Rights and Responsibilities
Resolving the Dilemma of Humanitarian Intervention

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This paper critically examines attempts to conceptualise the use of military intervention on humanitarian grounds, with a focus on the 'responsibility to protect' framework, and offers discussion of the way forward in light of the Afghanistan and Iraq wars and the US-led 'war on terror'. It traces the history of the concept from its post-Cold War origins through to the UN World Summit of September 2005. The paper concludes with a brief review of the challenges that face the international community in moving forward, and the specific contributions that might be made by the UK government.

Introduction

The principles of a 'just war' originated with classical Greek and Roman philosophers, but in the Christian tradition it was St. Augustine (354-430), and later St. Thomas Aquinas (1225-74), who laid the modern foundations of just war theory. Essentially just war theory argues that a war can only be considered legitimate if it is both justified (*jus ad bellum*) and conducted in an ethical manner (*jus in bello*). Two of the essential conditions for the waging of such a war are that it must be for a just cause and fought with good intentions. Traditionally the only just causes were in response to an armed attack or to redress a grave wrong suffered. In addition, only a war lawfully declared by a government of a sovereign state could be considered a just war.

The foundations of international law with regard to state sovereignty were shaped by the agreements made by European states as part of the Treaties of Westphalia in 1648. The sovereign authority of the state was established within a system of independent and equal units, as a way of establishing peace and order in Europe after nearly 30 years of war. The post-1945 system of international order enshrined in the UN Charter is based on this basic model. In accordance with Article 2.1 of the Charter, the organisation is based on the principle of the sovereign equality of all member states. The principle of non-interference in affairs that are within the domestic jurisdiction of those states is enshrined in Article 2.7. A sovereign state is empowered in international law to exercise total jurisdiction within its territorial borders. In turn, other states have the duty not to intervene in the internal affairs of a sovereign state. This post-colonial principle is most heavily supported and defended by vulnerable states, as it offers their last defence in the face of pressure from more powerful states, particularly in today's globalised world.

Just war theory and the Westphalian concept of state sovereignty should mean that, on the whole, what happens within a state is its own affair as long as it takes place within the limits of international law. However, since the early-1990s there has been a growing argument that in some instances there are violations of human rights occurring that are so severe that the use of force is the only reasonable option to stop those violations and that the concept of non-interference must, at times, yield to the international responsibility to

protect that population. This so-called right of 'humanitarian intervention' refers, in this instance, to action taken against a state or its leaders, without their consent, for purposes which are humanitarian or protective (the most controversial form of such intervention being military).

According to a Canadian paper submitted in April 2004 to the UN *High-Level Panel on Threats, Challenges and Change*, the current debate regarding humanitarian intervention takes place in the context of "geopolitical shifts which have fundamentally altered the global security environment since the United Nations Charter was drafted".[1] The paper argues that the most important geopolitical shifts post-1945 are:

1) The process of decolonisation in the 1950s and 1960s which led to the emergence of a large number of new states in Africa and Asia.
2) The end of the Cold War in the early 1990s and the emergence of new state actors.
3) The trend towards global interdependence, which has made borders more permeable, increased contacts at the sub-national level, and widened the transnational impact of internal conflict.

The different societies that make up humanity are interconnected and interdependent today as never before. Only by working together will countries be able to overcome the threats to security that they face in today's uncertain world. What is now needed is collective security which, while not violating national sovereignty, promotes a shared responsibility for managing emerging threats and has respect for international law and fundamental human rights at its heart.

The problem is that there are no agreed rules about humanitarian intervention to guide the international community in responding to individual situations as they arise or to judge the legitimacy and legality of intervention in each case. There is a disparity between modern day global security challenges and the rules currently in place for managing international peace and security, particularly in relation to humanitarian intervention.

Oxford Research Group is undertaking a long-term programme of work exploring the concept and application of humanitarian intervention.[2] As part of that work, this paper critically examines attempts to conceptualise the use of military intervention on humanitarian grounds, with a focus on the 'responsibility to protect' framework, and offers discussion of the way forward in light of the Afghanistan and Iraq wars and the US-led 'war on terror'. Finally, the important role that the UK government has to play in this issue is explored along with the policy implications of such a role.

The Right of Humanitarian Intervention

The *'devoir d'ingérence'* (duty of intervention) was a term first coined in the late-1980s by Professor Mario Bettati and the French politician Bernard Kouchner. They were opposed to the Westphalian concept of state sovereignty being used as a defence for a state's gross violations of its population's fundamental human rights. Following Saddam Hussein's Kurdish operation in 1991, Kouchner, and others in the Mitterrand government, pushed for the *'droit d'ingérence humanitaire'* (right of humanitarian intervention) – the right to intervene when states oppress their own citizens. Kouchner (who co-founded Médecins Sans Frontières in 1971) argued that there were some so-

called humanitarian crises that were politically motivated and therefore could only be addressed by decisive exercises of state power.

Previously, humanitarian action was 'disinterested', and carried out within the humanitarian space (a zone free of political interference) under what might be called a doctrine of silent neutrality. This doctrine was practised by, for example, the International Committee of the Red Cross (ICRC) in the Nigerian-Biafran civil war of 1967-1970. Kouchner, and others like him, championed a more politically engaged humanitarian action. At first, this was meant only as the right of states to provide humanitarian relief even when the violating state refused to give permission.

The Kouchnerian notion of the right to intervene on humanitarian grounds was used by the UN in Iraq in 1991 and Somalia in 1992, and by France in Rwanda in 1994. A full application of this approach to humanitarian action came in the form of UNPROFOR (the United Nations Protection Force) operations in Bosnia in 1994-95. UNPROFOR's function was to deliver humanitarian relief to trapped refugees and encircled civilian populations in cities under siege in places like Sarajevo. However, the fundamental weakness of this approach was that intervention did not mean stopping the actual fighting that was causing the humanitarian crisis in the first place. UN troops were only allowed to defend themselves or protect humanitarian workers seeking to distribute aid. They could do little when, for example, Serbs massacred 7,000 Muslim men and boys in the UN 'safe area' of Srebrenica in July 1995.

The Srebrenica massacre did little to help the Kouchnerian notion of using military intervention to enable the delivery of aid to civilians in the midst of a civil war, without trying to coerce the different sides into stopping the fighting. In Bosnia, humanitarian action had been used as a substitute for direct military action, with dire consequences. However, the concept of humanitarian intervention looked very different during the 1999 NATO campaign in Kosovo.

The Doctrine of the International Community

In Kosovo, it was considered necessary to use NATO air strikes to roll back alleged ethnic aggression, and even to provide military assistance to victims seeking to defend themselves. In supporting the Kosovo Liberation Army (KLA), considered by many to be a terrorist organisation, the UK-US led coalition took sides in what was, essentially, a civil war. Kosovo was the first time military means were used to create a humanitarian space for aiding the civilian population and the reconstruction of a country. However, traditional humanitarian agencies were appalled by the way humanitarian motives were now being employed as a defence of military action (a defence that seems familiar post-9/11 and the Afghanistan and Iraq wars). Many commentators have since argued that genocide was not in fact occurring in Kosovo and that one of the main motives behind the NATO campaign was actually to preserve the credibility of NATO.

At the time, the British Prime Minister, Tony Blair, argued that the most pressing foreign policy problem was to identify the circumstances in which states should become actively involved in other people's conflicts. He first laid out his 'doctrine of the international community' (what has also become known simply as the 'Blair doctrine') in a speech to the Chicago Economic Club on 22nd April 1999.[3] When applying the doctrine to international security and humanitarian intervention, Blair called upon the idea of a just war based not on any territorial ambitions but on values (although Kosovo certainly did

not fit the notion of a just war, either in its justification nor its conduct, as laid out in traditional just war theory). While he pointed out that the principle of non-interference should not be rejected too readily, he argued that the principle must be qualified in certain important respects – for example, acts of genocide could never be a purely an internal matter. Therefore, when deciding when and where to intervene, he proposed the following five major considerations:

1) Are we sure of our case?
2) Have we exhausted all diplomatic options?
3) Are there military operations we can sensibly and prudently undertake?
4) Are we prepared for the long term?
5) Do we have national interests involved?

Tony Blair (or Professor Sir Lawrence Freedman, who purportedly provided the intellectual backbone, and much of the wording, of this part of the Chicago speech) did not suggest these as absolute tests, but as the kind of issues that needed to be considered when deciding when and where to intervene. He also argued that these rules would only work if a new way could be found to make the UN operate, and so avoid the deadlock that had undermined the effectiveness of the Security Council during the Cold War. However, when Hugh Powell and the policy planning staff at the Foreign Office tried to translate Blair's speech into a strategy document, relating it to international institutions such as the UN, they reportedly failed after weeks of effort.[4]

The Blair doctrine of the international community suffered from some fundamental difficulties. Not least of which was the question: *who* is the international community? From a village in Kosovo, a Serb may have been forgiven for thinking that they were, in fact, being bombed by a small group of Western nations that had simply decided to call themselves the 'international community'. They may also have been forgiven for thinking that, in seeking secession and an ethnically pure Kosovo, the KLA had managed to manipulate external intervention to advance their political purposes. Which in turn leads to another challenge: *whose* values are we upholding? Who decides which side is 'good' and which side is 'bad' in any conflict? The values should relate to those rights accorded to people under the large body of international human rights law, not those values that the so-called international community has held up, sometimes legitimately and sometimes not, as ad hoc explanations for the use of military force.

The problem remained that any force with the power to intervene outside of the UN, could have interests that extended beyond the cessation of genocide and the liberation of the oppressed. Not only were Blair's criteria for intervention too weak to divorce humanitarianism from imperialism (in terms of both its intention and application), but his version of intervention seemed to emphasise *military* intervention and then only as a *reactive* measure (that is, military intervention after, for example, a genocide had already begun). As Blair himself recognised, there are also political, diplomatic, economic and financial measures that can be used. In addition, very little attention was paid to preventing these crises in the first place, and it looked like intervention would only be exercised by the strong against the weak.

Humanitarian Intervention and the United Nations

Whatever the merits or criticisms of Blair's Chicago speech, the 1990s had become somewhat a decade of humanitarian intervention. In the period between the end of the Cold War in the early 1990s and the growing threat from international terrorism at the beginning of the new millennium, notions of a just war were enjoying a revival in the context of this new era of humanitarian intervention. This was even when some of the interventions at best looked like taking sides in a messy civil war, or at worst like old-fashioned gunboat diplomacy under a new veil of moral justice. The decade saw interventions (against the wishes of a government, but with purported humanitarian justifications) in Liberia (1990-97), northern Iraq (1991-present), the former Yugoslavia (1992-present), Somalia (1992-93), Rwanda and eastern Zaire (1994-96), Haiti (1994-97), Sierra Leone (1997-present), Kosovo (1999-present) and East Timor (1999-present). The Kosovo bombing in particular is understood by many to have established the norm of resort to force without the authorisation of the UN Security Council.

This is an important point to note: Kosovo is understood by many to have established the norm of resort to force *without the authorisation of the UN Security Council* (although in fact most humanitarian interventions have taken place without prior endorsement by the UN). The UK Parliament's Foreign Affairs Committee report on NATO's intervention in Kosovo concluded that, "NATO's military action, if of dubious legality in the current state of international law, was justified on moral grounds".[5] The UN Charter only sanctions the use of force in self-defence under Article 51 or when authorised by the Security Council to maintain or restore international peace and security under Chapter VII (and then only if the Council considers that measures not involving the use of armed force would be or have proved to be inadequate). Article 2.7 specifically forbids intervention "in matters which are essentially within the domestic jurisdiction of any state", though this injunction can be overridden by Security Council authorisation under Chapter VII.

The UN has intervened in the past to stop gross violations of human rights, for example in Somalia and the former Yugoslavia. However, it has only done so under Chapter VII in the name of preserving the peace (or, some might say, preserving the status quo). If a country or countries were to intervene under the remit of the UN again, they would require a Security Council resolution that, depending on the circumstances, could be vetoed by one or more of the five permanent members (for example, by Russia or China because of the ongoing situations in Chechnya and Tibet respectively). The threat of veto (the so-called 'hidden veto') hangs over the Council. The problem is that the Security Council's decision to intervene or not intervene in a particular conflict does not reflect internationally agreed objective criteria and legal norms, but the domestic and global imperatives of the Permanent Five.

Although the Security Council has primary responsibility for the maintenance of international peace and security, under the Uniting for Peace procedures (UN Resolution 377) the General Assembly can take collective action, as needed, when the Security Council is blocked by the veto or the threat of a veto. The purpose of Uniting for Peace is to ensure that any incapacity of the Security Council does not prevent the international community from meeting its responsibility for maintaining peace in the world. The idea is that there is still a second body in the United Nations, in the form of the General Assembly, which can take over this responsibility. Specifically, the resolution states:

"If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security."[6]

During the 2003 build-up to the invasion of Iraq, a resolution against the war was not submitted to the Security Council since vetoes by the USA and the UK were fairly certain, and the failure to pass such a resolution might be used to defend the war's legitimacy. Instead, members of the Organization of the Islamic Conference (an association of 56 Islamic states promoting Muslim solidarity in economic, social and political affairs) and the Non-Aligned Movement (a movement of 115 members representing the interests and priorities of developing countries), as well as many areas of civil society, considered calling the General Assembly to adopt a Uniting for Peace resolution to prevent an attack by the USA and its allies. However, even if the General Assembly were to have passed such a resolution, they could only have *recommended* collective action to UN members. The Uniting for Peace resolution has been employed ten times since its adoption in 1950. Most famously, it was used twice in 1956 by the United States when the UK and France attacked the Suez Canal after Egypt nationalised it and again, later that year, to pressure the Soviet Union to halt its invasion of Hungary. It then seems somewhat ironic, not to mention hypocritical, that the Bush administration worked so hard to prevent the General Assembly from discussing the Iraq invasion under such a resolution.

Another issue is the time taken by the UN to respond to humanitarian crises. For example, after the Security Council passed Resolution 918 in May 1994, which increased the UN strength in Rwanda to 5,500 troops, nearly six months passed before the force was eventually deployed, by which point approximately 500,000 Rwandan civilians had already been killed. According to the United Nations Association, in every major UN peacekeeping operation between 1991 and 1999, there was an interval of between three to six months separating the adoption of a UN resolution authorising a mission and the point when the force was actually deployed.[7]

As a result of such delays, there have been some calls for the development of a UN standing army as a permanent international force recruited, trained and deployed directly by the UN. This highly trained rapid reaction force could be permanently at the disposal of the Security Council, able to respond quickly to an emerging humanitarian crisis and deployable for a limited time while a traditional UN peacekeeping force was being mustered. However, concerns have been raised regarding the legitimacy of such a standing force, given that enforcement action falls within the exclusive domain of the Security Council which, despite numerous calls for reform, is still dominated by the permanent members and under-represents the developing world. Either way, at present there does not seem to be the political will necessary to establish a UN standing army, and other mechanisms are being explored, such as the use of regional rapid reaction forces (as local actors) or even private military companies, to reduce the UN's response time to crises.

So should a country stand by and allow genocide to occur because the Security Council is deadlocked, or does it have the right, or more importantly the duty, to intervene without a UN mandate? Of course the case for genocide is sometimes not all that clear. During the first half of 2004, debate raged on for months over whether there was, or was not, genocide occurring in the Darfur region of Sudan – even while tens of thousands of people were being killed and over one million people displaced. Furthermore, any resort to force outside of the UN leaves the door wide open for misuse of the concept of humanitarian intervention by countries with less than altruistic motives. We should not forget that in 1939 Nazi Germany invoked humanitarian reasons to legitimise its threatened invasion of Czechoslovakia, alleging that ethnic Germans there were being mistreated in the Sudetenland. Humanitarian interventions can also be viewed as legitimate or not, depending on the countries involved. The USA adamantly opposed Vietnam's invasion of Cambodia in 1978, despite the fact that it halted the atrocities being committed by Pol Pot's Khmer Rouge regime, because the intervention was carried out by the 'wrong' people. Indeed the legitimacy of an intervention is very much in the eye of the beholder.

Shortly after Blair's Chicago speech, UN Secretary-General Kofi Annan summarised in an article for the *Economist* what he called the dilemma of humanitarian intervention: "On the one hand, is it legitimate for a regional organisation to use force without a UN mandate? On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked?"[8] In seeking answers to these questions, Annan discussed four aspects of intervention which, he argued, needed to be considered with special care:

1) *'Intervention' should not be understood as referring only to the use of force*; the commitment of the world to peacekeeping, humanitarian assistance, rehabilitation, and reconstruction varies greatly from region to region.
2) Traditional notions of sovereignty are not the only obstacle to effective action in humanitarian crisis – no less significant are the ways in which states define their national interests. A new, broader definition of national interest is needed, which would induce states to find greater unity in the pursuit of common goals and values, and recognise that *the collective interest is the national interest*.
3) In cases where forceful intervention does become necessary, *the Security Council must be able to rise to the challenge*. The UN should be able to find common ground in upholding the principles of the Charter, and acting in defence of our common humanity.
4) When fighting stops *the international commitment to peace must be as strong as was the commitment to war*.

Kofi Annan raised the dilemma of intervention in his speech to the United Nations General Assembly in 1999, and again in 2000. He asked the international community to find a new consensus on how to approach these issues and to forge unity around the basic principles and processes involved. He posed the question:

> *"If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"*[9]

The Responsibility to Protect

In response to the challenge laid down by Kofi Annan, Canada's then Prime Minister Jean Chrétien announced the establishment of the International Commission on Intervention and State Sovereignty (ICISS) during the UN Millennium Summit in September 2000. The mandate of this independent commission was to promote a comprehensive global debate on the relationship between intervention and state sovereignty. This one-year mandate hoped to foster an international political consensus on how to move towards action within the UN system.

Following twelve months of intensive research and consultation, the Commission published its report *The Responsibility to Protect* and formally presented it to Kofi Annan in December 2001. The report's central theme is "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states".[10] In other words, the report promotes a re-characterisation of the concept of state sovereignty from *sovereignty as control* to *sovereignty as responsibility*. It recognises that the rights conferred on a sovereign state are also balanced with responsibilities. The report is not an attempt to overturn the norm of non-intervention or norms of state sovereignty, but rather to update them. It argues that where a civilian population is suffering from serious human rights abuses, and the state in question is unwilling or unable to avert them, the principle of non-intervention must yield to the international responsibility to protect that population.

This 'responsibility to protect' umbrella comprises three specific responsibilities:

1) *The responsibility to prevent* – to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
2) *The responsibility to react* – to respond to situations of compelling human need with appropriate measures.
3) *The responsibility to rebuild* – to provide full assistance with recovery, reconstruction and reconciliation.

The international community's responsibility to *prevent* is considered the single most important dimension of the 'responsibility to protect' and the Commission argues that prevention options should always be exhausted before intervention is contemplated. However, in relation to situations where military intervention for human protection purposes becomes necessary (to prevent large-scale loss of life or ethnic cleansing), the report discusses various important principles: the just cause threshold, the precautionary principles, right authority and operational principles. The four precautionary principles that should be considered in relation to any military intervention are identified as:

1) *Right intention* – the primary purpose of the intervention must be to halt or avert human suffering.
2) *Last resort* – military intervention can only be justified when every other non-military option has been explored.
3) *Proportional means* – the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.

4) *Reasonable prospects* – there must be a reasonable chance of success, with the consequences of action not likely to be worse than the consequences of inaction.

The ICISS concludes that the most appropriate body to authorise such military intervention is the UN Security Council, and that the most pressing task is to ensure that the Security Council works better than it has in the past. They argue that the Permanent Five should agree not to apply their veto power, other than when vital state interests are involved, to obstruct the passage of resolutions authorising military intervention for human protection purposes for which there is otherwise majority support. They also recommend that the Security Council should seek to reach an agreement on a set of guidelines embracing the principles of military intervention, including the precautionary measures outlined above, laid out in the report.

As with the other doctrines of humanitarian intervention discussed in this paper, the 'responsibility to protect' is not without its critics. A series of World Federalist Movement-Institute for Global Policy consultations with civil society organisations highlighted several key issues. Concerns were raised about the central role the report proposed for the Security Council, without full consideration of what should happen if the Council fails to act (although it does discuss the possibility of a General Assembly emergency special session under the Uniting for Peace procedures). Another concern was the emphasis on the responsibilities of sovereign states, which raises the question of what responsibilities failed states or rebel authorities have and how they would be held accountable. However, on the whole, the consultations found strong support for the general principles and framework of the ICISS report.[11] Much of the debate now focuses on how to ensure that such a framework is not abused and selectively implemented by powerful countries to further their own national interests at the expense of the sovereignty of Third World countries.

The report was released only a few months after the 9/11 attacks on the United States. In the months and years following those attacks, the attention of the international community shifted from humanitarian intervention to the so-called 'war on terror' and the related wars in Afghanistan and Iraq. The ICISS report didn't really enter the public consciousness at the time, and if it was not for the efforts of members of the ICISS, the Canadian Government, the UN Secretary-General and certain sectors of civil society, the important concepts in the report may have been overlooked altogether. However, the report has slowly been gaining international support and is now at the centre of negotiations over reform of the UN.

The 'War on Terror'

In light of the absence of the much promised weapons of mass destruction in Iraq, and the affirmation that there was no significant pre-war link between Saddam Hussein and al-Qaida, Tony Blair and George W. Bush now want to claim, retrospectively, humanitarian reasons for the invasion of Iraq. This claim not only lacks credibility or any legal basis; it damages the very concept of humanitarian intervention. Any efforts to justify the Iraq war, even in part, in humanitarian terms risks giving humanitarian intervention a bad name. In an increasingly cynical world, will the public now believe their elected leaders when they ask for support for further armed interventions – whatever the reasons offered? Humanitarian intervention has become linked to military invasion and the 'war on terror'. This is a concept Tony Blair is happy to promote, as demonstrated in a speech in his Sedgefield constituency on 5th March 2004:

"Already, before September 11th the world's view of the justification of military action had been changing. The only clear case in international relations for armed intervention had been self-defence, response to aggression. But the notion of intervening on humanitarian grounds had been gaining currency. I set this out, following the Kosovo war, in a speech in Chicago in 1999, where I called for a doctrine of international community, where in certain clear circumstances, we do intervene, even though we are not directly threatened…

…Containment will not work in the face of the global threat that confronts us. The terrorists have no intention of being contained. Emphatically I am not saying that every situation leads to military action. But we surely have a right to prevent the threat materialising; and we surely have a responsibility to act when a nation's people are subjected to a regime such as Saddam's."[12]

It is important to recognise how different this is from the 1999 speech Tony Blair gave in Chicago. It is difficult to see how anything in the Chicago speech (or in the ICISS recommendations) would sanction the removal by force of a dictator such as Saddam Hussein at that time. In fact, the Attorney General's pre-Iraq war legal advice to Tony Blair in relation to humanitarian intervention was that, "I know of no reason why it would be an appropriate basis for action in present circumstances".[13] Similarly, a war fought to pre-empt potential future terrorist attacks has only the remotest conceptual link to the right of humanitarian intervention, particularly as there is no way of guaranteeing that civilian lives lost in such a war would be fewer than those resulting from the feared terrorist attacks. This last point is important in light of one of the key elements of just war theory, *jus in bello*: innocent people and non-combatants should not be harmed and only appropriate force should be used.

There is a growing blurring in political thought and rhetoric between intervention on humanitarian grounds and pre-emptive strikes to stop the spread of weapons of mass destruction, avert future terrorist attacks, or bring about regime change. This link between the so-called 'war on terror' and humanitarian intervention is something that the ICISS itself rejected. In the foreword to *The Responsibility to Protect*, the authors explain that the framework the Commission developed to address the issue of coping with human protection claims in other states must not be confused with the framework necessary to deal with the issue of responding to terrorist attacks in one's own state. The two issues are "fundamentally different". However, the report does go on to say:

"We have no difficulty in principle with focussed military action being taken against international terrorists and those who harbour them. But military power should always be exercised in a principled way, and the principles of right intention, last resort, proportional means and reasonable prospects outlined in our report are, on the face of it, all applicable to such action."[14]

It is clear that the wars in Afghanistan and Iraq, and the manner in which these wars were fought, do not fulfil the general principles of *The Responsibility to Protect* or the four precautionary measures the ICISS identified, and bear no relation to the right of humanitarian intervention or, for that matter, Tony Blair's own criteria for intervention discussed earlier in this paper. Over 25,000 Iraqi civilian deaths[15] and in the region of 9,000 or more Iraqi military deaths[16] are testament to this (as are the over 2,000 Coalition military deaths in Iraq so far[17]). It is a sad fact that, while the Taliban may have been ousted from power, more innocent civilians were killed as a direct result of military

action in Afghanistan than died in the 9/11 attacks that prompted the US-led invasion.[18] The 'war on terror' must be kept clearly separate from the right of humanitarian intervention if we are to move forward with developing a rigorous, consistent and legitimate application of the 'responsibility to protect'.

The 'war on terror' is causing a further problem for the UN itself. The Bush administration's insistence that its allies contribute troops, and other resources, to the conflict in Iraq (and the NATO-led International Security Assistance Force in Afghanistan) rather than to UN operations, is leaving a depleted UN short of the necessary resources for peacekeeping and post-conflict operations in other, predominately non-oil-producing, parts of the world.[19] This in turn has serious implications for the effectiveness of future UN military operations in response to humanitarian crises.

The Afghanistan and Iraq wars were not humanitarian interventions, but the current cynicism they have created about the use of military force for humanitarian purposes could be devastating for persecuted peoples in need of assistance in the future. The people of Darfur may be among the first victims of this. In September 2004, the BBC reported that Sudan's parliamentary speaker, Ahmad Ibrahim al-Tahir, warned against intervention in his country, saying: "If Iraq opened one gate of hell for the West, we will open seven of its gates. We will not surrender this country".[20] Unfortunately, although some hope Bush's second term might see a shift from attacking 'symptoms', through his so-called 'war on terror', to addressing some of the root causes of terrorism and political violence, it may also lead to more interventions justified publicly, at least in part, on 'humanitarian' grounds.

The Way Forward?

Following several years of the 'war on terror', the concept of humanitarian intervention is now clearly back on the international agenda. The US Government seems determined to spread 'freedom' and market-based 'democracy' in the Middle East (with Iran set firmly in their sights); the European Union is developing an EU Rapid Reaction Force (on 60 days notice) and a series of elite battle groups (on 15 days notice) to deal with humanitarian crises, particularly in Africa; and the African Union has sent troops to Darfur. The crisis in Darfur, in particular, has focused attention on the need for a clear framework for humanitarian interventions. In September 2004 alone, the British Foreign Secretary, Jack Straw, the Canadian Prime Minister, Paul Martin, and the Vatican Secretary of State, Cardinal Angelo Sodano, all gave key speeches relating to the principle of humanitarian intervention.

However, in light of the problems and setbacks discussed in this paper, can a universally acceptable doctrine of humanitarian intervention still be developed and acted upon by the wider international community? In short, the answer must be that it can, because it has to. There have been over 40 cases of genocide or politicide in the last 50 years, and there is currently a high risk of future genocide or political mass murder in Sudan, Burma, Algeria, Burundi, Rwanda and Ethiopia, with a significant possibly of such violence in a dozen others.[21] This issue will not go away.

There is some resistance within government circles to developing a framework within which interventions can be placed, but there is a very real need for a clear framework to

be adopted if interventions are, and are seen to be, legitimate in the eyes of those countries in whose affairs the 'international community' tends to intervene.

It is the politically and militarily weaker states of Africa, and the strategically important states of the Middle East, that will likely face the 'threat' of future humanitarian interventions. If these interventions are to be seen as legitimate in the eyes of all states, then they must be carried out within an internationally agreed framework that clearly distinguishes humanitarian needs from imperial actions (or humanitarian actions from imperial interests). The decision to intervene, or not, must also be made by an organisation that is open, accountable and representative.

Fortunately, in the form of the United Nations, the world already has in place a military and diplomatic organisation with the potential capacity (though maybe not always the will) to deal with all peace, security and human protection issues. Collective intervention approved by the UN is seen, by most, as legitimate because it is authorised by a representative international body. Interventions taken outside the UN system are often seen as illegitimate because they can be self-interested, with humanitarian reasons offered as secondary justification for military action.

Furthermore, we also already have a robust and progressive doctrine of humanitarian intervention, in the form of the framework and recommendations set out in the ICISS report *The Responsibility to Protect*. Oxford Research Group is part of the call from many areas of civil society to support this document, which is a truly important development of intervention doctrine. The Canadian Government, and other UN member states, should be assisted in developing the inter-governmental processes necessary to promote and operationalise the key concepts of the ICISS report within the UN system as soon as realistically possible. It is important to note that this framework does not necessarily open the door to an increase in interventions, each situation will still need to be considered on a case-by-case basis, but it does provide the international community with the guidelines necessary to respond quickly to each situation as it arises.

However, it goes without saying that more emphasis should be placed on preventing these humanitarian crises from arising in the first place. Progressive and radical work should be undertaken on the world's responsibility to *prevent* (as well as the responsibility to rebuild after a conflict), by addressing the fundamental root causes of conflict, including poverty and human insecurity. These root causes include, for example, the spread of HIV/AIDS, the international arms trade, the over-exploitation of natural resources, the threat of global climate change, military aid and state terror, the consequences of IMF structural adjustment policies, and the unjust world trade system.[22] If this work is to be undertaken within the UN, then the organisation should rapidly address the growing problem of the poor quality of the information and analysis available to the Security Council. A review carried out by the *Disarmament Times* in 2004, found that UN reports "characteristically gloss over or ignore key issues, and provide little or no analysis of the interplay of major economic and political interests that lies at the root of conflicts".[23] The review concludes that this is because the Secretariat does not wish to offend powerful states, including the permanent members of the Security Council, but this is a problem that must be addressed if the UN is to play its part in the international community's responsibility to prevent humanitarian crises.

Sovereignty needs to be protected, particularly in the developing and post-colonial world and particularly in the face of Western economic, political, cultural and military

imperialism. However, states have a responsibility to protect their citizens and the international community has a duty, not a right, to intercede when those citizens are genuinely suffering from gross violations of their fundamental human rights. The ICISS report provides a suitable framework within which interventions can occur, but they must be carried out with the authority of the UN and, ideally, with any troops coming under the command of the UN. For this to work the UN will need to go through the difficult and profound process of change, in order to adapt to the security problems of the 21st century.

Many of the issues discussed in this paper were addressed at the end of 2004 in the report of the Secretary-General's *High-Level Panel on Threats, Challenges and Change*.[24] The report identifies violence within states (including civil wars, large-scale human rights abuses and genocide) as one of six clusters of threats with which the UN and the world must be concerned in the coming decades. The responsibility to protect civilians from large-scale violence is a central theme of the report and the Panel incorporated 'responsibility to protect' principles into several of their key recommendations. The Panel affirmed the core argument of the ICISS report: that with state sovereignty comes the responsibility to protect the welfare of the population, and that the international community has a responsibility to protect those peoples when states are unable or unwilling to do so. In particular, the report recommended that the basic precautionary principles set out by the ICISS (right intention, last resort, proportional means and reasonable prospects) be met by the Security Council in authorising any use of military force. The Panel also reiterated the ICISS report's emphasis on conflict prevention and post-conflict reconstruction.

Following the report of the High-Level Panel, Kofi Annan argued that as genocide, ethnic cleansing and other such crimes against humanity are threats to international peace and security, then the UN Charter already gives full authority to the Security Council to use military force, preventively if necessary, in these situations. He also reaffirmed the four precautionary principles laid out in *The Responsibility to Protect* and urged the Security Council to adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorise or mandate the use of force.[25]

Intense negotiations on this issue continued right up to the UN World Summit in September 2005. The governments of Rwanda, South Africa, Tanzania, Australia, New Zealand, Canada, Mexico, Chile, Argentina, Peru, Singapore, Japan and all the European governments are understood to have strongly supported the proposed agreement to enshrine their responsibility to protect civilians and stop mass killings. However, the governments of the USA, Russia, India, Pakistan, Egypt, Iran, Syria, Malaysia, Cuba, Venezuela and Brazil tried to weaken or block the agreement for a variety of reasons. Although weakened, the final Outcome Document of the Summit did include the first ever clear international agreement that outside countries should be willing to act to stop atrocities, using military force as a last means if necessary, in a country whose government is unable or unwilling to do so itself. Specifically the document states:

> *"Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate,*

encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide."[26]

Unfortunately, an important paragraph relating to the use of the veto in the Security Council did not make it into the final document. This paragraph asked the five permanent members of the Security Council to refrain from using their veto in cases of genocide, crimes against humanity, ethnic cleansing and war crimes. This proposal had received widespread support from the European Union and Latin America, however it was reportedly removed as a result of pressure from the USA, Russia and China (who all hold veto power). This means that despite the widespread acceptance of the general principle of a 'responsibility to protect', there will still be political hurdles to overcome in the Security Council in implementing this principle if and when military intervention is required.

While the political will to establish a UN standing army does not exist (if indeed such an army can be considered necessary), further attention needs to be given to any role that regional or sub-regional organisations (for example, the African Union or European Union) might play in rapid troop deployment, particularly if the Security Council and General Assembly fail to respond to an emerging humanitarian crisis. There also needs to be serious examination of the worrying possibility that the UN may make greater use of private military companies (as somewhat unaccountable non-state actors) in future military interventions, peacekeeping operations and post-conflict reconstruction. This is important, as further work is needed on the means used for intervention – in other words, not just *if* or *when* should we intervene, but *how* should we intervene? One positive development is reported UN plans for a rapid reaction force of aid workers to be deployed in refugee emergencies. Able to move at three to four days notice, this force could provide initial protection for civilians fleeing internal conflicts, who are highly vulnerable to violence, including rape and murder.[27]

In addition, member states must stop crippling the UN and the Security Council (for example, through the political use of vetoes, consistent failure to meet their financial obligations to the organisation, or blocking reform proposals) and then blaming the UN for inaction. The failure to stop the genocide in Rwanda in 1994 is often seen as the UN's most shameful moment. However, it was a lack of political will from key members of the UN Security Council, as well as arguments over who would supply the resources and cover the cost of military action, which led to the failure to intervene in time. What followed was a preventable genocide and the loss of an estimated 800,000 lives in three months. Although more than the sum total of its parts, the UN is made up of its individual members states and they all have a responsibility to ensure that it works effectively.

Military intervention on asserted humanitarian grounds should be approached with extreme caution but, perhaps more importantly, there must never be another Rwanda. We must now begin to move from rhetoric to reality.

The Role of the UK Government

Although the whole international community needs to engage with these issues, the UK government is of particular importance. Tony Blair has previously expressed a specific interest in the issue of humanitarian intervention, particularly in his 'doctrine of the international community' speech discussed earlier. In addition, as a permanent member of the UN Security Council, the UK is well placed to influence discussion on the topic of humanitarian intervention and to support the Canadian government and the UN Secretary-General in promoting the 'responsibility to protect'.

The Prime Minister's Strategy Unit project on countries at risk of instability (so-called "fragile states"), concluded that the international community needs to support the 'responsibility to protect' agenda through practical steps to enable early response to crises and improve its crisis prevention capabilities. The UK government has established an intergovernmental Global Conflict Prevention Pool and there is an evolving UK Peace Support Operations doctrine to enable a more strategic approach to conflict prevention and resolution (the 'responsibility to prevent').[28] The UK is also involved in developing an EU Rapid Reaction Force to deal with humanitarian crises, particularly in Africa (the 'responsibility to react'). In addition, the UK government is in the process of setting up a Post Conflict Reconstruction Unit as an intergovernmental unit to develop strategy for post conflict stabilisation (the 'responsibility to rebuild').[29]

The government must be commended for these initiatives, and for their support of the 'responsibility to protect' agenda at the UN. However, working with government and other NGOs, Oxford Research Group aims to promote a more comprehensive approach to operationalising the 'responsibility to protect' framework in the UK, which links these various initiatives together with strong political support and an overarching policy that has the UN at its heart. This is particularly important given that the Ministry of Defence *Joint Doctrine and Concept Centre* believes that the UK will face increasing calls for humanitarian intervention and assistance overseas (especially in sub-Saharan Africa) over the next thirty years.[30] There must also be recognition that the UK can play a key role in conflict prevention by applying the ICISS precautionary principles to the deployment of their own Armed Forces, and therefore accepting that there must never be another intervention along the same lines as Iraq. Portraying an invasion and regime change as a 'humanitarian' intervention because all other justifications have proven

hollow, undermines the very principles the government is trying to promote with the initiatives highlighted above.

What is needed now is genuine support at the highest levels of government for the 'responsibility to protect' framework and *all* that it represents: progressive policies of prevention; all means short of military action exhausted before UN authorised force is used; that the interests of the people in need of protection are the only justification for such force, and; a strong commitment to rebuilding a nation after any military intervention. If applied properly, this is not a framework that will encourage more interventions, in fact many of the wars of the last twenty years would have failed to meet the threshold of the 'responsibility to protect' criteria, but it will give the international community legitimate guidelines for ensuring that state sovereignty or lack of political will should never again protect those who persecute and allow serious harm to come to their populations.

This is our shared responsibility.

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[17] In September 2005, Iraq Coalition Casualty Count reported 2,107 Coalition military fatalities since January 2003. In addition, over 14,000 US military personnel had been wounded in action. See http://icasualties.org/oif/.

[18] Professor Marc Herold of the University of New Hampshire found that a minimum of 3,291-3,831 Afghan civilians were killed as a direct result of Coalition military action between October 2001 and December 2003. See http://pubpages.unh.edu/%7Emwherold/. Official figures put the number of people killed in the 9/11 terrorist attacks at 2,915. See *The 9/11 Commission Report* http://www.9-11commission.gov/report/911Report.pdf and the Center for Disease Control http://www.cdc.gov/mmwr/preview/mmwrhtml/mm51SPa6.htm.

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