



# RESEARCH PAPER

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### Research Paper

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## Editorial

**T**he very idea of “criteria” remains a more controversial subject in international affairs than observers might first admit. Self-described progressives believe that criteria – regardless if they are legal, moral, political, military, economic, etc., in form or substance – provide an invaluable “normalizing” function within and between transnational institutions, non-government organizations, and nation-states. Criteria establish, in other words, “signposts” or parameters that define what political behaviours or actions are permissible or not. Out of these parameters then come senses of normalcy and predictability that are critical to the smooth functioning of international affairs.

A second, perhaps more jaundiced school of thought sees things differently, however. To them, criteria are certainly helpful and needed, but they are also two-edged swords. They can be deliberately manipulated. They can be “weapons” – just as legal and moral criteria have increasingly become “weapons” – in the hands of those eager to promote preferred political agendas or secure particular political goals. Criteria, for example, can be used to create a common practice, which can become common law, which can then serve as a foundation for formal international law. In what today seems to be increasingly shorter amounts of time, what was once permissible thus becomes impermissible; what was once an available suite of options has narrowed merely to one or two. To some, this decreased freedom of action should be celebrated; it is the hoped-for result of applied criteria. By constricting behaviours, true believers argue, we ensure greater peace and stability for all. To others, however, such constraints may cause increasingly intolerable burdens. In fact, they may lead to political dead-ends – dead-ends that precipitate more desperate actions rather than greater self-restraint.

This tension over the perceived benefits and dangers of applied criteria most glaringly appears today in the case of sovereignty. Do the claims of a greater international good trump sovereignty, especially in the case of those nations that are either unwilling or unable (or both) to thwart instability and violence from spilling over their borders? If a greater good does take precedence, what criteria should a nation or alliance invoke to determine when or when not to intervene in the affairs of others?

The following background paper provides some provisional answers for NATO decision makers to consider. It is a distillation and elaboration of work done by NDC Senior Course 103 Committees, and thus represents their contribution to the free marketplace of ideas that makes up NATO transformation.

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# NDC Research Branch Elaboration on Senior Course 103 Analyses NATO and Interventionism: Some Possible Criteria for the Future

## 1. The Thesis

In November 2003, then-Secretary General Lord Robertson affirmed that “NATO is a problem solver. It must go where the trouble is. In today’s [globalized] world, if we don’t go to the trouble, the trouble will come to us.” Jaap de Hoop Scheffer, Lord Robertson’s successor, agrees with this point. He certainly knows, however, that “going to the trouble” may require NATO to intervene in the internal affairs of troubled (and yet still sovereign) states. Is this appropriate? This background paper assumes that NATO should pursue this option not only in the name of self-defense, but also 1) if there are gross and widespread violations of human rights, 2) if there is a grave threat to regional stability, and/or 3) if there is a serious threat to global/collective security in general. The open question in all these cases, however, is what intervention criteria the Alliance will actually rely upon and invoke?

● The problem: NATO does not have pre-existing intervention criteria embedded into its planning processes. *Ad hoc* decision-making criteria have obviously existed before, but they were largely temporary and often inadequate. NATO might therefore consider developing formal intervention criteria to determine when to intervene in the affairs of others, either within greater Europe or in out-of-area operations. To help meet this requirement, *this background paper provides four possible sets of criteria that the Alliance might use, either singly or in various combinations, to guide its intervention determinations in the future. The first set clusters around four closely related moral-humanitarian approaches, while the other three focus on political, institutional-structural, and “objective” criteria.*

● A necessary caveat: A broad range of activities can fit under the term “intervention,” ranging from political, economic, judicial to military measures.

For the purposes of this analysis, we define “intervention” as the proactive steps taken against a state or its leaders – with or without their consent – in the name of collective self-defence, stopping massive humanitarian rights violations, and preserving regional or even global security. These steps can include various forms of preventive diplomacy and peace support operations. However, if prevention fails, peacekeeping, peace enforcement, and peace-building activities might then follow, as ultimately might high-intensity military operations.

## 2. Overview

● To support the above thesis, this background paper will proceed in four parts. First, it will identify the traditional forms of intervention that exist and the legal rules/prohibitions that bound them. Second, it will discuss recent thinking on the permissibility of interventions. Third, it will highlight some historical lessons learned that might help define viable intervention criteria for the future. Finally, it will provide four possible sets of criteria that NATO might use to determine when to intervene, either militarily or not, in its own security zone or elsewhere.

## 3. Traditional Forms of Intervention and the Legal Principles that Bound Them

● Four types of intervention have dominated in the past.

□ *Humanitarian Intervention.*

□ *Preventive Intervention*, which includes preventive diplomacy and even the withdrawal of diplomatic recognition as options.

□ *Reactive or Non-Forcible Intervention*, which usually involves using “soft power” – economical, diplomatic, or informational – to



impact specific events in troubled areas. (More specifically, reactive intervention can involve the use of economic sanctions, the suspension of foreign aid, arms embargos, UN Peacekeeping missions, etc.)

❑ And *Classical Military Intervention*, which can involve the threat of military force, the creation and enforcement of ‘no-fly’ zones, and direct intervention. (The latter can involve destroying terrorist strongholds, or stepping in between two or more warring parties to prevent possible atrocities.)

❑ A caveat: Some argue that today’s threat environment requires a fifth form of intervention – i.e., *Preemptive Military Intervention*. Its critics argue, however, that if this form of intervention is going to provide stability rather than added instability, it will require “when to use” criteria most of all.

❑ The above forms of intervention may be proactive, but they are not necessarily “aggressive.” They reflect a circumscribed approach to solving international problems. The legal sources of this caution include the following and more.

❑ *The UN Charter, Article 2.4*: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state....” There are two exceptions, however: The right to individual or collective self-defense (Article 51), and collective action taken by the UN Security Council (in accordance with Articles 39-50).

❑ *The Declaration on Principles of International Law (1970)*: “No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference... are in violation of international law.”

❑ *The OSCE (Formerly CSCE) Helsinki Final Act of 1975 (1.a.ii)*: “The participating states will refrain from any intervention, direct or indirect, individual or collective, in the internal affairs

falling within the domestic jurisdiction of another participating state, regardless of their mutual relations.”

❑ Given these strict, “without doubts” standards, it should come as no surprise that there exist strong historical antagonisms to interventionism. In the eyes of many, it was (and is) NOT appropriate...

❑ In civil wars.

❑ In support of those seeking “democracy” or self-determination.

❑ In questionable or weak cases of self-defense.

❑ In order to punish others.

❑ In order to follow a previous intervention by another state.

Despite of their history, however, these traditional antagonisms have recently been under assault.

#### 4. Interventionism – A Change in Direction?

● Since the mid-1990s, portions of the international community have increasingly come to believe that state sovereignty is NOT by definition inviolable. To them, the protections provided by the UN Charter should “never be the source of comfort or justification” for those who – in violation of international mandates – repress minorities, violate human rights, or violently thwart the self-determination of others to a genocidal degree, particularly within failed or failing states.

● In other words, no legal principle – not even sovereignty – should ever shield those who commit crimes against humanity. And since these crimes can spill over borders and negatively affect regional stability AND collective security, the international community must have a conditional right to intervene in out-of-control internecine conflicts.

● This major shift in thinking is partially attributable to 1) a growing emphasis put on justice over order in international relations, 2) on the promoting of broader “human security” over “national security,” and 3) on a subsequent



willingness to compromise national sovereignty – as just noted – to avoid or diminish the cross-border threats posed by massive human rights violations.

● New-era intervention, however, does raise some thorny issues over political and military legitimacy.

□ The political legitimacy of interventionism now seems to rest on three interrelated beliefs.

\* The UN should be the preferred “lead” in intervention scenarios. (The assumption here is that the Security Council has a moral duty to act on behalf of the international community.)

\* An intervention is legitimate only if the majority of international actors (the transnational academic community and media, publics at large, NGOs, nation-states, international organizations, etc.) believe it is correct and acceptable. It must be, in other words, consensus-based. (Needless to say, critics find this particular criterion morally dubious and a call for empty majoritarianism.)

\* A state may pursue its own interests in an intervention, but it must also pursue the general good of the international community at the same time. (Put another way, narrow definitions of national interest are no longer acceptable.)

□ In the military sphere, the legitimacy of an intervention is NOT synonymous with “victory.” Instead, combatants should focus on creating the conditions by which civilian agencies and indigenous authorities/populations can build a self-sustaining peace. Creating these conditions is what now makes military operations “legitimate.”

## 5. Intervention Criteria – Seven Past Lessons Learned

● Thus far, we have identified traditional forms of intervention and the legal rules/prohibitions that have historically bound them. We have also highlighted the new thinking that has occurred over the permissibility and legitimacy of interventions.

The next logical step is to identify workable intervention criteria for the future (i.e., criteria that answer when interventions are appropriate), but that is only possible after first considering some historical lessons learned.

● Past interventions seemingly provide the following lessons learned for our consideration.

□ *First:* They should generally be conducted under the auspices of the UN Charter, the Geneva Convention, their protocols, and other international agreements that regulate international armed conflict between states. (Again, this principle holds true today, but there is a growing consensus that supports a more “elastic” approach to intervention, even while working within these legal frameworks.)

□ *Second:* Multilateral interventions are preferable; they typically provide broader levels of support and lower levels of political suspicion.

\* However, political leaders must invariably justify the commitment of resources and the associated risks of intervention to their publics. They may have to (or perhaps even should) interject some degree of national self-interest into any intervention, regardless of how altruistic the primary motives actually are.

□ *Third:* Those who intervene must quickly demonstrate unity of effort and clarity of purpose – their authority and credibility depend on it, especially among local leaders and the public.

\* However, unity of effort and clarity of purpose depend on preliminary consultation; appropriate risk analysis, planning, and consensus building; and decision-making among possible participants. Repeating this process once an intervention occurs is also necessary.

□ *Fourth:* Since today’s crises and emergencies are profoundly political in nature, non-military efforts should initially take precedence over military operations.

\* Successfully resolving complex emergencies then requires a comprehensive



response that embraces military activities, emergency relief and long-term development strategies.

❑ *Fifth:* Effective military interventions require the coordinated participation of a wide range of actors, including IGOs, regional governmental organizations/agencies, and NGOs.

❑ *Sixth:* Capable combat forces are critical to ensuring the success of military interventions. They must, however, be capable of performing more than traditional security missions.

❑ *Seventh:* Post-intervention strategies must ensure that the conditions that prompted a military intervention in the first place do not repeat themselves or simply reappear. (In the particular case of a failing or failed state, nation building must obviously be the final goal.)

## 6. When to Intervene: Four Possible Sets of Criteria for the Future

● All general and military interventions should be based on established criteria, used either singly or in combination. The following examples may help NATO determine if and when it wants to intervene in events either “over the horizon” or in its own “backyard.” We can break down the first set of criteria – moral-humanitarian – into four closely related subs-criteria – i.e., sub-criteria that emphasize different parts of the moral-humanitarian approach. In addition to the latter, the other three major sets of possible criteria are political, institutional-structural, and “objective.”

● **First Basic Criteria: Moral-Humanitarian** (in four variations/approaches)

❑ *Sub-Criteria #1: The traditional Just War Approach*, which includes the following tests.

\* Right Authority (which is based on and exercised through the sovereign power of the state. However, if a government is unaccountable to its own citizens and rules arbitrarily, it jeopardizes its sovereignty and its right to declare war).

\* Just Cause (i.e., the right to self-defense, which includes preventive measures in the

face of a probable act of aggression, and assisting others against an oppressive government or from an external threat).

\* Right Intention (where you fight for justice, not self-interest or self-aggrandizement).

\* Proportionality (the desired end should be proportional to the means used).

\* Last Resort. (That military force should only be used as a last resort is a distinctly modern addition to the Just War tradition. The “classical” tradition of St. Augustine has no such requirement; instead, it first and foremost puts a premium on reestablishing “right order.”)

\* A Reasonable Chance of Success.

❑ *Sub-Criteria #2: The Jus ad Pacem Approach, which justifies intervention for...*

\* Grave and massive violations of human rights.

\* Threats of war, or impending terrorist acts.

\* The protection of rights that can only be assured by external actors.

However, interventions based on the above criteria must be approved by an appropriate collective international body and have an overall “humanitarian” intent.

❑ *Sub-Criteria #3: The “Preventive Principles for Military Intervention” Approach.*

This sub-criteria asks advocates of military intervention to cross a “Just Cause Threshold” – i.e., they can only intervene to prevent . . .

○ Large-scale loss of life (either actual or perceived), due to a state’s deliberate actions, neglect, inability to act, or actual collapse.

○ And large-scale “ethnic cleansing,” again either actual or perceived. (Note: The elements of ethnic cleansing include killing, forced expulsion, and acts of terror or rape.)





\* Once military interventionists cross the Just Cause Threshold, they must then comply with five “Precautionary Principles” (which are copies or updated versions of traditional Just War requirements).

○ Right Intention (the primary purpose of the intervention must be to halt or avert human suffering).

○ Last Resort (military intervention can only be justified when every non-military option for the prevention or peaceful resolution of a crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded).

○ Proportional Means (the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the objective of protecting lives).

○ Reasonable Prospects (there must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, and the consequences of action should not be expected to be worse than the consequences of inaction).

○ Right Authority (Security Council authorization should be sought prior to any military intervention action. If the Security Council rejects a proposal or fails to respond in a reasonable amount of time, the alternatives are 1) to have the General Assembly consider the matter in an Emergency Special Session (under the “Uniting for Peace” procedure), or 2) to have regional or sub-regional organizations act within their area of jurisdiction (under Chapter VIII of the UN Charter, and subject to their seeking subsequent authorization from the Security Council).

\* Finally, the Precautionary Principles should determine the nature of your Operational Principles, which get formulated after the decision to intervene militarily has occurred.

□ **Sub-Criteria #4: The Humanitarian Approach.** The requirements here are threefold; you should intervene only...

\* To prevent the massive loss of life.

\* To stem drug and refugee flows, and combat terrorism.

\* To nullify the risk of genocide or massive starvation.

However, argue advocates of this variation to the Moral-Humanitarian approach, those who intervene for the above reasons must also have a clear political plan for the post conflict phase of events.

● **Second Basic Criteria: The Political Approach.** Thus far, our candidate sets of criteria for the “when” of intervention have been moral and humanitarian. A political approach, however, might pose the following questions and then expect appropriate answers.

□ Are we sure of our case?

□ Have we exhausted all diplomatic options?

□ Is the military option prudent?

□ Are we prepared to commit for the long term?

□ Do we have specific interests at stake?

● **Third Basic Criteria: The Institutional-Structural Approach.** Here we might ask whether the monitoring or problem-solving mechanisms we have in place are functioning properly. If they are not (based on the answers to the following sample questions), intervention might be appropriate.

□ Can we detect adequately the scope/depth of human rights violations and breaches of international law in a particular area?

□ How able are local authorities or institutions to uphold legal order?

□ Have peaceful or consent-based efforts truly hit a dead end? (This is a difficult question, especially for ideologues opposed to the use of any force at all.)



- What is the UN Security Council's actual ability to monitor on-going events/actions?
- Would we actually be capable of a limited and proportionate use of force?

● **Fourth Basic Criteria: The "Objective" Approach.** This final option specifically looks at military intervention and posits eight barriers that NATO leaders might want to consider and make sure they can overcome before pursuing an intervention.

*Acceptance.* No democratic state or alliance can afford to use force against other states or their populations unless there is a clear threat to national interests or state sovereignty. Additionally, decision-makers and planners have to gain acceptance from...

- \* The country, alliance or coalition that is going to project its power regionally or out-of-area.
- \* The countries neighboring the possible intervention.
- \* The international community.
- \* The victims of aggression themselves, whenever possible.

*Morality.* The only broadly accepted moral justification for military intervention is inextricably linked to international law, despite all its flaws and its evolving nature. Military intervention is therefore morally justified if we use it to end crimes against human rights that are subject to universal jurisdiction.

*Legality/Legitimacy.* In the case of legality, the threshold questions are simple – does the intervention comply with international law, and/or has the UN Security Council authorized it, which can often mean the same thing? Legitimacy, in turn, now seems increasingly to depend on 1) prominent UN involvement, 2) the consensus of most international actors, and 3) the dovetailing of national interests with the greater good of the international community. In all cases, NATO must strive to reach internal consensus on the legality and legitimacy of future interventions. In

some cases that will be relatively easy; in other cases it may be impossible.

*Interests.* Complete disinterestedness – i.e., the absence of any narrow self-interest – by those involved in a given intervention may be ideal, but it is not realistic. It is not always a negative either. Self-interest can accelerate the intervention process while also ensuring proper caution and selectivity within an Alliance. Additionally, in those cases where national interests are not at play and consensus on intervention is not possible, NATO members might want to adopt a "constructive abstention" position as an alternative to saying "yes" or "no."

*Proportionality.* The principle of proportionality (in the *jus ad bellum* sense of the word) requires us to determine whether the costs of intervention – in terms of physical damage, organizational risks, and human suffering – will be proportional to the good we expect to achieve. In other words, will the intervention actually result in a better state of peace?

*Duration/Endurance.* Since there is a strong correlation between the number of casualties experienced in "optional" interventions and public support, it is vitally important that NATO 1) limits the scale, duration and intensity of its interventions, and 2) conducts them early enough to ensure they will be successful.

*Success.* Success in NATO is ultimately political. Therefore, in the case of military intervention, NATO planners must always ask and answer the following question: "Can the problem(s) at hand actually be solved in a way envisioned by the politicians?"

*Right Players.* Because today's complex and varied missions require a diverse cast of players, NATO should seek out additional partners in its future interventions. These partners might include other international and regional organizations, NGOs, or neighboring states.

## 7. Conclusion

No internationally accepted intervention criteria exist for nation-states at this time. NATO will nev-



ertheless be confronted in the future with political-painful choices that could be helped by at least preliminary considerations of such criteria as part of its on-going transformation. To aid the process, this analysis first identified the traditional forms of intervention that exist and the legal rules/prohibitions that still bound them today. It then discussed recent thinking on the permissibility of interventions, and it provided seven historical lessons learned that might help define viable intervention criteria for the future. Finally, it provided four possible sets of criteria (one with its own four variations) that NATO might use to determine when to

intervene militarily or not, and in its own security zone or elsewhere. These sets of criteria include a Moral-Humanitarian approach (with its Just War, *Jus ad Pacem*, "Preventive Principles for Military Intervention," and "Humanitarian" variants), a Political Approach, an Institutional-Structural Approach, and an "Objective" Approach. NATO leaders might want to determine when to intervene in the future based on a single set of criteria, or on a mixing and matching of the above. The important thing is to come up with criteria that avoid the ad hoc approaches no longer suited for today's out-of-area realities.

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