PV.6498 (Mar. 17, 2011) (Brazil, Germany, India, and Russia also abstained). Like Resolution 1970, Resolution 1973 expressly invoked the R2P. S.C. Res. 1973, *supra*, pmbl. para. 4. In explaining its abstention, China said it "attache[d] great importance" to the Arab League and African Union's support for the establishment of a no-fly zone. U.N. SCOR, 66th Sess., 6498th mtg., *supra*, at 10. Despite this regional support, however, China noted without clarifying that it "ha[d] serious difficulty with parts of the resolution," and it emphasized its opposition to the use of force and its position that any UN action should abide by the UN Charter and international law and "respect the sovereignty, independence, unity and territorial integrity of Libya." *Id.* China subsequently "expressed regret" over the foreign military strikes against Libyan air defense facilities and ground forces. Andrew Jacobs, *China Urges Quick End to Airstrikes in Libya*, N.Y. TIMES, Mar. 22, 2011 (reporting on China's calls for a ceasefire and its statements "suggesting that coalition forces were imperiling civilians by exceeding the United Nations-mandated no-fly zone"). In addition to the PRC's subsequent criticism of the military campaign, China's state-owned press stridently opposed the intervention. *Id.* (quoting, *inter alia*, a *People's Daily* article as stating that "humanitarian intervention is only an excuse for military intervention into other countries' domestic affairs" and that intervening states "claim to be motivated by morality but in fact they are driven by narrow political and economic interests"); see also Chris Buckley, *China Seizes on Libya for Propaganda War Against West*, REUTERS, Mar. 23, 2011 (describing criticism of the intervention in China's state-run press as a "propaganda campaign" aimed in part at dissuading copycat pro-democracy or anti-regime protests in China). Nonetheless, China's abstention on Resolution 1973—and therefore acquiescence in a UN-backed military action against another government for humanitarian purposes—represents a significant step in Beijing's liberalization of its position on humanitarian intervention. See Brian Spegele, *China Takes New Tack in Libya Vote*, WALL ST. J., Mar. 20, 2011 (noting that "China's rare acquiescence moved it further away from its longstanding foreign policy based on non-intervention").
