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# *Preventing and Responding to Atrocity Crimes: China, Sovereignty and the Responsibility to Protect*

Mauro Barelli\*

## **Abstract**

With China on the rise, a question that is becoming increasingly important for international lawyers is that of the potential implications of Beijing's strident defense of State sovereignty for the international legal system. Against this background, a better understanding of Chinese interpretations of sovereignty appears not only useful but also desirable. This article contributes to clarifying some of the intricacies of those interpretations by examining China's approach to the principle of the Responsibility to Protect (R2P). Through an analysis of both its conceptual and practical engagement with R2P, the article reveals that Beijing's attitudes towards questions of sovereignty and non-intervention in the context of humanitarian crises are more complex and nuanced than often assumed. After exploring the conditions under which China would accept infringements of sovereignty aimed at protecting basic values of humanity, the article suggests that the real challenge that Beijing will face going forward is not to show more willingness to engage in forcible interventions, but, rather, make credible contributions to peacefully preventing and halting the commission of atrocity crimes.

## **1. Introduction**

As an influential member of the international community, China faced heavy criticism for its handling of the Syrian crisis.<sup>1</sup> According to many, by calling for a political and consensual solution to the conflict while resisting the imposition of strong measures against the Assad government, China failed in its responsibility as a permanent member of the Security Council to help solve the crisis and hold the perpetrators of heinous crimes accountable.<sup>2</sup> Among other things, this wave of

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<sup>1</sup> For a discussion of the Chinese position on the crisis, see, Yun Sun, *China's Approach to the Syrian Crisis: Beyond the United Nations*, *China Policy Institute: Analysis*, 15 December 2014, and M. Swaine, *Chinese Views of the Syrian Conflict*, *China Leadership Monitor*, *Carnegie Endowment for International Peace*, 13 September 2012. For a broader discussion of the Security Council's early response to the conflict, see J. Gifkins, *The UN Security Council Divided: Syria in Crisis*, (2012) 4 *Global Responsibility to Protect*, pp. 377-393.

<sup>2</sup> Security Council, sixty-sixth year, 6627<sup>th</sup> meeting, 4 October 2011, UN Doc. S/PV.6627; Security Council, sixty-seventh year, 6711<sup>th</sup> meeting, 4 February 2012, UN Doc. S/PV.6711; and Security Council, sixty-ninth year, 7180<sup>th</sup> meeting, 22 May 2014, UN Doc. S/PV.7180. See, also, "China/Russia Veto a Victory for 'Impunity, Inaction and Injustice'" Global Center for the Responsibility to Protect, 4 October

criticism revealed the potential tension that exists between Beijing's intransigent defence of State sovereignty and an international system that is increasingly less State-centred in nature.<sup>3</sup> The significance and implications of this presumed incompatibility become all the more important in light of the fact that China is among the States who are benefitting from an ongoing process of re-distribution of power at the international level.<sup>4</sup> Indeed, as a military and economic power with a permanent seat at the Security Council, China today has not only an appetite but also the capacity to influence the course of global affairs.<sup>5</sup> As acknowledged also by Xue Hanqin, the current Chinese judge at the International Court of Justice, this situation has led to an 'understandable concern' about the role that Beijing will play on the world stage, not only economically but also politically and legally.<sup>6</sup> Under these circumstances, a better understanding of the nature and dynamics of China's defensive attitudes towards sovereignty appears not only useful but also desirable.

Sovereignty is a complex and contested concept which has both political, jurisdictional, economic and territorial connotations.<sup>7</sup> Recognizing its

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2011, at <http://www.responsibilitytoprotect.org/index.php/crises/191-the-crisis-in-syria/3916-global-center-for-the-responsibility-to-protect-chinarussia-veto-a-victory-for-impunity-inaction-and-injustice-> [accessed 25 January 2018]; and "UN: Russia, China Vetoes Betray Syrian People", Human Rights Watch, 4 February 2012, at <https://www.hrw.org/news/2012/02/04/un-russia-china-vetoes-betray-syrian-people> [accessed 25 January 2018].

<sup>3</sup> For a discussion of various manifestations of this tension, see, W. Muller, China: An Illiberal, Non-Western State in a Western-centric, Liberal Order?, (2016) 15 *Baltic Yearbook of International Law*, pp. 216–237; E. Posner and J. Yoo, International Law and the Rise of China, (2006-2007) 7 *Chicago Journal of International Law*, pp. 6-15; J. Ku, China and the Future of International Adjudication, (2012) 27 *Maryland Journal of International Law*, pp. 154-173. For non-legal analyses, see G. Chin and R. Thakur, "Will China Change the Rules of Global Order?", (2010) 33 *The Washington Quarterly*, pp. 119–38; and G. Ikenberry, The Rise of China and the Future of the West: Can the Liberal System Survive? *Foreign Affairs*, January/February 2008.

<sup>4</sup> W. Burke-White, Power Shifts in International Law: Structural Realignment and Substantive Pluralism, (2015) 56 *Harvard International Law Journal*, pp. 1-80.

<sup>5</sup> 'Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era', Speech by President Xi Jinping at the 19<sup>th</sup> National Congress of the Communist Party of China, 18 October 2017, at [http://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content\\_34115212.htm](http://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_34115212.htm); and 'The Essence of Major Country Diplomacy with Chinese Characteristics', Statement by Foreign Minister Wang Yi at the 19<sup>th</sup> National Congress of the Communist Party of China, 19 October 2017, at [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1503756.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1503756.shtml) [accessed 25 January 2018].

<sup>6</sup> Xue Hanqin, Chinese Observations on International Law, (2007) 6 *Chinese Journal of International Law*, pp. 83–93.

<sup>7</sup> See, among others, S. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press, 1999), L. Henkin, That "S" Word: Sovereignty, and Globalization, and Human Rights, Et cetera, (1999) 68

multidimensional character, Brierly described it as ‘an aggregate of particular and very extensive claims that States habitually make for themselves in their relations with other States.’<sup>8</sup> Given the variety of meanings that may be attached to it, this article does not aim to discuss all the possible manifestations of China’s stance on sovereignty.<sup>9</sup> Instead, its objective is to shed light on the latter through an analysis of Beijing's engagement with the principle of the Responsibility to Protect (R2P). R2P promises to be a valuable case-study because it is predicated on the idea that sovereignty is no longer inviolable but, rather, contingent on a State’s willingness and ability to protect its populations from atrocity crimes.<sup>10</sup> Thus, when a State perpetrates or allows such crimes on its territory, the principle of non-intervention, which is both a ‘substantiation and manifestation’ of sovereignty,<sup>11</sup> yields to the responsibility of the international community to (intervene to) protect.<sup>12</sup> To what extent, then, is China prepared to accept infringements of sovereignty that are ultimately aimed at protecting basic values of humanity? In answering this question, the article will highlight that Chinese attitudes towards sovereignty in the context of humanitarian crises are more complex and nuanced than often assumed. At a broader level, the article will also offer valuable insights into some of the dynamics affecting the rise of China to great power status, and especially the tension that exist between its ambition, and indeed, often, necessity, to take a more active role on the world stage and its traditionally restrained approach to foreign policy.

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*Fordham Law Review*, pp. 1-14, and H. Schermers, Different Aspects of Sovereignty, in G. Kreijen (ed), *State, Sovereignty and International Governance* (OUP 2002).

<sup>8</sup> J. Brierly, *The Law of Nations*, 4<sup>th</sup> ed (Clarendon Press, 1949) p. 48.

<sup>9</sup> For broader discussions, see W. Muller, China's Sovereignty in International Law: from Historical Grievance to Pragmatic Tool, (2013) 1 *China-EU Law Journal*, pp. 35-59, and A. Carlson, Moving Beyond Sovereignty? A Brief Consideration of Recent Changes in China's Approach to International Order and the Emergence of the Tianxia Concept, (2011) 68 *Journal of Contemporary China*, pp. 89– 102.

<sup>10</sup> On the concept of atrocity crimes, see, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (United Nations, 2014).

<sup>11</sup> R. Buchan, and N. Tsagourias, The Crisis in Crimea and the Principle of Non-Intervention, (2017) 19 *International Community Law Review*, pp. 165-193, at p. 172. See also, P. Kunig, Prohibition of Intervention, *Max Planck Encyclopedia of Public International Law* (April 2008), and R. Vincent, *Non-intervention and International Order* (Princeton University Press 1974).

<sup>12</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, International Development Research Centre, 2001, p. IX.

The article is structured as follows. Section 2 provides an overview of Chinese perspectives on the centrality of sovereignty in international law and relations. Section 3 illustrates the reasons behind China's strict approach to sovereignty, while also highlighting the factors that are pushing Beijing to soften its position on the principle. Following on that, Section 4 introduces the meaning and scope of R2P in international law. Section 5 goes on to examine China's conceptual engagement with R2P's three pillar-structure, while Section 6 turns to Beijing's practical implementation of the principle. Lastly, Section 7 draws some final conclusions.

## 2. Sovereignty in International Law and Relations: Chinese Perspectives

There is little doubt that the concept of sovereignty, which is typically defined as a State's capacity to exercise supreme authority within its territory and independence in relation to other States,<sup>13</sup> is key to the international legal system.<sup>14</sup> Article 2(1) of the Charter of the United Nations (UN) unambiguously affirms that 'the Organisation is based on the principle of the sovereign equality of States'.<sup>15</sup> No less importantly, the principle of non-intervention in the internal affairs of States, which represents 'the corollary of every State's right to sovereignty',<sup>16</sup> forms part of customary international law.<sup>17</sup> Following the same logic, a State's territorial integrity receives

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<sup>13</sup> See, among others, R. Lansing, Notes on Sovereignty in a State, (1907) 1 *The American Journal of International Law*, pp. 297-320; and R. Vincent, *supra* note 11, p. 40.

<sup>14</sup> *Case concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, International Court of Justice, Judgment of 23 May 2008, para. 122. See also, A. Cassese, States: Rise and Decline of the Primary Subjects of the International Community, in B. Fassbender and A. Peters (ed.) *The Oxford Handbook of the History of International Law* (OUP 2014) p. 69; and B. Buzan, *An Introduction to the English School of International Relations* (Polity Press 2014) p. 139.

<sup>15</sup> Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

<sup>16</sup> R. Jennings and A. Watts, *Oppenheim's International Law*, Volume 1 Peace (9<sup>th</sup> ed, Longman 1996) p. 428.

<sup>17</sup> *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, International Court of Justice, Judgment of 27 June 1982, paras. 202-204. See also, Article 8 of the 1933 *Montevideo Convention on the Rights and Duties of States*; General Assembly resolution 2131 (XX) on the *Declaration on Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of the Independence and Sovereignty*; General Assembly resolution 36/103 on the *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*; and General Assembly resolution 2625 (XXV) on *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.

international legal protection as a fundamental component of statehood.<sup>18</sup> All that being said, it is undeniable that in the past few decades the scope of sovereignty has undergone an important transformation. In particular, the expanding reach of international law, combined with the rapid development of economic globalization, has limited States' ability to freely exercise their sovereign powers in several important ways.<sup>19</sup> For some, this erosion of sovereignty has called, or should call into question the validity of State-centric models of international relations.<sup>20</sup> For others, States have simply used their sovereign powers to limit their powers, and, in doing so, have redefined sovereignty in light of new conditions and circumstances.<sup>21</sup> According to this narrative, 'sovereignty' is not in decline; on the contrary, it is set to remain firmly at the centre of both world politics and international law.<sup>22</sup>

Among the States that subscribe to the latter view is certainly China. In his 1989 Hague Lecture, the late Wang Tieya emphasized that China regards the principle of sovereignty 'as the cornerstone of the whole system of international law.'<sup>23</sup> Almost three decades later, the primacy of sovereignty remains a distinguishing feature of Chinese international legal discourse.<sup>24</sup> To be sure, this is not tantamount to saying

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<sup>18</sup> Article 2(4) of the UN Charter. See also, Article 1 of the 1974 *Consensus Definition of Aggression* adopted by General Assembly Resolution 3314 (XXIX); and General Assembly resolution 2625 (XXV), *supra* note.

<sup>19</sup> For a discussion, see, C. Eric, *Globalization and the Future of the Law of the Sovereign State*, (2010) 8 *International Journal of Constitutional Law*, pp. 636-655; A. Coleman and J. Magoto, "Westphalian" Meets "Eastphalian" Sovereignty: China in a Globalized World, (2013) 3 *Asian Journal of International Law*, pp. 237-269; and A. Pronto, 'Human-Rightism' and the Development of General International Law, (2007) 20 *Leiden Journal of International Law*, pp. 753-765, at p. 755.

<sup>20</sup> T. Jacobsen, C. Sampford, and R. Thakur, *Re-Envisioning Sovereignty: The End of Westphalia?* (Ashgate 2008); A. Van Staden and H. Vollaard, *The Erosion of State Sovereignty: Towards a Post-territorial World?* in G. Kreijen (ed), *supra* note 7; R. Falk, *Revisiting Westphalia, Discovering Post-Westphalia*, (2002) 6 *The Journal of Ethics*, pp. 311-352; A. Peters, *Humanity as the A and Ω of Sovereignty*, (2009) 3 *European Journal of International Law*, pp. 513-544.

<sup>21</sup> *Case of the S.S. Wimbledon*, Judgment of 17 August 1923 (Series A, No. 1), First Annual Report of the Permanent Court of International Justice, pp. 163-168. See, also, R. Jennings, *Sovereignty and International Law*, in G. Kreijen (ed), *supra* note 7, p. 36.

<sup>22</sup> S. Krasner, *Think Again: Sovereignty*, Foreign Policy, 20 November 2009; Zewei Yang, *The End of State Sovereignty? - From a Chinese Perspective*, in P. Sevastik (ed) *Aspects of Sovereignty: Sino-Swedish Reflections* (Martinus Nijhoff 2013) pp. 161-178; and J. Alvarez, *The Schizophrenias of R2P*, in P. Alston and E. Macdonald (ed) *Human Rights, Intervention, and the Use of Force* (OUP 2008).

<sup>23</sup> W. Tieya, *International law in China: Historical and Contemporary Perspectives* (Volume 221) *Collected Courses of the Hague Academy of International Law* (Brill Nijhoff, 1990) 288.

<sup>24</sup> Xue Hanqin, *Chinese Contemporary Perspectives on International Law: History, Culture and International Law*, *Pocketbooks of the Hague Academy of International Law* (Martinus Nijhoff Publishers, 2012) Chapter 2; W. Muller, *supra* note 9; P. Chan, *China, Sovereignty and International Legal Order* (Brill/Nijhoff 2015); S. Ogden, *Sovereignty and International Law: the Perspective of the People's*

that Beijing clings to an absolute notion of sovereignty.<sup>25</sup> As recently acknowledged by President Xi Jinping, China engages daily with the challenges and opportunities posed by the contemporary globalized world, mindful that its own dependence on such world is constantly deepening.<sup>26</sup> In doing so, Beijing fully accepts that the combined forces of international markets, resources and rules can affect, and to some extent limit, its sovereign powers.<sup>27</sup> Indeed, China has accepted important restrictions of its own sovereignty as a result of global pressures and incentives. The most notable example is provided by its accession, in 2001, to the World Trade Organization (WTO). At that time, in order to further integrate into, and benefit from, the world economy, China not only agreed to an 'ambitious package of market opening commitments',<sup>28</sup> but also accepted the WTO's system of compulsory dispute settlement notwithstanding its traditional reluctance to submit to international adjudication.<sup>29</sup> Also of relevance is the fact that, despite expressing strong reservations about the international human rights project,<sup>30</sup> China has both ratified six of the nine core international human rights treaties and accepted the legitimacy of various international monitoring mechanisms which inevitably interfere with the way in which States treat their own citizens.<sup>31</sup>

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Republic of China, (1974) 7 *New York University Journal of International Law and Politics*, pp. 1-32; J. Pan, *Sovereignty's Implications for China: Then and Now*, in P. Sevastik (ed), *supra* note 22; Li Zhaojie, *Legacy of Modern Chinese History: its Relevance to the Chinese Perspective of the Contemporary International Legal Order*, (2001) 5 *Singapore Journal of International & Comparative Law*, pp. 314-326.

<sup>25</sup> Wang Tieya, *supra* note 23, p. 292; See, also, Xue Hanqin, *supra* note 24, p. 80.

<sup>26</sup> Statement by President Xi Jinping at The Central Conference on Work Relating to Foreign Affairs, Beijing, 29 November 2014, at [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1215680.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1215680.shtml). See also, 'Exploring the Path of Major-Country Diplomacy with Chinese Characteristics', Remarks by Foreign Minister Wang Yi at the Launch of the World Peace Forum, 27 June 2013, at [http://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/2461\\_663310/t1053908.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/2461_663310/t1053908.shtml) [accessed 25 January 2018].

<sup>27</sup> Statement by President Xi Jinping, *supra* note.

<sup>28</sup> 'Overview of the Terms of China's Accession to WTO', European Commission, 1 October 2001, para. 56, at [http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc\\_111955.pdf](http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_111955.pdf) [accessed 25 January 2018].

<sup>29</sup> See, for example, H. Moynihan, *China's Evolving Approach to International Dispute Settlement* (Chatham House, 2017).

<sup>30</sup> See, for example, Article 1 of the Beijing Declaration adopted by the First South-South Human Rights Forum on 8 December 2017, at [http://www.xinhuanet.com/english/2017-12/08/c\\_136811775.htm](http://www.xinhuanet.com/english/2017-12/08/c_136811775.htm) [accessed 25 January 2018]. See, also, *The Costs of International Advocacy: China's Interference in United Nations Human Rights Mechanisms* (Human Rights Watch, 2017).

<sup>31</sup> See, among others, S. Sceats and S. Breslin, *China and the International Human Rights System* (Chatham House, 2012).

Yet, China's recognition of the elastic nature of sovereignty is tempered by two fundamental caveats which ultimately define Chinese defensive attitudes towards the principle. First, China opposes restrictions to sovereignty that are non-reciprocal and non-voluntary;<sup>32</sup> and, second, it firmly opposes any attempt to conceptually undermine sovereignty as the building block of international law and relations.<sup>33</sup>

In line with this defensive stance, Chinese policy statements regularly underline the importance of respecting the principles of sovereign equality and non-intervention,<sup>34</sup> rhetorically portray sovereignty as 'the most important feature of any independent State',<sup>35</sup> and warn against infringements upon the territorial integrity of any country.<sup>36</sup> The same attitudes are reflected in official documents relating to international law. For example, a 2016 joint declaration with Russia on the Promotion of International Law expressly affirmed the centrality of the principles of sovereign equality and non-intervention for the stability of international relations.<sup>37</sup> In the same fashion, China's written statement to the International Court of Justice in the 2009 Kosovo opinion strongly defended the inviolability of State sovereignty and territorial integrity.<sup>38</sup> Inevitably, China's stance on sovereignty also informs Beijing's approach

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<sup>32</sup> Wang Zonglai and Hu Bin, *China's Reform and Opening-up and International Law*, (2010) 9 *Chinese Journal of International Law*, pp. 193–203, at p. 197; and Wang Tieya, *supra* note 23, p. 295.

<sup>33</sup> Xue Hanqin, *supra* note 24, p. 94; Wang Tieya, *supra* note 23, p. 296.

<sup>34</sup> See, for example, 'Firmly March on the Path of Socialism with Chinese Characteristics and Strive to Complete the Building of a Moderately Prosperous Society in All Respects', Speech by President Hu Jintao at the 18<sup>th</sup> National Congress of the Communist Party of China (8 November 2012), at [http://www.china.org.cn/china/18th\\_cpc\\_congress/2012-11/16/content\\_27137540.htm](http://www.china.org.cn/china/18th_cpc_congress/2012-11/16/content_27137540.htm); and the Position Papers of the People's Republic of China at the 71<sup>st</sup> (8 August 2016) and 72<sup>nd</sup> (5 September 2017) Sessions of the United Nations General Assembly, respectively at <http://www.china-un.org/eng/hyfy/t1396325.htm>, and [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/P020170904435053466190.pdf](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/P020170904435053466190.pdf) [accessed 25 January 2018].

<sup>35</sup> 'Carry forward the Five Principles of Peaceful Coexistence to Build a Better World Through Win-win Cooperation', Address by President Xi Jinping at Meeting Marking the 60<sup>th</sup> Anniversary of the Initiation of the Five Principles of Peaceful Coexistence, 28 June 2014, at [http://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/zyjh\\_665391/t1170143.shtml](http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1170143.shtml) [accessed 25 January 2018].

<sup>36</sup> *Ibid*; See, also, 'Secure a Decisive Victory', *supra* note 5.

<sup>37</sup> *The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law*, 25 June 2016, at [http://www.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/2331698](http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698) [accessed 25 January 2018].

<sup>38</sup> Written Statement of the People's Republic of China to the International Court of Justice on the Issue of Kosovo, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)* 16 April 2009, at <http://www.icj-cij.org/files/case-related/141/15611.pdf> [accessed 25 January 2018].

to foreign policy. Since the mid-1950s the conduct of Chinese foreign affairs has been shaped by the five principles of peaceful coexistence, which affirm, in essence, that States should respect each other's sovereignty and refrain from intervening in each other's internal affairs in order to establish peaceful and stable relations.<sup>39</sup> The inclusion of the five principles in the Preamble to the Chinese Constitution is testament to their enduring institutional relevance.<sup>40</sup> As Chinese authorities rarely miss an opportunity to highlight China's allegiance to these principles,<sup>41</sup> the latter show no sign of diminishing in importance.<sup>42</sup> On the contrary, as will be further discussed below, they currently underpin Beijing's endeavors to explore new forms of diplomacy.<sup>43</sup>

While all the above clearly highlights how the concept of sovereignty frames the Chinese visions of international law and relations, it is important to note that China's real approach to questions of sovereignty is more pragmatic and flexible than its rhetoric seems to suggest.<sup>44</sup> The reasons for and implications of this incongruence will be discussed in the next section.

### 3. China and Sovereignty: Navigating Between Competing Impulses

As explained by Wang Tieya, China's defensive stance on sovereignty is, first and foremost, a direct consequence of the Chinese people's 'struggles for their [own] lost

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<sup>39</sup> The five principles are: mutual respect for each other's territorial integrity and sovereignty; mutual non-aggression; mutual non-interference in each other's internal affairs; equality and mutual benefit; and peaceful coexistence.

<sup>40</sup> Constitution of the People's Republic of China as amended on 14 March 2004, at [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm) [accessed 25 January 2018].

<sup>41</sup> 'Carry forward the Five Principles of Peaceful Coexistence', supra note 35; See, also, Statement by Ambassador Liu Jieyi at the Security Council Open Debate on Maintenance of International Peace and Security, 21 August 2014, at <http://www.china-un.org/eng/chinaandun/securitycouncil/t1186619.htm> [accessed 25 January 2018].

<sup>42</sup> *Carry forward the Five Principles of Peaceful Coexistence*, supra note 35.

<sup>43</sup> *Ibid.*; *Work Together to Build a Community of Shared Future for Mankind*, Speech by President Xi Jinping at the United Nations Office at Geneva, 18 January 2017, at <http://iq.chineseembassy.org/eng/zygx/t1432869.htm> [accessed 25 January 2018]; and 'Secure a Decisive Victory', supra note 5.

<sup>44</sup> A. Carlson, *On Being Sovereign During a Time of Increased Interdependence: China's Evolving Approach to Sovereignty and Its Implications for Chinese Foreign Relations*, in S. Breslin (ed), *Handbook of China's International Relations* (Routledge, 2010).

sovereignty.’<sup>45</sup> To appreciate this point, one must refer to what in Chinese history is known as the century of humiliation. This historical period, which began in 1839 with the first Opium War and lasted over 100 years, saw China reduced to a semi-colonial status by a series of military aggressions at the hands of Western powers and Japan. A distinguishing feature of this period was the imposition of the so-called ‘unequal treaties’, in which China was forced to concede many of its territorial and sovereignty rights. Crucially, this era of discrimination and domination by outside powers strikingly contrasted with the glories of Imperial China and the Chinese civilization. According to official accounts, it was only with Mao Zedong’s proclamation of the founding of the People’s Republic of China in 1949 that this sad chapter of Chinese history came to an end. Due to Cold War dynamics, however, communist China was excluded from the UN until October 1971, a circumstance which further added to Beijing’s growing sense of victimhood.<sup>46</sup> There is little doubt that the century of humiliation has been rhetorically used by governmental officials to serve a variety of purposes. This, however, does not change the fact that this experience of subjugation and humiliation, now deeply embedded in the nation’s collective psyche, has importantly contributed to define China’s distrust for interventionist foreign policies.

This aversion is further motivated by strategic reasons. In particular, by respecting the principles of sovereignty and non-intervention in its relations to other States, China preserves its ability to use those same principles as legal tools to protect itself against foreign attempts to meddle in its internal affairs. For a country determined to resist the imposition of Western liberal models of society, and confronted with a number of security-related challenges that have both domestic and international dimensions, the importance of this extra-layer of (legal) protection can hardly be overstated. Thus, in the words of President Xi Jinping:

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<sup>45</sup> Wang Tieya, *supra* note 23, p. 290. See also Wang Yi, *China: A Staunch Defender and Builder of the International Rule of Law*, (2014) 13 *Chinese Journal of International Law*, pp. 635-638, at p. 635.

<sup>46</sup> China’s seat at the United Nations was initially controlled by the Republic of China, which at the time was based in Taiwan where the Nationalists led by Chiang Kai-shek had fled following their defeat in the civil war against the Communists. By 1971, however, the People’s Republic of China had gained enough international support for the UN General Assembly to pass a resolution declaring that it, and not the Republic of China, was the rightful representative of China. See, UN General Assembly Resolution 2758 (25 October 1971).

'The principle of sovereignty not only means that the sovereignty and territorial integrity of all countries are inviolable and their internal affairs are not subjected to interference. It also means that all countries' right to independently choose social systems and development paths should be upheld, and that all countries' endeavors to promote economic and social development and improve their people's lives should be respected.<sup>47</sup>

As to the correlation between sovereignty and security threats, the following passage from the 1993 Chinese government white paper on the question of Taiwan is particularly instructive:

'In international affairs, the Chinese Government always pursues a foreign policy of peace and adheres to the Five Principles of [peaceful coexistence]. It actively seeks to develop friendly relations with all countries of the world and will never undermine any country's interests nor interfere in its internal affairs. By the same token, it expects all other governments to refrain from undermining China's interests or interfering in China's internal affairs and to correctly handle their relations with Taiwan.'<sup>48</sup>

Of special relevance, here, is the U.S.' relationship with Taiwan. This is so because, despite acknowledging the Chinese government's position that 'there is but one China and Taiwan is part of China',<sup>49</sup> the U.S. has officially committed to assist Taipei in maintaining its defensive capability.<sup>50</sup> Given China's goal of promoting peaceful national reunification while opposing Taiwanese secessionist forces, Washington's involvement is inevitably seen as an interference in China's internal affairs and is, therefore, viewed with deep suspicion by Beijing.

It is clear from the above that China has legitimate concerns about the potential weakening of sovereignty as a central principle of international relations. That said, while memories of the past and present-day self-preservation strategies may discourage Beijing from taking a more relaxed approach towards the principle, other factors steer it in a very different direction. The first thing to note in this respect is that

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<sup>47</sup> 'Working Together to Forge a New Partnership of Win-win Cooperation and Create a Community of Shared Future for Mankind', Statement by President Xi Jinping at the General Debate of the 70<sup>th</sup> Session of the UN General Assembly (28 September 2015) at <http://www.chinese-embassy.org.uk/eng/zgyw/t1305051.htm> [accessed 25 January 2018].

<sup>48</sup> 'The Taiwan Question and Reunification of China', Taiwan Affairs Office & Information Office of the State Council, August 1993, Beijing. See, also, 'The One-China Principle and the Taiwan Issue', Taiwan Affairs Office & Information Office of the State Council, February 2000, Beijing.

<sup>49</sup> Joint Communiqué of the People's Republic of China and the United States of America, February 28, 1972, at <http://www.china-embassy.org/eng/zmgx/doc/ctc/t36255.htm> [accessed 25 January 2018].

<sup>50</sup> H.R.2479 - Taiwan Relations Act, 96<sup>th</sup> Congress (1979-1980) at <https://www.congress.gov/bill/96th-congress/house-bill/2479> [accessed 25 January 2018].

the expansion of China's overseas interests has had a profound impact on the trajectory of its foreign policy. Following the programme of market reforms initiated in the late 1970s by Deng Xiaoping, China went, within just a few decades, from being politically isolated and economically weak to becoming an economic giant fully integrated in the international system. When the need to support this unprecedented economic growth began to require access to natural resources abroad, China's global footprint inevitably, and considerably, expanded.<sup>51</sup> Under the new circumstances, Beijing soon realized the importance of protecting its growing overseas interests (in the form of investments, assets and personnel), prompting a gradual, and yet significant, adjustment of its foreign policy thinking. In 2004, President Hu Jintao publicly referred to the necessity to enhance China's capability to safeguard its interests abroad;<sup>52</sup> a few years later the same concerns began to feature prominently in official State documents.<sup>53</sup> Accordingly, the question of instability in countries of strategic importance to Beijing has been gradually integrated into Chinese foreign policy. Yet, how can China strive to promote structural stability abroad without interfering with the internal political and economic affairs of States? Evidently, the need to protect its global interests has made a rigid interpretation of the five principles of peaceful coexistence increasingly untenable, drawing China into a sort of 'non-intervention' dilemma.<sup>54</sup> Against this background, it is not surprising that some Chinese scholars have begun suggesting that pragmatic concepts such as 'creative

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<sup>51</sup> For a broader discussion of China's economic transformation, see, E. Economy and M. Levi, *By All Means Necessary* (OUP 2014).

<sup>52</sup> The 10th Conference of Chinese Diplomatic Envoys Stationed Abroad, Beijing, August 2004, at <http://www.china-un.ch/eng/xwtd/t156047> [accessed 25 January 2018]. For a discussion, see M. Duchâtel, O. Bräuner and Zhou Hang, *Protecting China's Overseas Interests: The Slow Shift away from Non-interference*, SIPRI Policy Paper, June 2014.

<sup>53</sup> For example, 'The Diversified Employment of China's Armed Forces', Information Office of the State Council, Beijing, April 2013; and 'China's Military Strategy', Information Office of the State Council, Beijing 2015.

<sup>54</sup> Z. Pang, China's Non-Intervention Question, (2009) 1 *Global Responsibility to Protect*, pp. 237-252, at p. 246.

involvement,'<sup>55</sup> 'soft intervention',<sup>56</sup> 'harmonious intervention',<sup>57</sup> or 'conditional interference',<sup>58</sup> should now shape China's foreign policy decision making.<sup>59</sup>

The move away from a strict non-intervention policy is simultaneously driven by another factor, namely China's ambition to act as a responsible global power. Economic growth has brought with it increasing demands that China become a responsible stakeholder. Although some in China have dismissed these calls as Western attempts to hinder the rise of the country, Chinese officials have ultimately embraced the idea that with more power comes more responsibility.<sup>60</sup> At one level, China interprets this new role as an entitlement to be more vocal on the world stage, including, crucially, on questions of international law that directly affect its national interests. In an important sense, however, by accepting the costs and burden that come with being a responsible power Beijing is also seeking to refute the 'China threat theory', which, by portraying the country as a destabilizing force in global affairs, undermines both the present and future status of China in the world.<sup>61</sup> Against this background, China's contribution to collective efforts to, *inter alia*, improve global economic welfare,<sup>62</sup> combat climate change,<sup>63</sup> and strengthen non-proliferation regimes<sup>64</sup> represent important signs of Beijing's intention to engage responsibly with

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<sup>55</sup> Yizhou Wang, *Creative Involvement: A New Direction in China's Diplomacy* (Routledge 2017) and *Creative Involvement: The Evolution of China's Global Role* (Routledge 2017).

<sup>56</sup> Shitong Qiao, *Whither China's Non-Interference Principle?* ESIL Conference Paper Series (2/2011).

<sup>57</sup> Chiung-Chiu Huang and Chih-yu Shih, *Harmonious Intervention: China's Quest for Relational Security* (Routledge 2016).

<sup>58</sup> Zhongying Pang, China's Non-Intervention Question, (2009) 1 *Global Responsibility to Protect*, pp. 237-252.

<sup>59</sup> Chen Zheng, China Debates the Non-Interference Principle, (2016) 9 *Chinese Journal of International Politics*, pp. 349-374.

<sup>60</sup> 'China's Peaceful Development', Information Office of the State Council, Beijing, September 2011; 'Secure a Decisive Victory', *supra* note 5; 'Exploring the Path of Major-Country Diplomacy with Chinese Characteristics', *supra* note 26.

<sup>61</sup> See, for one, R. Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (OUP 2007).

<sup>62</sup> 'Jointly Shoulder Responsibility of Our Times, Promote Global Growth', Keynote speech by Xi Jinping at the Opening Session of the World Economic Forum Annual Meeting, Davos, 17 January 2017, at [http://www.xinhuanet.com/english/2017-01/18/c\\_135991184.htm](http://www.xinhuanet.com/english/2017-01/18/c_135991184.htm) [accessed 25 January 2018].

<sup>63</sup> 'China's Policies and Actions for Addressing Climate Change', The Information Office of China's State Council, Beijing, 5 November 2013; M. Landler, U.S. and China Reach Climate Accord After Months of Talks, *The New York Times*, 11 November 2014; EU-China Leaders' Joint Statement on Climate Change and Clean Energy, 2 June 2017, at <http://www.ecbi.org/sites/default/files/EU-China-Leaders-Joint-Statement-on-Climate-Change.pdf.pdf> [accessed 25 January 2018].

<sup>64</sup> 'China's Endeavors for Arms Control, Disarmament and Non-Proliferation', The Information Office of the State Council, Beijing, September 2005; On the role played by China in reaching the P5+1 nuclear deal with Iran, see 'Readout of the President's Call with Chinese President Xi Jinping', The White House, Office

global challenges. These actions certainly improve the international image of China, but so does taking concrete steps in particularly sensitive areas such as, for example, conflict prevention and resolution, that require a more direct involvement in States' domestic affairs. In this sense, Beijing's expanding engagement with UN peacekeeping operations, which will be further discussed in section 6 below, has also brought reputational benefits to China, enhancing its moral standing both in the eyes of its own citizens and those of other countries.<sup>65</sup>

It is, therefore, clear that China is caught between the desire, or, at least, temptation, to soften its approach to 'non-intervention' and the awareness that doing so in an unconstrained manner could contribute, against its own interests, to mount a serious challenge to the essence of sovereignty. In many important respects, Beijing's inauguration of a new era of foreign policy based on the concept of 'major country diplomacy with Chinese characteristics' seeks to strike a balance between these two competing impulses.<sup>66</sup> Under the leadership of Xi Jinping, China has *explicitly* acknowledged the need to adjust its foreign policy in line with its new status as a global power.<sup>67</sup> In a marked departure from Deng Xiaoping's cardinal rule of 'keeping a low profile and biding your time', this means that, as China's global influence and interests grow, its diplomacy must become more 'enterprising and innovative.'<sup>68</sup> Among other things, this new proactive approach presupposes that

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of the Press Secretary, July 21, 2015, at <https://obamawhitehouse.archives.gov/the-press-office/2015/07/21/readout-president%E2%80%99s-call-chinese-president-xi-jinping> [accessed 25 January 2018]; *US-China Joint Statement on Nuclear Security Cooperation*, 1 April 2016, at <http://www.chinese-embassy.org.uk/eng/zgyw/t1353099.htm> [accessed 25 January 2018]; *China's Five Principles for a Comprehensive Solution of the Iranian Nuclear Issue*, 19 February 2014, at [http://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/zjzg\\_663340/jks\\_665232/jkxw\\_665234/t1129941.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjzg_663340/jks_665232/jkxw_665234/t1129941.shtml) [accessed 25 January 2018]; and *Wang Yi Raises Four-point Proposal on Negotiation on Iranian Nuclear Issue*, 1 April 2015, at [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1251850.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1251850.shtml) [accessed 25 January 2018].

<sup>65</sup> G. Bates and Chin-hao Huang, *China's Expanding Peacekeeping Role: its Significance and the Policy Implications*, SIPRI Policy Brief, February 2009.

<sup>66</sup> 'Exploring the Path of Major-Country Diplomacy with Chinese Characteristics', supra note 26; Statement by President Xi Jinping, supra note 26; 'Build a New Type of International Relations Featuring Win-win Cooperation', Wang Yi, 1 July 2016, at [http://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/2461\\_663310/t1376908.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/2461_663310/t1376908.shtml) [accessed 25 January 2018]; 'Secure a Decisive Victory', supra note 5. For a discussion, see B. Glaser and A. Szalwinski, *Major Country Diplomacy with Chinese Characteristics*, (2013) 16 *China Brief*, pp. 9-12.

<sup>67</sup> Statement by President Xi Jinping, supra note 26.

<sup>68</sup> 'Exploring the Path of Major-Country Diplomacy with Chinese Characteristics', supra note 26.

Beijing should become more directly involved in addressing complex international situations and strive to provide a Chinese perspective to their solution.<sup>69</sup>

The advancement of this new form of diplomacy, however, should not be read as a validation of interventionist policies and/or a challenge to other States' sovereignty. Indeed, Chinese authorities have been careful to emphasize that Beijing's new foreign policy will continue to be guided by the five principles of peaceful coexistence,<sup>70</sup> and that mutual respect based on the sovereign equality of States, peace, development, and win-win cooperation (as opposed to confrontation) constitute the pillars on which the model of international relations envisioned by China is built. Indeed, a clear indication that Beijing has no intention to repudiate its traditional anti-interventionist stance can be found in Foreign Minister Wang Yi's articulation of the three principles that China is called to respect while 'handling hotspot issues', namely refraining from intervening in the internal affairs of States, avoiding the pursuit of selfish interests, and promoting political, rather than military, solutions.<sup>71</sup>

Having outlined the dynamics of China's present-day struggle to define a straightforward approach to questions of sovereignty and non-intervention, the article will now proceed to evaluate how the competing forces that were discussed above play out in the specific context of Beijing's engagement with R2P.

#### **4. R2P in International Law**

It is widely accepted, today, that the international community should contribute to prevent, and if prevention fails, respond to atrocity crimes. What is less clear is under what circumstances, and how, it should do so. Amidst these uncertainties, R2P has gained international recognition as a guiding principle for collective action against

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<sup>69</sup> 'Toward a New Type of International Relations', Speech by Foreign Minister Wang Yi at the Launch of the China Development Forum, 25 March 2015, at [http://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/wjbz\\_663308/2461\\_663310/t1248487.shtml](http://www.fmprc.gov.cn/mfa_eng/wjb_663304/wjbz_663308/2461_663310/t1248487.shtml) [accessed 25 January 2018].

<sup>70</sup> 'Secure a Decisive Victory', supra note 5; 'Exploring the Path of Major-Country Diplomacy with Chinese Characteristics', supra note 26.

<sup>71</sup> 'Toward a New Type of International Relations', supra note 69; Speech by Foreign Minister Wang Yi at the Opening of the Symposium on International Developments and China's Diplomacy, 10 December 2017, at [http://www.fmprc.gov.cn/mfa\\_eng/wjbxw/t1518130.shtml](http://www.fmprc.gov.cn/mfa_eng/wjbxw/t1518130.shtml) [accessed 25 January 2018].

genocide, war crimes, crimes against humanity, and ethnic cleansing, quickly evolving from representing an emerging idea in the late 1990s to being openly accepted into the international legal space and formally embedded in the UN institutional architecture only a few years later.<sup>72</sup> In this sense, it represents a useful lens through which to analyze contemporary perspectives on how to protect endangered populations.

In many respects, it was the events in Rwanda, Srebrenica, and Kosovo that accelerated the emergence of R2P. On the one hand, the failure of the international community to protect the victims of the genocide that took place in Rwanda and Srebrenica made it abundantly clear that international mechanisms needed to be created in order to deal promptly and efficiently with conscience-shocking events of that kind.<sup>73</sup> On the other hand, the decision of NATO to intervene militarily in Kosovo to put an end to the ethnic cleansing campaign initiated by Slobodan Milosevic was widely criticized both outside NATO and among international lawyers. While, politically, many questioned the narrative of this ‘humanitarian intervention’ as necessary and beneficial, it was the dubious legal basis of the operation that ultimately undermined its credibility.<sup>74</sup> At that time, despite recognizing that the situation in Kosovo constituted a threat to peace and security in the region, and even referring to an impending humanitarian catastrophe that needed to be prevented, the UN Security Council fell short of authorizing military action against the Federal Republic of Yugoslavia.<sup>75</sup> This omission is of enormous significance in terms of

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<sup>72</sup> Among the many academic publications on R2P, see, A. Bellamy and T. Dunne, *The Oxford Handbook of the Responsibility to Protect* (OUP, 2016); R. Thakur and W. Maley, *Theorizing the Responsibility to Protect* (CUP 2015); C. Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’ (2007) 101 *American Journal of International Law*, p. 99-120; and A. Orford, *From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept*, (2011) 3 *Global Responsibility to Protect*, pp. 400-424.

<sup>73</sup> Report of Secretary-General pursuant to General Assembly Resolution 53/35, *The Fall of Srebrenica*, UN Doc. A/54/549 (15 November 1999) and Report of the Independent Inquiry into the Actions of the United Nations during the 1994 genocide in Rwanda, UN Doc. S/1999/1257 (16 December 1999).

<sup>74</sup> On the notion of humanitarian intervention, see, among others, B. Simms and D. Trim (eds), *Humanitarian Intervention: A History* (CUP 2013); S. Chesterman, *Just War Or Just Peace?: Humanitarian Intervention and International Law* (OUP 2001); N. White, “The Legality of Bombing in the Name of Humanity” (2000) 5 *Journal of Conflict and Security Law*, pp. 27-43; P. Hipold, “Humanitarian Intervention: Is There Need for a Legal Reappraisal?”, (2001) 12 *European Journal of International Law*, pp. 437-468; N. Krisch, ‘Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo’, (2002) 13 *European Journal of International Law*, pp. 323-335.

<sup>75</sup> See, in particular, UN Doc. S/RES/1199 (1998) of 23 September 1998.

international law. According to the UN Charter, member States are allowed to use force in the conduct of their international relations only in self-defense (Article 51) or as authorized by the Security Council (acting under its Chapter VII powers). Outside these two categories of exception, States are under a general obligation, reflected in Article 2(4), to refrain from using force.

In light of the above, it is not surprising that a significant number of States disputed the legality of the NATO campaign.<sup>76</sup> In response, it was suggested that, while *illegal*, the intervention was nevertheless *legitimate* because all diplomatic avenues had been exhausted and no other way of stopping the ongoing atrocities was realistically conceivable.<sup>77</sup> Although admirable in its intent, this attempt to reconcile legality and morality fully exposed the inherent political and legal difficulties surrounding the notion of humanitarian intervention, catalyzing the conceptual shift towards a, politically, less contested and, legally, more acceptable solution to the problem of heinous crimes.<sup>78</sup>

This shift materialized in the form of R2P. In September 2000, the government of Canada and a group of major foundations set up the International Commission on Intervention and State Sovereignty (ICISS) with the task of reflecting on the legal, moral, operational and political questions surrounding the issue of intervention for humanitarian purposes. The ensuing report, completed in 2001, successfully reframed the intervention discourse by shifting the terms of the debate from an individual *right* to intervene to a collective *responsibility* to protect.<sup>79</sup> In doing so, however, it envisioned a variant of R2P which many States considered too ambitious, especially if juxtaposed with the existing rules of international law on the use of force.<sup>80</sup> A few

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<sup>76</sup> See, for example, the position of the Non-Aligned Movement in the aftermath of the intervention in Kosovo. XIII Ministerial Conference, Cartagena, April 2000, para. 263.

<sup>77</sup> For example, Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000). See, also, A. Roberts, *Legality vs Legitimacy: Can Uses of Force be Illegal but Justified?* in P. Alston and E. Macdonald (ed) *Human Rights, Intervention and the Use of Force* (OUP 2008).

<sup>78</sup> *We the Peoples: The Role of the United Nations in the Twenty-first Century*, Report of the Secretary-General, UN Doc. A/54/2000, 27 March 2000, para. 217.

<sup>79</sup> *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, supra note 12.

<sup>80</sup> See, among others, P. Quinton- Brown, *Mapping Dissent: The Responsibility to Protect and Its State Critics*, (2013) 5 *Global Responsibility to Protect*, pp. 260-282; A. Bellamy, *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, (2006) 20 *Ethics & International Affairs*,

years later, this general dissatisfaction led to a substantial redefinition of R2P as reflected in the World Summit Outcome unanimously adopted by the General Assembly in resolution 60/1 of 2005.

The World Summit Outcome diluted the ICISS-inspired model of R2P in four main ways. First, by restricting the scope of R2P interventions to genocide, war crimes, ethnic cleansing and crimes against humanity; second, by requiring that States 'manifestly fail' to protect their populations before any R2P action may be contemplated; third, by re-affirming that the use of force is the monopoly of the Security Council; and, finally, by subscribing to a qualified political commitment by the international community to protect endangered people rather than accepting a legal responsibility to do so. For the purpose of this article, it is particularly important to highlight that, by referring to States' commitment 'to take timely and decisive action on a case-by-case basis' and eschewing the formulation of a set of criteria informing the relevant decision-making process, the World Summit Outcome granted the Security Council, and, in turn, the P5, a large room for maneuver in implementing the principle.

The essence of this (cautious) version of R2P was later captured in the 'three pillar structure' put forward by the UN General Secretary Ban Ki Moon.<sup>81</sup> According to this model, the first pillar of R2P refers to the responsibility of individual States to protect their populations from atrocity crimes; the second affirms the responsibility of the international community, through the UN, to use all appropriate peaceful means to 'assist' States in effectively discharging the above duty; and the third relates to the responsibility of the international community to take, on a case-by-case basis, timely and decisive action if a State is manifestly failing to protect its population. It is through the lens of this prudent, and internationally validated variant of R2P that the

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pp. 143-169; M. Pollentine, *Constructing the Responsibility to Protect* (PhD Thesis, Cardiff University 2012). See also, Final Document of the 14<sup>th</sup> Summit Conference of Heads of State or Government of the Non-Aligned Movement (Havana, September 2006), at [http://cns.miis.edu/nam/documents/Official\\_Document/14NAMSummit-Havana-Compiled.pdf](http://cns.miis.edu/nam/documents/Official_Document/14NAMSummit-Havana-Compiled.pdf) [accessed 25 January 2018]; and *Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, International Development Research Centre, 2001.

<sup>81</sup> 'Implementing the Responsibility to Protect', Report of the Secretary-General, UN Doc. A/63/677 (12 January 2009).

remaining part of the article will examine China's conceptual and practical engagement with the various dimensions of the principle.

### **5. China and R2P's Three Pillar-Structure: Conceptual Engagement**

In an important sense, R2P presupposes a novel understanding of State sovereignty.<sup>82</sup> States are still entitled to exercise exclusive jurisdiction within their own territory as well as to conduct their affairs without outside interference; yet, crucially, these prerogatives are no longer absolute but, instead, become contingent on a State's willingness and ability to protect its population from mass atrocities. In other words, should a State fail to live up to its responsibility to protect its own people, that responsibility is transferred to the international community. The first dimension of this new vision of sovereignty, namely that States have a duty to protect their populations, is not particularly controversial if one considers the evolution of international law in the last few decades, especially in the fields of international criminal law and international human rights law. On the contrary, the proposition that States' entitlement to immunity from external interferences wanes as they fail to protect their own people is inevitably more problematic in that it opens up a potentially major space for external intervention, including, crucially, military intervention. As will be shown below, China has no objection to the notion of sovereignty as responsibility but has important concerns about the modalities, and consequences, of the activation of the 'fallback responsibility' on the part of the international community.

As discussed already, China does not subscribe to an absolute version of sovereignty which, among other things, would give States the unlimited power to do what they want to their own people. Instead, it takes the view that sovereignty carries with it the obligation for States to, generally, fulfill their international law obligations and, specifically, protect the security and welfare of their populations.<sup>83</sup> Consistent

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<sup>82</sup> For a theoretical discussion of R2P's implications for sovereignty, see R. Thakur and W. Maley, *Theorising the Responsibility to Protect* (CUP 2015). See, also, F. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution Press, 1996); and 'A More Secure World: Our Shared Responsibility', Report of the High-level Panel on Threats, Challenges and Change, 2 December 2004, UN Doc. A/59/565, para. 29.

<sup>83</sup> See, for example, Xue Hanqin, *supra* note 6.

with this, Beijing has unambiguously endorsed the first pillar's proposition that national governments have the primary responsibility to protect their populations.<sup>84</sup>

More importantly, China has also accepted that the international community has a collective responsibility to help to protect populations from atrocity crimes.<sup>85</sup> From a sovereignty standpoint, this implies a recognition of the legitimacy of the international community's involvement in (certain) internal affairs of States. The extent of the involvement, however, varies substantially between pillar 2 and 3 scenarios. International action under the second pillar focuses on prevention and consists mainly of encouraging and assisting States to meet their duty to protect. It includes a wide range of economic, political, humanitarian and even military tools such as the deployment of armed units for *non-coercive* purposes.<sup>86</sup> Considering the above as well as the fact that pillar 2 situations would normally involve governments which are not the direct perpetrators of violent crimes, but, rather, find themselves under stress before an imminent or ongoing crisis,<sup>87</sup> a mutual and active partnership between the international community and the State concerned is necessary for the successful exercise of this form of collective responsibility.<sup>88</sup> In other words, pillar 2 action can hardly occur against the will of the State concerned. This is crucial in understanding China's prompt endorsement of this pillar. Indeed, Beijing has often (over)emphasized this important aspect by noting that 'the implementation of "R2P" should not contravene the principle of state sovereignty and the principle of non-interference of internal affairs'.<sup>89</sup>

Not surprisingly, statements of this kind have raised concerns about China's genuine commitment to R2P. This is especially true if one were to interpret them as applying to the whole range of options available under the R2P banner. As will be also

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<sup>84</sup> Position Paper of the People's Republic of China on the United Nations Reforms, 7 June 2005, at <http://www.china-un.org/eng/chinaandun/zzhgg/t199101.htm> [accessed 25 January 2018], and Statement by Ambassador Liu Zhenmin at the Plenary Session of the General Assembly on the Question of the 'Responsibility to Protect', 24 July 2009, at <http://www.china-un.org/eng/hyyfy/t575682.htm> [accessed 25 January 2018].

<sup>85</sup> Ibid.

<sup>86</sup> 'Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect', UN Doc. A/68/947 (11 July 2014).

<sup>87</sup> Ibid.

<sup>88</sup> Ibid., para. 28.

<sup>89</sup> Statement by Ambassador Liu Zhenmin, *supra* note 84.

discussed in the next section, however, China's archetypal pledge to uphold R2P in conjunction with the principles of sovereignty and non-intervention is essentially confined to pillar 2 situations. As such, it serves as a reminder that, in those circumstances, international action can only take place with the consent of the affected government. Understood in these terms, Beijing's preoccupation with protecting State sovereignty is not necessarily out of tune with the spirit of R2P. Indeed, it should not be forgotten that in international law the consent of the government concerned is normally a legal requirement for a variety of UN-sponsored measures which interfere in the internal affairs of States such as, for example, the establishment of early warning systems or the sending of fact-finding missions.<sup>90</sup> It is also particularly telling that State consent is a legal prerequisite even for the deployment of traditional UN peacekeeping operations.<sup>91</sup> Thus, by accentuating the importance of 'consent' in pillar 2 situations, China is not seeking to undermine R2P but, rather, prevent that issues of human rights and humanitarian assistance could be used as pretexts to unduly violate States' sovereignty.<sup>92</sup>

China's concerns about potential infringements of sovereignty become considerably more intense with regard to the principle's third pillar. In pillar 3 scenarios, which usually involve a national government committing atrocity crimes, the limited international involvement characteristic of pillar 2 would normally give way to more robust and intrusive forms of intervention. Evidently, the coercive nature of the latter represents a direct threat to the principle of sovereignty. On top of that, while not all the coercive measures associated with pillar 3 involve the use of force (as the case of economic sanctions clearly demonstrates),<sup>93</sup> the range of actions

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<sup>90</sup> G. Nolte, *Purposes and Principles*, Article 2(7), in B. Simma, D. Khan, G. Nolte, A. Paulus (eds), *The Charter of the United Nations: A Commentary, Volume I* (3<sup>rd</sup> ed, OUP 2012) p. 303.

<sup>91</sup> For a discussion, see N. Tsagourias, *Consent, Neutrality/Impartiality and Self-Defence in Peacekeeping: Their Constitutional Dimension*, (2006) 11 *Journal of Conflict and Security Law*, pp. 465-482.

<sup>92</sup> Statement of the People's Republic of China at the Informal Interactive Dialogue on the Responsibility to Protect: "A Vital and Enduring Commitment: Implementing the Responsibility to Protect", (Transcription), 8 September 2015, at <http://www.globalr2p.org/resources/873> [accessed 25 January 2018]. See, also, Statement by Ambassador Wang Guangya on the Report of the High-level Panel, 27 January 2005, at <http://www.china-un.org/eng/hyyfy/t181639.htm> [accessed 25 January 2018].

<sup>93</sup> For a non-exhaustive list of possible coercive measures not involving the use of force, see, 'Responsibility to protect: timely and decisive response', UN Doc. A/66/874, para. 31

contemplated under this pillar does certainly include military operations. Indeed, as frequently observed by its own advocates, to be truly meaningful R2P must necessarily comprise a military option.<sup>94</sup> In light of all that, R2P's third pillar presents three main challenges for China. First, Beijing's preference is to deal with conflict situations through diplomatic and political channels. In this sense, it is considerably less prone to support coercive measures than it is to endorse consensual ones.<sup>95</sup> Second, China has a principled objection to resorting to force for humanitarian purposes.<sup>96</sup> Its position on humanitarian intervention was clearly articulated at the time of the NATO operations in Kosovo that were discussed earlier. According to China, the latter represented a serious violation of the UN Charter that both undermined the authority of the Security Council and set an extremely dangerous precedent in the history of international relations.<sup>97</sup> Third, China is seriously concerned about the possibility of strong forms of intervention being used as a (Western) instrument for regime change and democracy promotion.<sup>98</sup>

Because of all these reasons, China has not been willing to *openly* endorse the core tenets of R2P's third pillar. That said, Beijing has not rejected them either. International law helps to shed light on the reasons behind this ambivalent position. As discussed in section 4, R2P coercive action, including military interventions, must necessarily be authorized by the Security Council. In this sense, R2P has not brought any significant alteration of the international legal landscape. Under Chapter VII of the UN Charter,

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<sup>94</sup> See, for example, R. Thakur, Syria and the Responsibility to Protect, in *Into the Eleventh Hour*, p. 41, and 'Mobilizing Collective Action: The Next Decade of the Responsibility to Protect', UN Doc. A/70/999-S/2016/620 (16 August 2016) para. 45.

<sup>95</sup> For example, Statement by Mr. Liu Jieyi on the Syrian crisis, 7825<sup>th</sup> meeting of the Security Council, Seventy-first year, 5 December 2016, UN Doc. S/PV.7825. See also, statement by Mr Zhang Yesui on North Korea, 6141<sup>th</sup> meeting, Sixty-fourth year, 12 June 2009, UN Doc. S/PV.6141.

<sup>96</sup> Position Paper of the People's Republic of China, *supra* note 84.

<sup>97</sup> See, for example, SC/6686, 4011<sup>th</sup> meeting (PM) 10 June 1999; Statement by Mr. Qin Huasun, General Assembly, fifty-fourth session, 27<sup>th</sup> plenary meeting, 6 October 1999, UN Doc. A/54/PV.27; Statement by Mr. Shen Guofang, Security Council, 54 Year, 4011<sup>th</sup> meeting, 10 June 1999, UN Doc. S/PV.4011. On China's aversion to the use of force, see '*Build Towards a Harmonious World of Lasting Peace and Common Prosperity*', Statement by Hu Jintao, President of the People's Republic of China at the United Nations Summit, New York, 15 September 2005, at <https://www.un.org/webcast/summit2005/statements15/china050915eng.pdf> [accessed 25 January 2018].

<sup>98</sup> See, for example, Statement delivered on behalf of the Permanent Mission of the People's Republic of China to the United Nations, General Assembly Informal Interactive Dialogue on the Responsibility to Protect: "Timely and Decisive Action", 5 September 2012 (unofficial transcription), at <http://www.globalr2p.org/resources/141> [accessed 25 January 2018].

the Security Council is empowered to take peaceful or non-peaceful measures in response to a threat to international peace and security. Thanks to an expansive interpretation of the concept of 'threat to the peace', the Council has long been able to authorize enforcement measures in the context of civil wars and/or humanitarian crises.<sup>99</sup> Crucially, measures taken under Chapter VII are not limited by the principle of non-intervention in the internal affairs of States. As specified by Article 2(7) of the UN Charter:

'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 ... but this principle shall not prejudice the application of enforcement measures under Chapter VII.'

All this means that, irrespective of R2P, the Security Council is not only entitled to take coercive action in dealing with humanitarian crises, but can also do so without the need to obtain the consent of the target State. It goes without saying that, as a permanent member yielding veto power, China has an interest in preserving the Council's prerogatives. This explains why, despite favoring a restrained approach to the third pillar, Beijing does not, and indeed, as a matter of international law, cannot object to it. The resulting ambivalence is well reflected in the Chinese habit of acknowledging the capacity of the Security Council to authorize coercive action in R2P situations without expressly saying so. A good example is provided by China's official statement at the 2009 General Assembly debate on R2P:

'the responsibility of the [Security] Council entrusted by the UN Charter is the maintenance of international peace and security. The prerequisite for its taking action is the existence of "any threat to the peace, breach of the peace, or act of aggression". The Council must consider "R2P" in the broader context of maintaining international peace and security, and must guard against abusing the concept.'<sup>100</sup>

Further evidence of China's implicit endorsement of the whole range of options available under R2P is provided by its typical demand that, *as far as possible*, humanitarian crises should be solved by peaceful means.<sup>101</sup> Indeed, China is among

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<sup>99</sup> For example, Security Council Resolutions 794 (1992) and 940 (1994).

<sup>100</sup> Statement by Ambassador Liu Zhenmin, *supra* note 84. See also, statement by Ambassador Wang Guangya, *supra* note 92.

<sup>101</sup> See, for example, Position Paper of the People's Republic of China, and statement by Ambassador Liu Zhenmin, *supra* note 84.

the countries that sought to promote a strict sequential approach to R2P's three pillar-model based on the assumption that no military action under pillar 3 can occur until all available options under pillar 2 have failed.<sup>102</sup>

In conclusion, given its inclination to rely on consensual and peaceful means of solving international crises, which, in turn, stems from its defensive stance on sovereignty, Beijing is significantly less comfortable with the third pillar of R2P than it is with its second. At the same time, China quietly accepts that, under exceptional circumstances, coercive measures, including military force, could be employed to respond to mass atrocity situations. These measures, however, must necessarily be authorized by the Security Council, in accordance with both the UN Charter and the model of R2P endorsed by the General Assembly in 2005.

## **6. China and R2P's Three Pillar-Structure: Practical Engagement**

China has supported several Security Council resolutions which expressly reaffirmed the R2P language of the 2005 World Summit Outcome.<sup>103</sup> This is important because, in doing so, Beijing has not only reiterated its endorsement of the principle, but also contributed to further embed it in the fabric of international law. Consistent with this, China has also regularly voted in favor of resolutions which either reminded States of their responsibility to protect their populations (pillar 1),<sup>104</sup> or were aimed at providing international assistance to national governments facing an imminent or ongoing crisis (pillar 2).<sup>105</sup> It should also be mentioned that, after decades of wariness, Beijing has become an active supporter of peacekeeping operations, which represent one important instrument through which the UN can implement R2P's second pillar. Remarkably, China is today the second largest contributor to the UN peacekeeping budget,<sup>106</sup> and the largest supplier, among the P5, of military and civilian

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<sup>102</sup> A Bellamy, *The Three Pillars of the Responsibility to Protect*, in A Serbin and A Serbin Pont (eds), *Latin America and the Responsibility to Protect: Divergent Views from the South?* (2015) 41 *Pensamiento Propio*, Special Issue: 10 Years of the Responsibility to Protect, 35-64, 52.

<sup>103</sup> For example, Security Council Resolutions 1894 (2009) and 1674 (2006).

<sup>104</sup> For example, Security Council Resolutions 2295 (2016), 2150 (2014), 2093 (2013), and 1975 (2011).

<sup>105</sup> For example, Security Council Resolutions 1653 (2006) and 2349 (2017).

<sup>106</sup> This figure applies to the 2016-2018 period. At

personnel.<sup>107</sup> It is also telling that China has not only backed traditional peacekeeping operations but has also authorized and participated in more ‘robust’ missions, which typically combine the capacity to use force beyond self-defense with the ability to temporarily displace certain functions of State authority.<sup>108</sup> Beijing, however, has not done so unreservedly. On the contrary, it has expressed discomfort at the prospect of peace operations becoming increasingly intrusive, re-affirming, instead, the centrality of the classic principles of peacekeeping, namely consent of the parties, impartiality, and non-use of force except in self-defense and in defense of the mandate.<sup>109</sup>

Occasionally China has also taken concrete steps to facilitate the provision of pillar 2 assistance on the part of the international community. For example, following the violent government crackdown on peaceful protesters in September 2007, it was instrumental in persuading Myanmar authorities to meet with UN officials in order to work towards a resolution of the crisis.<sup>110</sup> Similarly, in June 2007 it played a vital role in facilitating the deployment of a hybrid United Nations-African Union peacekeeping operation in the violence-wracked Darfur region in western Sudan.<sup>111</sup> Since both the governments of Myanmar and Sudan ultimately consented to these forms of ‘external’ involvement, the conduct of China did not formally infringe the much revered principle of non-intervention. In practice, however, these instances of induced consent indicate that Beijing is prepared to take a more flexible approach to sovereignty than its rhetoric often suggests. Indeed, in light of the shift in its foreign

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[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/331/Add.1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/331/Add.1)

<sup>107</sup> The relevant figures are available at:

<http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml> [accessed 25 January 2018].

<sup>108</sup> For example, the United Nations Stabilization Mission in Mali, and the United Nations Organization Mission in the Democratic Republic of Congo. For a discussion, see P. Labuda, ‘UN Peace Operations: Tracking the Shift from Peacekeeping to Peace Enforcement and State-Building’, *EJIL:Talk!*, September 2015.

<sup>109</sup> See, for example, statement by Li Baodong, Security Council, 6943<sup>rd</sup> meeting, 28 March 2013, UN Doc. S/PV.6943; and statement by Zhang Yishan, Security Council, Sixty-first year, 5439<sup>th</sup> meeting, 16 May 2006, UN Doc. S/PV.5439.

<sup>110</sup> ‘China pressure on Myanmar key, EU says’, Reuters, 21 December 2017. See also, *Update Report No. 1: Myanmar, October 2007*, at <http://www.securitycouncilreport.org/update-report/lookup-c-glKWLeMTIsG-b-4488273.php> [accessed 25 January 2018].

<sup>111</sup> See, for example, A. Natsios (Former US Envoy to Sudan), Testimony on Sudan Before the House Committee on Foreign Affairs, 8 February 2007, at <https://2001-2009.state.gov/p/af/rls/rm/80294.htm> [accessed 25 January 2018]. For a broader discussion of China’s involvement in the crisis in Darfur, see Z. Chen, *China and the Responsibility to Protect*, (2016) 25 *Journal of Contemporary China*, pp. 686-700.

policy discourse discussed in section 3 above, China's use of its political and economic leverage as a means to promote the resolution of conflict situations may be expected to intensify in the future. This seems to be confirmed by Beijing's recent involvement in the Rohingya crisis. In September 2017, following a brutal security operation in Myanmar's northwestern Rakhine State, over 270,000 Rohingya fled to Bangladesh in less than three weeks.<sup>112</sup> With important geopolitical and economic interests at play,<sup>113</sup> China intervened to broker talks between Myanmar and Bangladesh on the basis of a three-stage plan which included the restoration of order and stability in the Rakhine state, the opening of negotiations between the two governments on the safe return of the refugees, and the establishment of a poverty alleviation process.<sup>114</sup> These diplomatic efforts are an important sign of Beijing's increasing willingness to contribute responsibly to solve humanitarian crises. At the same time, the modalities of Beijing's mediation revealed an inherent discomfort at the idea of intervening too heavily in the internal affairs of the States concerned, and especially of Myanmar with which China has close political and economic ties. In particular, given the gravity of the situation,<sup>115</sup> the failure to raise the question of accountability and the fact that no calls were made for direct UN involvement in the relevant political process raised important concerns about China's interpretation of the spirit of R2P's second pillar.<sup>116</sup>

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<sup>112</sup> At the time of writing, 647,000 refugees had fled to Bangladesh. <http://www.unhcr.org/uk/rohingya-emergency.html> [accessed 25 January 2018].

<sup>113</sup> For a discussion, see, among others, *'Why do China, India back Myanmar over the Rohingya crisis?'* South China Morning Post, 18 October 2017; and *'China to take 70 percent stake in strategic port in Myanmar'*, Reuters, 17 October 2017.

<sup>114</sup> Statement by Wu Haitao, Security Council, Seventy-second year, 8133rd meeting, 12 December 2017, UN Doc. S/PV.8133 Provisional.

<sup>115</sup> The UN Secretary General described the situation as a 'humanitarian nightmare', while the UN High Commissioner for Human Rights described the systematic attacks on the Rohingya as a form of 'ethnic cleansing'. See, Secretary-General's remarks at open debate of the Security Council on Myanmar, 28 September 2017, at <https://www.un.org/sg/en/content/sg/statement/2017-09-28/secretary-generals-remarks-open-debate-security-council-myanmar>; and Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, Human Rights Council, 36<sup>th</sup> session, 11 September 2017, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041> [accessed 25 January 2018].

<sup>116</sup> Instead, China was adamant that the crisis could only be solved by Myanmar and Bangladesh through bilateral channels. See, for example, Statement by Wu Haitao, supra note 114; and China's statement on the occasion of the vote on Human Rights Council Resolution on the 'Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar', UN Doc. A/HRC/S-27/L.1 (5 December 2017), at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22493&LangID=E> [accessed 25 January 2018].

Finally, the Chinese response to the humanitarian crises in Libya and Syria can help to shed light on the nature and dynamics of China's engagement with R2P's third, and most challenging, dimension. In February 2011, Libyan governmental forces deployed lethal force to repress a popular uprising which began in Benghazi and quickly spread to other cities. Among others, the UN Human Rights Council promptly condemned the gross and systematic human rights violations committed by national security officials, which included indiscriminate armed attacks against civilians, extrajudicial killings, arbitrary arrests, as well as the detention and torture of peaceful demonstrators.<sup>117</sup> Noting that some of these atrocities could amount to crimes against humanity, the Human Rights Council also called upon the Libyan Government to meet its responsibility to protect its population. On its part, the UN Security Council quickly adopted Resolution 1970 imposing an arms embargo, applying sanctions and travel bans on governmental figures, and referring the situation to the International Criminal Court.<sup>118</sup> As they entailed (non-forcible) coercion, these measures fell within the scope of R2P's third pillar. It is, therefore, significant that China supported them by voting in favor of the resolution. As this did not stop Gaddafi from continuing to violently suppress the popular revolt, and amidst concerns about an imminent assault on the city of Benghazi, on 17<sup>th</sup> March 2011 the Security Council passed another resolution, namely Resolution 1973, which, after reiterating the responsibility of the Libyan government to protect their population, imposed a no-fly zone and authorized the use of 'all necessary measures' to protect civilians and civilian populated areas. The uniqueness of this resolution lies in the fact that, for the first time, the Security Council explicitly authorized the use of force for the protection of civilians against (the will of) a functioning State. It is in fact for this reason that the adoption of Resolution 1973 was hailed as a major triumph for R2P.<sup>119</sup>

China allowed this resolution to pass by abstaining on the vote. According to several accounts, Beijing did so with a view to safeguarding its substantial investments in the country and protecting the safety of the over 36,000 Chinese

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<sup>117</sup> Human Rights Council, UN Doc. A/HRC/RES/S-15/1 (25<sup>th</sup> February 2011).

<sup>118</sup> Resolution 1970 of 26 February 2011.

<sup>119</sup> For a different view, see, among others, N. Tsagourias and N. White, *Collective Security: Theory, Law and Practice* (CUP 2013) p. 99.

nationals who worked there.<sup>120</sup> This abstention does not necessarily conflict with Beijing's cautious approach to pillar 3, for, as suggested in section 4 above, China never rejected the possibility of resorting to force for humanitarian purposes provided that the relevant operations are authorized by the Security Council. Considering its characteristic aversion to the use force, however, this move surprised many observers, leading to speculations that China had softened its position on forcible intervention. In reality, in its explanation of the vote China emphasized the need to put an end to the violence against civilians, but also reiterated its opposition to the use of force in international relations, further expressing serious reservations about various elements of the adopted text.<sup>121</sup> Importantly, it also specified that the (*ad hoc*) decision to cast a vote of abstention was made taking into consideration the special circumstances of the case, including, in particular, the presence of regional consensus on the need for external intervention.<sup>122</sup> In this respect, it should also be highlighted that the defection of several members of the Gaddafi government contributed to weaken the latter's international standing, thus facilitating a more robust response by the international community.<sup>123</sup> Crucially, Beijing's doubts over the appropriateness of the resolution did not wane when NATO took control of the relevant operations. On the contrary, as NATO contravened the letter and spirit of Resolution 1973 by taking side with the rebels and pursuing regime change, both China and several other non-Western States expressed serious concerns about how the UN mandate had been interpreted and executed. Indeed, as the modalities of NATO operations reinvigorated widespread fears that R2P could be abused to justify politically motivated interventions, Beijing officials began to have second thoughts over their decision to abstain rather than use the veto.<sup>124</sup>

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<sup>120</sup> See, for example, J. Parello-Plesner and M. Duchâtel, *China's Strong Arm: Protecting Citizens and Assets Abroad* (Routledge, 2015) p. 109.

<sup>121</sup> See, Explanation of Vote by Ambassador Li Baodong after the adoption of Security Council resolution 1973, at <http://www.china-un.org/eng/gdxw/t807544.htm> [accessed 25 January 2018].

<sup>122</sup> Ibid. See, also, C. Fung, Global South Solidarity? China, Regional Organisations and Intervention in the Libyan and Syrian Civil Wars, (2016) 37 *Third World Quarterly*, pp. 33-50.

<sup>123</sup> A. Garwood-Gowers, China and the "Responsibility to Protect": The Implications of the Libyan Intervention, (2012) 2 *Asian Journal of International Law*, pp. 375-393, at p. 384.

<sup>124</sup> S. Sceats and S. Breslin, *supra* note 31, pp. 48 and 49.

That China's (indirect) support for coercive action in Libya did not necessarily reflect a shift in favor of R2P's third pillar was further confirmed by Beijing's subsequent engagement in the Syrian crisis. The latter erupted in March 2011, when the government of President Assad began to use force to crush pro-democracy protesters demanding his resignation. While UN bodies were quick to denounce the grave and systematic human rights violations committed by Syrian authorities, including arbitrary executions, the killing and persecution of protesters, arbitrary detention, enforced disappearances, as well as torture and ill-treatment of detainees,<sup>125</sup> the Security Council, paralyzed by the vetoes of Russia and China, failed to take any significant action to halt the violence. Beijing voted in favor of a number of resolutions aimed at easing the humanitarian situation, including one demanding the destruction of Syria's chemical weapons and one authorizing humanitarian agencies to access rebel-held areas without government consent,<sup>126</sup> while also abstaining on four resolutions, ultimately vetoed by Moscow, which would have condemned the bombardment of Aleppo, denounced the chemical attack that took place in Khan Shaykhun on 4<sup>th</sup> April 2017, and renewed the mandate of a UN mission investigating the use of chemical weapons.<sup>127</sup> In a move that was criticized by many, however, China repeatedly sided with Russia in resisting the imposition of stronger measures against the Assad government, including economic sanctions and referral to the International Criminal Court.

Beijing's heavy use of the veto in relation to the Syrian crisis raised the question of whether a new phase in the relationship between China and R2P had begun, namely one characterized by an outright rejection of the enforcing measures, be they forcible or non-forcible, typical of the third pillar. Certainly, the fact that Resolutions 1970 and 1973 led to the overthrow of Gadhafi made Beijing even more mindful of the potential misuse of R2P rhetoric, strengthening its (pre-existing) inclination to favor assistance over intervention. During the Syrian crisis, this was clearly reflected in China's firm

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<sup>125</sup> See, for example, Human Rights Council, UN Doc. A/HRC/S-17/2 (23 August 2011).

<sup>126</sup> Security Council Resolutions 2118 (2013) and 2165 (2014).

<sup>127</sup> Security Council Draft Resolutions 846 (2016), 315 (2017), 884 (2017), and 962 (2017).

condemnation of regime change strategies,<sup>128</sup> which can be seen as an attempt to recalibrate the relationship between sovereignty and intervention in the context of pillar 3 action.<sup>129</sup> China's staunch defense of Syrian sovereignty has also been linked to the fact that the Assad government remained largely intact.<sup>130</sup> This, in turn, may have important implications in R2P terms as it may signal a broader commitment to protect effective governments from external intervention, thus setting a potentially very high threshold for robust action.<sup>131</sup>

All that said, Beijing's position on the Syrian crisis should not be read as a sweeping rejection of the international community's responsibility arising under R2P's third pillar. Firstly, both the complexity and uniqueness of the situation should be highlighted. In China's calculations, Assad may have offered the best chance of restoring stability and security in a country engulfed in a complex and brutal civil war, which, in light of its religious and geopolitical dimensions,<sup>132</sup> risked instigating a wider wave of instability in a region of critical importance not only to Western States but also to Beijing's resource-intensive economy. Similarly, the effects of Moscow's vigorous involvement in the conflict, both diplomatically and military, should not be overlooked. Without overstating the case for a solid political alliance between the two powers,<sup>133</sup> China and Russia have often relied on each other's support at the Security Council with a view to strengthening their respective positions within a body otherwise dominated by Western powers. This tactical alignment is made even more valuable by the fact that, driven by a broader convergence of interests, China and Russia often unite, both within and outside the UN, to advance common positions on various matters of international law and politics. Thus, just like Russia had previously

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<sup>128</sup> See, for example, statement by Ambassador Li Baodong at the Security Council Ministerial Meeting on the Middle East, 12 March 2012, at <http://www.china-un.org/eng/gdxw/t913340.htm> [accessed 25 January 2018].

<sup>129</sup> C. Fung, Separating Intervention from Regime Change: China's Diplomatic Innovations at the UN Security Council Regarding the Syria Crisis, (2018) *The China Quarterly*, pp. 1-20. See also, M. Vanhullebusch, Regime Change, the Security Council and China, (2015) 14 *Chinese Journal of International Law*, pp. 665-707.

<sup>130</sup> A. Garwood-Gowers, *supra* note 123, p. 391.

<sup>131</sup> *Ibid.*

<sup>132</sup> S. Pecanha, S. Almkhtar and K. Rebecca Lai, 'Untangling the Overlapping Conflicts in the Syrian War', *The New York Times*, 18 October 2015.

<sup>133</sup> On the dynamics of this relation, see M. Kaczmarek, *Russia-China Relations in the Post-Crisis International Order* (Routledge 2015).

sided with China in preventing strong UN action against countries of strategic importance to Beijing,<sup>134</sup> China had an incentive to follow Moscow's lead in defending Syria's sovereignty.

Secondly, and more importantly, it is telling that, as China cast its initial vetoes, the official think-tank of the Ministry of Foreign Affairs was intent on formulating a new Chinese approach to R2P, labelled 'Responsible Protection',<sup>135</sup> which, *inter alia*, accepted forcible intervention as an appropriate response to humanitarian crises provided that all diplomatic and political means are exhausted and that the goal of the intervention remains that of protecting innocent civilians rather than overthrowing a government.<sup>136</sup> As such, and despite not being formally endorsed by the Chinese government, the concept of 'Responsible Protection' revealed China's willingness to engage with, and shape the limits of R2P's coercive pillar instead of simply objecting to it. It is also worth recalling that, although under different circumstances, China supported Security Council resolutions entailing forcible coercion for humanitarian purposes and/or imposing sanctions in the context of humanitarian crises both before and after Libya. For example, it voted in favour of Security Council Resolution 794 (1992), which, in an attempt to defuse the 'human tragedy caused by the conflict in Somalia', authorized members States 'to use all necessary means to establish a secure environment for humanitarian relief operations'. It also abstained on Security Council Resolution 940 (1994) which authorized the use of force to restore peace and stability in Haiti following a coup d'état which had driven the democratically elected president into exile. Furthermore, it abstained on Security Council Resolution 1593 (2005) which referred the situation in Darfur to the ICC, and voted in favor of Security Council Resolution 1975 (2011) which imposed sanctions against the Former President of Cote d'Ivoire and urged him to step aside.<sup>137</sup>

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<sup>134</sup> Myanmar (2007) and Zimbabwe (2008).

<sup>135</sup> 'Responsible Protection: Building a Safer World', Ruan Zongze, (15 June 2012) at [http://www.ciis.org.cn/english/2012-06/15/content\\_5090912.htm](http://www.ciis.org.cn/english/2012-06/15/content_5090912.htm) [accessed 25 January 2018].

<sup>136</sup> For a detailed analysis, see A. Garwood-Gowers, China's "Responsible Protection" Concept: Reinterpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes, (2016) 6 *Asian Journal of International Law*, pp. 89-118.

<sup>137</sup> For a discussion of earlier practice, see J. Davis, From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era, (2011) 44 *Vanderbilt Journal of Transnational Law*, pp. 217-283.

What the above analysis suggests, therefore, is that China has a clear predisposition towards political and peaceful solutions to conflict situations. That said, in light of the particular circumstances of the case, it may exceptionally support, or tolerate, coercive measures, especially if underpinned by regional consensus, which are not aimed at overthrowing an existing government. Unsurprisingly, in defining the relevant circumstances China will take into account not only humanitarian considerations but also the broader and complex realities of international politics, on the one hand, and its own security and development interests, on the other. While evidently not ideal and conducive to inconsistent outcomes, this logic is not only characteristic of great-power behavior,<sup>138</sup> but also conforms to the notion of R2P that has come to be recognized in international law. Indeed, as highlighted in section 4 above, R2P responses to humanitarian crises are not structurally designed to achieve a high level of consistency.

## 7. Conclusions

China's sensitivity over sovereignty is often seen at odds with an international legal system that increasingly protects interests beyond those of the State. While China has always been a champion of sovereignty,<sup>139</sup> its attitudes towards the principle are taking on a new significance in light of the country's rise to great power status. Against this background, this article has examined Beijing's conceptual and practical engagement with the principle of R2P, suggesting that its attempts to revisit its traditional foreign policy discourse in the context of humanitarian crises reveal that China does not always and necessarily subscribe to rigid interpretations of sovereignty.

China oscillates between the desire, or temptation, to soften its stance on non-intervention and the preoccupation that doing so unreservedly could undermine,

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<sup>138</sup> A. Roberts and D. Zaum, *Selective Security: War and the United Nations Security Council since 1945* (Routledge 2009).

<sup>139</sup> Since the time Beijing became accustomed to the concept following the events of the Opium War. For a discussion, see, Junwu Pan, *Sovereignty's Implications for China: Then and Now*, in P. Sevastik (ed), *supra* note 22, pp. 15-16.

against its own interests, the essence of sovereignty. The former impulse derives from Beijing's necessity to protect its expanding overseas interests and ambition to enhance its status on the world stage; the latter is dictated by past experiences of encroachments on its own sovereignty and present-day concerns about protecting its internal structures and pattern of development. The interplay between these competing forces contributes to explain China's complex and, at times, ambivalent approach to humanitarian crises. Contemporary institutional efforts to prevent and respond to atrocity crimes are guided by the principle of R2P, which is predicated on the assumption that States' capacity to exercise their full sovereign powers is a function of their willingness and ability to protect their populations from mass atrocities. This means that when a State fails to live up to its responsibility to protect, the latter shifts to the international community. Considering that, once activated, international action can range from consensual assistance to forcible intervention, one may say, without exaggerating, that R2P strikes at the heart of sovereignty. In this sense, it inevitably conflicts with China's understanding of the international system as a Westphalian, sovereignty-centred structure. At the same time, Beijing has important reasons to support R2P actions even if doing so might lead to infringements of sovereignty. First, as a rising global power its prosperity and security are increasingly dependent on peaceful development and stability across the globe. Second, in line with its aspiration to become a responsible power, taking action against atrocity crimes helps to promote the image of the country as a defender of basic values of humanity.

As a result of the interplay of the above factors, China has, first of all, endorsed the notion of 'sovereignty as responsibility' which is reflected in R2P's first pillar, accepting that sovereignty carries with it the responsibility for States to protect the welfare and security of their populations. More importantly, China has also recognized the legitimacy of the international community's involvement in certain internal affairs of States as articulated by R2P's second pillar. This has been greatly facilitated by the fact that, by virtue of its consensual nature, this form of international assistance appears compatible with a strict interpretation of sovereignty. That said, China's practical engagement with R2P's second pillar suggests that, under certain

circumstances, Beijing may be prepared to endorse more intrusive forms of intervention which tend to blur the distinction between consensual and non-consensual forms of assistance. This tendency is best illustrated by China's support for robust peace operations empowered to both use force beyond self-defense and displace certain functions of State authority, and use of its leverage to persuade national governments to agree to various forms of 'external' involvement.

As a State that favors political solutions to conflict situations and repudiates the use of force for humanitarian purposes, China finds it particularly difficult to engage with the third pillar of R2P. This is so because pillar 3 action is not only coercive in nature but may also include, as last resort, the use of force. This inevitably increases the risk of R2P being used to facilitate regime change, notably something that Beijing firmly condemns. For these reasons, China has not been willing to *openly* endorse this dimension of the principle. For political and legal reasons, however, it has not rejected it either. Politically, the fact that a mass atrocity situation could be perceived as posing a direct threat to China's security and/or development interests may exceptionally lead Beijing to soften its traditional aversion to coercive interventions. Legally, it should not be forgotten that the modalities of R2P forcible action have been designed so as to conform to the Charter of the United Nations. In particular, the 2005 World Summit Outcome has identified the Security Council as the only body capable of authorizing military operations under the R2P banner. In doing so, it has not conferred on the Council any new power because the latter has long been able, in accordance with Chapter VII of the Charter, to take enforcement measures, including the use force, in the context of civil wars and/or humanitarian crises. Evidently, as a permanent member yielding veto power, China has no incentive to either question or deny the existence of these well-established prerogatives. Indeed, Beijing's conduct is in line with a quiet acceptance, and prudent interpretation, of the Security Council's responsibility envisioned under pillar 3. Thus, while naturally predisposed towards political and peaceful solutions and very critical of regime change strategies, China has occasionally supported enforcement measures, including the use of force, in dealing with situations of crisis.

All the above suggests that the relationship between China and R2P, and, in turn, sovereignty, is more complex and nuanced than one might assume. In addition, China may be prompted to make further adjustments to its approach to sovereignty and non-intervention as the process of adaptation to its new role on the world stage continues to unfold. Indeed, in light of President Xi Jinping's pursuit of a more proactive and enterprising role in global affairs, China's involvement with humanitarian crises can be expected to intensify rather than diminish. Looking ahead, this is unlikely to result in a substantial hardening of China's position towards pillar 3 action. An open endorsement of the latter remains in fact too problematic for a State which takes pride in presenting itself as a defender of sovereignty. Furthermore, given the widely shared view that armed interventions end up causing more harm than good, China does not face significant pressure to revisit its principled objection to the use of force for humanitarian ends. By contrast, and in line with the dictates of pillar 2, China can be expected to make more regular use of its political and economic leverage to support and facilitate prevention strategies, or, when atrocity crimes are occurring, create the conditions for (semi)consensual forms of intervention to take place. In this sense, the real challenge that Beijing will face going forward is not to show more willingness to engage in forcible interventions, but, rather, to make credible contributions to peacefully preventing or halting the commission of mass atrocities. As demonstrated by its recent involvement in the Rohingya crisis, this will not be an easy task to accomplish. Whether, and how, China succeeds in this endeavor, however, is of paramount importance because it will not only determine the nature and extent of its contribution to preventing and responding to atrocity crimes but also define, more broadly, its identity as a new global power.