CANADIAN FORCES COLLEGE / COLLÈGE DES FORCES CANADIENNES
JCSP 33 / PCEMI 33

MASTER OF DEFENCE STUDIES RESEARCH PAPER

The Responsibility to Protect

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Syndicate 9

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ABSTRACT

Controversial humanitarian interventions in the 1990s in Somalia, Rwanda, Bosnia and Kosovo led successive UN Secretaries-General to plead with the international community to consider the balance between intervention and state sovereignty in order to respond to a future crisis like Rwanda. In 2000, Canada established the International Commission on Intervention and State Sovereignty to reconcile these competing principles in order to protect the victims of potential human rights violations when their states were unable or unwilling to prevent such tragedies. In 2001, the Commission issued its report, *The Responsibility to Protect*, which was intended to achieve global consensus on a mechanism to move from debate to action in times of need.

The Report clarified the debate of the previous decade regarding just cause, rightful authority and the balance between non-intervention and universal human rights. It stated that large scale loss of life or ethnic cleansing were valid grounds for action, that the UN Security Council was the appropriate authority to approve action, and that the principles of intervention and state sovereignty were complementary, but that non-intervention yields to the international responsibility to protect when populations are at risk.

The Report provoked substantial response from academics, governments, civil society and others. The reactions ranged from agreement to dissention, with myriad views between. However, even the Report's proponents were divided between full support, and acknowledgement that the Report was a smaller, incremental step in the progress of humanitarian intervention. The range of responses demonstrates the Report's failure to achieve global consensus.

In practical terms, the international community's lack of action in the face of the ongoing humanitarian tragedy in the Darfur region of the Sudan further demonstrates that *The Responsibility to Protect* is not, in itself, the mechanism to move the global community to action. While the ICISS report has the potential to provide a moral and structural framework for the international community to act in the event of atrocities, lack of global consensus and political will to act has limited the realization of additional protections of humanity.

INTRODUCTION

The International Commission on Intervention and State Sovereignty (ICISS) published its report *The Responsibility to Protect* in 2001, detailing the need for the international community to exercise the responsibility to protect populations at risk if their sovereign state is unable or unwilling to do so. The Commission sought to reconcile the objectives of strengthening state sovereignty and improving the capacity of the international community to react when required. While some heralded the report as a substantial, visionary step, others claimed it provides insufficient structure for the necessary changes in state practice and further, that governments will be reluctant to commit to criteria that will require use of force.[1]

It has been almost six years since the report was published. Has it facilitated action in situations where large scale human rights violations or humanitarian tragedies threaten? Not so far. While the ICISS report has the potential to provide a moral and structural framework for the international community to act in the event of atrocities, lack of global consensus and political will to act has limited the realization of additional protections of humanity.

The Responsibility to Protect concept evolved from early debate in the 1990s leading to the creation of ICISS in Canada, to the international community's response to the report and potential application of the concept. The situation in Darfur, Sudan is a prime example of lack of action to make the legal concept operational, and illustrates the continued impediments to action in the face of an ongoing humanitarian tragedy. The

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[1] MacFarlane, S. Neil, Carolin J. Thielking and Thomas G. Weiss, "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly* 25, no. 5 (2004), 977-992.

challenges facing the application of *The Responsibility to Protect* and its implementation

by the wider world community are the inability to achieve global consensus and to

generate sufficient domestic political will to provide resources.

A state's responsibility to protect its citizens is not a new concept. This

protection has been discussed amongst just war practitioners since medieval times,

although more for pragmatic reasons than for the moralistic reasons of late.[2] Nor is

humanitarian intervention a novel idea of the 20th century. In fact the idea of

humanitarian intervention by foreign powers failing a state's responsibility to its citizens

had its genesis with Hugo Grotius in the sixteenth century. Grotius claimed that a foreign

power could support subjects of another country in their legitimate resistance to

repression.[3] In the 1700s, Emerich de Vattel built onto Grotius' work by focusing on the

rights and obligations of citizens and states.[4] The 20th century prohibition on the use of

force in intervention had its birth in 1648, shortly after Grotius' death, in the Peace of

Westphalia. The Peace established three key principles which significantly affect

international relations today. The Peace recognized both the sovereignty of states and the

legal equality amongst them and also established the principle of non-intervention into a

sovereign state's internal affairs. It defined sovereignty as a state's ability to impose its

authority over the people and resources within its territories. As a result of the evolution

of the Westphalian system into an international norm, Grotius' humanitarian intervention

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[2] Reichberg, Gregory M., Henrik Syse and Endre Begby, ed., *The Ethics of War* (Oxford, UK: Blackwell Publishing, 2006), 386.

[3] *Ibid.*, 417.

[4] *Ibid.*, 507.

faded both from practice and from international law in the 20th century, with emphasis instead placed on the importance of a state's autonomy within its borders.[5]

The emphasis on state autonomy was strengthened after World War II. With the establishment of the United Nations (UN), in 1945, to preserve peace and international security through protection of the territorial integrity and political independence of its member states, the UN Charter enshrined the principles of sovereignty and non-intervention.[6] It further prohibited the use of force against other sovereign states, and allowed for only two exceptions – in response to an armed attack, or as mandated by the UN Security Council.[7] On the issue of forceful intervention by one state or states to protect the citizens of another state, the Charter is silent.

On the one hand international standards of prohibition of force and non-intervention exist; on the other hand the impact of human rights norms is increasing.[8] The UN General Assembly passed the Universal Declaration of Human Rights on 10 December 1948, recognizing that "the inherent dignity and … the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," and that "all human beings are born free and equal in dignity and rights."[9]

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[5] Danish Institute of International Affairs, *Humanitarian Intervention Legal and Political Aspects* (Copenhagen, Denmark: Government of Denmark,[1999]), 12.

[6] Directorate of Law Training, "Charter of the United Nations - 1945" in *Collection of Documents on the Law of Armed Conflict*, 2005 ed., ed. Directorate of Law Training (Ottawa: National Defence Headquarters, 2005), article 2(1) and 2(7), 62 - 63.

[7] Directorate of Law Training, "Charter of the United Nations - 1945" in *Collection of Documents on the Law of Armed Conflict*, 2005 ed., ed. Directorate of Law Training (Ottawa: National Defence Headquarters, 2005), articles 2(4) and 39, 63, 66.

[8] Ku, Charlotte, Gareth Evans and Lee Feinstein, "Rethinking Collective Action: The Responsibility to Protect and a Duty to Protect," *American Society of International Law* (2004), 83.

A number of other human rights statements and covenants followed this Declaration. They are monitored both by bodies created under the UN Charter, including the Commission on Human Rights, and by bodies created under the international human rights treaties, of which there are now seven that monitor core international human rights treaties such as the Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child.[10] The development of the covenants and follow-on emergence of human rights norms raised the dilemma of how to reconcile the concept of state sovereignty that the UN is founded upon, with its mission to promote the welfare of the people within those states, particularly when their rights may be violated by their own state. The dilemma is particularly difficult to resolve as both state sovereignty and the welfare of the people are important to the strength and permanence of the UN Charter.

This dilemma posed a lesser issue during the Cold War, when humanitarian intervention was not contemplated, in part, for fear of precipitating a third World War. With the reduction of this risk after the fall of the Berlin Wall in 1989, the possibility of joint international intervention could again be considered for purposes such as peace, security and human rights.[11] After the end of the Cold War, many countries whom the previous superpowers may have assisted, found they were no longer strategically important enough to command international assistance.[12] This period also brought

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[9] United Nations, "Universal Declaration of Human Rights," United Nations, http://un.org/Overview/rights.html (accessed 16 March, 2007).

[10] Office of the United Nations High Commissioner for Human Rights, "Human Rights Bodies," United Nations, http://www.ohchr.org/english/bodies/ (accessed 13 January, 2007).

[11] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 3.

increased intra-state conflicts, as the Warsaw Pact disintegrated and therefore no longer exerted the same pressure and control over their states and at times resorted to repression to maintain unity. Another result of the end of the Warsaw Pact was large stocks of surplus weapons furnished for export to the Third World, which intensified intra-state conflicts.

The new post-Cold War world order in the 1990s was marked by interventions in intra-state conflict in Somalia, Rwanda, Bosnia and Kosovo. As noted by the ICISS Report, these interventions were controversial both when they did not occur and when they did.[13] In 1994, the UN Security Council failed to act to intervene in the genocide in Rwanda, despite significant information regarding its planning and impending execution. The genocide was preceded by radio broadcasts promoting fear and hatred against the Tutsis. The Rwandan government funded the arming and training of Hutu radicals. The UN Security Council did not respond to numerous warnings by the UN Force Commander regarding the impending tragedy and the Council failed to allow existing UN forces in Rwanda to discharge their weapons except in self defence. The UN forces could not stop the killing once it started. It is estimated that between 800,000 and 1,000,000 people died.

In another failure to intervene, Srebrenica was the site of the massacre of thousands of Bosnian-Muslims in 1995, despite being designated a safe haven by the UN Security Council for Bosnian citizens fleeing Bosnian-Serb aggression. Although UN

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[12] Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *Humanitarian Intervention* (The Hague: Advisory Council on International Affairs, [2000]), 10.

[13] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 1.

forces witnessed some of the beatings and killings, they did nothing to protect the remaining refugees.[14] During both these tragedies, the UN had troops on the ground in sight of the atrocities. These failures by the UN to prevent mass killing damaged the UN's reputation and more importantly called into question its capability to protect victims and the credibility of humanitarian intervention.

Interventions were also contentious when they did occur. In 1992, a UN mission was established in Somalia to facilitate humanitarian aid to people trapped by civil war, a situation exacerbated by drought conditions which resulted in widespread famine. At the time, the country had no central government and at least 60% of the country's infrastructure was destroyed.[15] In the end, the force was withdrawn with a number of UN peacekeepers having been charged with misconduct. The mission was declared a failure.

Humanitarian intervention was also undertaken in Kosovo in 1999. In this case, the UN Security Council did not approve the operation, as it would have been vetoed by Russia and China who opposed military intervention. Instead of bringing the issue to the UN General Assembly, a coalition of NATO members intervened. While the operation was considered an operational success, it raised significant questions about the legitimacy of military intervention in a sovereign state, particularly when outside the UN process.[16] Criticism was leveled at the NATO coalition that the intervention caused more damage to

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[14] Canadian Forces College, "Authority, Responsibility and Accountability – Srebrenica" (Joint Command and Staff Programme Course 33 Activity Package Appendix 1 to C/DS 521/LDR/DI-1, 2006), A1-2/6.

[15] United Nations, "United Nations Operations in Somalia II," United Nations, http://www.un.org/Depts/DPKO/Missions/unosom2b.htm (accessed 8 January, 2007).

[16] Peace and Governance Programme, *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Intervention, and International Citizenship* (Tokyo: The United Nations University, [2000]), 7.

the people of Kosovo than it prevented.[17] The Independent International Commission on

Kosovo was critical of NATO's use of cluster bombs, of toxic leaks caused by bombing

industrial complexes, and of the environmental damage from using depleted-uranium

tipped shells.[18] Questions arose whether intervention under UN approval would have

provided additional discipline and constraints.[19] The intervention also raised the question

at what point it would be right for action to be taken which would violate another state's

sovereignty in the name of human rights. Furthermore, one might question whether it

would ever be appropriate for countries to act unilaterally or in loose coalitions in these

circumstances without the approval of the Security Council. The intervention in Kosovo

thus highlighted the familiar questions of just cause and right authority, fundamental

principles of Just War Tradition.

Considerable debate arose questioning the propriety of violating another state's

sovereignty in general, even for humanitarian purposes. Ludlow discussed three potential

reasons against supporting intervention: cultural relativism, maintenance of order, and

the establishment of dangerous precedents.[20] None of these are acceptable grounds for

lack of action as sovereignty is not absolute in the face of human rights violations.

Cultural relativism is based on the view that Western states are only able to view

other societies through the lens of Western-style democracy.   By forcing the Western

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[17] Evans, Gareth and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* 81, no. 6 (Nov/Dec 2002, 2002), 104.

[18] Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (New York: Oxford University Press, 2000), 5.

[19] Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *Humanitarian Intervention* (The Hague: Advisory Council on International Affairs,[2000]), p. 25.

[20] D. R. L. Ludlow, "Humanitarian Intervention and the Rwandan Genocide," www.lib.unb.ca/texts/jcs/spring99/ludlow.htm (accessed January 18, 2007).

value of humanitarian rights in different cultures, Ludlow points out that these societies would not be able to preserve their cultural distinctiveness, and therefore non-intervention should be respected in order for them to do so.[21] However, Caney points out that the concept of cultural relativism assumes no consistency in the values of the world's cultures; he cites the sanctity of human life as an example of commonality.[22] Although all moral or political values are not universal, some are and once these have been met, different cultures could pursue other cultural ideals. Therefore demanding respect for basic human rights through humanitarian intervention would not result in a homogeneous culture.[23] Thus, respect for human rights co-exists with cultural differences without damage to either.

Allowing cultural preservation as a valid reason not to intervene also assumes that states will tolerate multiple cultures and protect the cultural values of all their citizens. One needs look no further than Bosnia, Kosovo and Rwanda to understand how this assumption fails. In these cases, within the same state one culture was blatantly intolerant of another, which led to disregard of human rights and in Rwanda's instance, genocide. Thus cultural uniqueness should not stand in the way of humanitarian intervention if a state abuses basic human rights. In cases where one culture cannot rely on its sovereign state to protect its human rights and gross violations occur or are threatened, sovereignty must not be permitted to be absolute, and the broader community of states must take action to protect the victims.

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[21] *Ibid*.

[22] Simon Caney in D. R. L. Ludlow, "Humanitarian Intervention and the Rwandan Genocide," www.lib.unb.ca/texts/jcs/spring99/ludlow.htm (accessed January 18, 2007), 5.

[23] Simon Caney, "Human Rights and the Rights of States: Terry Nardin on Nonintervention," *International Political Science Review* 18, no. 1 (1997), 34.

Regarding the second opposing view to humanitarian intervention, maintenance of order, it is argued that over-riding state sovereignty, even for humanitarian purposes, could ultimately affect and potentially collapse the world order.[24] However as Caney refuted, "any political theory that prioritizes stability allows the powerful and strong to dictate principles that suit them."[25] Prioritizing this type of equilibrium could clearly result in an unjust situation where the weak are abused due to rules the strong impose to achieve stability. Thus non-intervention must be balanced with the principle of justice when human rights abuses are occurring. One does not necessarily take precedence over the other, particularly at the cost of human dignity.

With respect to the third objection to humanitarian intervention, that it could establish dangerous precedents, one need only consider if a norm based on ignoring and thus condoning gross human rights abuses would be more desirable than a norm based on intervention. If there is benefit of the doubt to be given, it should be provided to the victims of gross human rights violations, not the perpetrators. Therefore if there is a measure of uncertainty regarding the extent of violations, Caney argues for conservatism on the side of early intervention, rather than action too late. Rwanda serves as a poignant example of what can occur when the benefit of the doubt is given to the perpetrators, for which the UN still feels the disgrace of inaction.

Throughout the 1990s as the cases for consideration of intervention arose, the debate on the balance between intervention and sovereignty gained momentum. In 1995,

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[24] D. R. L. Ludlow, "Humanitarian Intervention and the Rwandan Genocide," www.lib.unb.ca/texts/jcs/spring99/ludlow.htm (accessed January 18, 2007), 6.

[25] Simon Caney, "Human Rights and the Rights of States: Terry Nardin on Nonintervention," *International Political Science Review* 18, no. 1 (1997), 30.

Deng postulated that state sovereignty has gone through four stages since its inception in the 1648 Peace of Westphalia, where the modern state concept was first formalized. The first stage was characterized by an absoluteness that extended both internally and externally in the new international community. The next stage was generated by the establishment of democratic values and institutions that required international accountability for human rights, and resulted in the reduction of the absolute sovereignty of the first stage. The third phase was a re-assertion of state sovereignty by governments whose domestic actions could leave them open to international criticism. Deng's final phase is the current one, where the international community recognizes that a state's sovereignty must be reconciled with the state's responsibility for the protection of its citizens' human rights.[26] One may speculate that the ICISS Report attempts to pull the world toward a fifth stage where state sovereignty routinely acquiesces to the international responsibility to protect.

The genesis of the idea for the fifth stage had its roots with the UN Secretary-General. In his address to the UN General Assembly in 1991, Javier Perez de Cuellar stated:

> It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protected barrier behind which human rights could be massively or systematically violated with impunity …. The case for not impinging on the sovereignty, territorial integrity and political independence of States is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection.[27]

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[26] Francis M. Deng, "Frontiers of Sovereignty - A Framework of Protection, Assistance, and Development for the Internally Displaced," *Leiden Journal of International Law* 8, no. 2 (1995), 260 - 261.

In extending the debate, the UN Secretary-General, Kofi Annan, in his millennium report

of 2000, noted the need for a new understanding of security in the context of the internal

wars seen in the 1990s in which humanitarian violations developed. He asserted that

security begins with prevention and dealing with the root causes of the conflict such as

poverty and economic growth instead of only their symptoms of violence.[28] In addition

to prevention and intervention, he stressed the need for post-conflict peace-building to

ensure that previous conflicts do not restart. The ensuing debate focused on the armed

aspect, although he stated that intervention could range from diplomacy to armed force.

He observed three reasons why some were concerned about the concept of humanitarian

intervention, the first being that it could allow for wanton interference in the domestic

affairs of sovereign states. Second, disaffected groups might inflame governments to

commit human rights violations in order to receive foreign support for their cause. His

third observation was that there was concern that interventions were not consistently

undertaken.

In response to these stated concerns, Annan issued the following challenge, "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?"[29] The continuing shame of

Rwanda overshadows arguments for non-intervention on the basis of cultural relativism,

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[27] Perez de Cuellar, Javier, *Report of the Secretary-General on the Work of the Organization* (New York: United Nations, [1991]), 7.

[28] K. Annan, *We the Peoples. The Role of the United Nations in the 21st Century* (New York: United Nations, [2000]), 44.

[29] K. Annan, *We the Peoples. The Role of the United Nations in the 21st Century* (New York: United Nations,[2000]), 48.

maintenance of international order, and the potential for future abuses of its use. While individually some of these arguments may have limited merit, even taken together they are not reason enough to stop trying to establish guidelines for future interventions so that, as Annan stated, action can be taken in the face of a future Srebrenica.

It is against the backdrop of this challenge and the parameters of the debate, just cause, right authority, and the balance between sovereignty and intervention that the discussion developed in Canada and led to the creation of ICISS. The ICISS Report clarifies the parameters; however, responses to the Report show it is not successful in its aim of achieving global consensus for future action. Darfur stands as a current example of how lack of political will and of international agreement can act as obstacles to a humanitarian crisis even when just cause and rightful authority have been satisfied. Therefore, while *The Responsibility to Protect* may provide a framework for the international community to act in response to atrocities, both political will and global consensus are required to provide humanity with the additional protection it, at times, requires.

CHAPTER 1 – PARAMETERS OF THE DEBATE

The post Cold War period was characterized by a series of interventions in intra-state conflicts. Four that stand out in the world's consciousness are Somalia, Rwanda, Bosnia and Kosovo. They demonstrate the full range of moral, legal, political and operational issues on which the humanitarian intervention debate is based. However, there were numerous other interventions of varying type and success in northern Iraq, Liberia, Haiti, and Sierra Leone.[30] These humanitarian interventions sparked considerable world-wide debate regarding just cause, rightful authority and the balance between the principles of sovereignty and non-intervention, and that of the protection of human rights. During the interventions of the 1990s, UN Secretaries-General Javier Perez de Cuellar and Boutros Boutros-Ghali both attempted to advance the debate toward establishing an international consensus on humanitarian intervention which the broader community of states could use to guide future interventions.[31] However, Kofi Annan was a more vocal proponent in his addresses of 1999 and 2000, when he issued a millennium challenge to the General Assembly to reconcile state sovereignty with non-intervention in order to respond to a future Rwanda or Srebrenica.

Three notable reports that substantially framed the debate were produced from within the international community toward the end of the previous millennium: the report by the Danish Institute of International Affairs commissioned by the Danish

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[30] Ku, Charlotte, Gareth Evans and Lee Feinstein, "Rethinking Collective Action: The Responsibility to Protect and a Duty to Protect," *American Society of International Law* (2004), 80.

[31] Perez de Cuellar, Javier, *Report of the Secretary-General on the Work of the Organization* (New York: United Nations, [1991]); Boutros-Ghali, Boutros, *Report of the Secretary-General* (New York: United Nations, [1994]).

government in 1999, a joint report by the Advisory Committee on Issues of Public

International Law and the Advisory Council on International Affairs requested by the

Dutch government in 2000, and the Independent International Commission on Kosovo's

report, *Conflict, International Response, Lessons Learned*, sponsored by the Swedish

government in 2000. These reports contributed significantly to the discussion; however

they did not provide closure. It was not until the creation of the International

Commission on Intervention and State Sovereignty (ICISS) and the issuance of the

subsequent Commission report in 2001, *The Responsibility to Protect*, that clarity was

provided to the three parameters of just cause, rightful authority and the balance between

sovereignty and intervention. The Report concluded that the large scale loss of life and

ethnic cleansing were grounds for intervention, that the UN Security Council was the

rightful authority to approve an intervention, and that non-intervention would yield to the

international responsibility to protect when the threshold to act has been passed.

However, while the Report provides clarity on the previous debate and may act as an

important framework for the consideration of humanitarian intervention, it is not enough

to move from consideration to action.

Just Cause

The Danish, Dutch and Kosovo reports all generally agreed on the acceptable

grounds for intervention. Genocide, crimes against humanity and war crimes against

large groups of civilians were valid reasons.[32] There was some imprecision in the

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[32] Danish Institute of International Affairs, *Humanitarian Intervention Legal and Political Aspects* (Copenhagen, Denmark: Government of Denmark,[1999]), 126. The Dutch report reflected existing or imminent grave, large-scale violations of fundamental human rights, particularly individuals' rights to life,

definitions of terms such as 'fundamental human rights' and 'great suffering', and none of the reports defined threshold values; however, the broad categories were consistent.

The consensus of the three reports suggests agreement in European circles. In Canada, the debate on grounds for just cause went a step further. Discussion arose on whether gross human rights violations as an assault on our values was sufficient just cause, or whether a country's interests also had to be engaged in order to support an intervention.

Bonser used the Kosovo intervention to demonstrate that decisive action was taken in Canada in that case because its values and interests intersected. He stated: "Canada does not and should not operate an interest-free foreign policy. "[33] The humanitarian considerations in Kosovo were the link to Canada's values. Canada's interests were also drawn in as the success of the Kosovo campaign became tied to NATO's credibility as the conflict progressed. Failure in the campaign could clearly have undermined NATO and thus ultimately affected European security and stability. This failure in turn could have potentially led to conflict for Europe, into which Canada would have felt pressured to participate. Thus, Canada's desire not to be involved in future wars was the interest which ensured its participation in the Kosovo campaign.

Bonser's concept of the intersection of a nation's values and interests had been present in Canadian government policy in a number of areas. The attempt to appeal to a

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irrespective of their nationality. Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *Humanitarian Intervention* (The Hague: Advisory Council on International Affairs,[2000]), 33. The Independent International Commission on Kosovo lists severe violations of international human rights or humanitarian law on a sustained basis and subjection of a civilian society to great suffering and risk due to the "failure" of their state. Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (New York: Oxford University Press, 2000), 293.

[33] Michael Bonser, "Humanitarian Intervention in the Post-Cold War World: A Cautionary Tale," *Canadian Foreign Policy* 8, no. 3 (2001), 71.

nation's interests as well as their moral values was a method that the Canadian government used at times to further its agenda in international affairs. For example, when Foreign Affairs Minister Lloyd Axworthy was promoting the human security concept, a recognition that the needs of individuals must be of principal concern to the international community, he made a case that national security and human security were two sides to the same coin. In his address to the US, he thus drew the link between the US' interests in national security and those of intervention in order to further the values represented by human security.[34] Not only does his explanation of this link demonstrate the desired intersection between values and interests with which he hoped to gain US support, but its clear relation to humanitarian intervention foreshadows the Canadian government's involvement in the concept of the responsibility to protect.

The reports produced in the wake of the Rwanda, Bosnia, Somalia and Kosovo incidents commonly agreed that genocide, crimes against humanity and war crimes against large groups of civilians are just cause for intervention. The ICISS Report further clarified just cause as large scale loss of life and ethnic cleansing. The Canadian debate on the just cause aspects of humanitarian intervention focused on whether moral purposes need to intersect with national interests when contemplating intervention. This discussion raises the view that having just cause for an intervention is not enough. That a nation must also have a national interest in pursuing the intervention suggests that another element is required in order for a nation to act: political will. Without it, a nation might agree that humanitarian intervention is warranted, but may not provide resources to contribute to it. Political will is generated by demonstrating to a country's constituency

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[34] Lloyd Axworthy, "Human Rights: Humanitarian Intervention," *Vital Speeches of the Day* 66, no. 19 (15 Jul 2000, 2000), 580.

that it is in their interest to participate in the mission. Pursuing intervention when it coincides with national interests is further entrenched in the Canadian International Policy Statement of 2005.[35] While humanitarian motives will continue to appeal to Canadian values, action will also require identification of national interests in order to generate sufficient political will to provide resources to move the rhetoric of just cause toward action.

Rightful Authority

In addition to just cause, the debate over humanitarian intervention raised rightful authority as another key aspect to consider in determining whether humanitarian intervention is justifiable. There may not be universal agreement on the criteria and thresholds for intervention, but it can generally be argued that interventions should be exceptional cases with stringent criteria. The possibility that a case could arise that meets these criteria is irrefutable. Assume for a moment that criteria were developed that gained wide acceptance. Once a situation arises that qualifies for intervention, who then decides if it is in the interest of the global community to take action? As the principal institution in the world for initiating collective action, perhaps it is the UN Security Council. However, in the case of Rwanda, the Security Council's failure to act contributed to the deaths of 800,000 to 1,000,000 people. Rightful authority may therefore also include the General Assembly, which is charged with making such decisions when the Security Council cannot agree. Alternately, could a coalition of like-

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[35] Government Canada, *Canada's International Policy Statement: A Role of Pride and Influence in the World OVERVIEW* (Ottawa: Government of Canada, [2005]). Note that the current Conservative government has not issued a formal statement regarding its stance on humanitarian intervention.

minded nations legitimately take it upon themselves to act without a Security Council or General Assembly mandate?

The question of rightful authority was raised in each of the key reports produced at the end of the millennium: the 1999 Danish report, the 2000 Dutch report, and the Independent International Commission on Kosovo's report, sponsored by the Swedish government in 2000. Each of the reports addresses the question of intervention with and without Security Council approval to assess whether in fact the Security Council is the rightful authority to approve intervention which might violate a state's sovereignty.

The Danish report noted that the UN Security Council is the only global authority for decision-making on behalf of the international community, with which most can agree. Founded on the basis of legal equality of all states, it normalizes the interests of the great powers and the small states. If one can argue that an institution of some sort is required to make decisions on behalf of the international community, it would be extremely difficult in modern times to create a new, separate body with the authority for humanitarian intervention. This difficulty exists for a number of reasons, not the least of which is the sheer number of states that exist today, as compared to 1945, that would need to agree on an operating charter. The UN could conceivably lose its authority if the Security Council were repeatedly unable to make critical decisions within their mandate of maintaining international peace and security. Future mistakes like the past inaction in Rwanda would seriously undermine the Council's credibility. If, as the Danish report points out, that occurred, the gap would likely be filled by other less regimented, regional or like-minded coalitions that might be dominated by one or more of the great powers. The report concludes that the Security Council:

is an indispensable element of the international legal order that should not be easily dismissed ... [It] is a highly desirable component of any strategy to protect victimized populations … however there is a growing demand for a safety valve so that gridlock in the Security Council does not thwart international attempts to avert humanitarian tragedies.[36]

On the question of intervention without authorization from the Security Council, the report examined the current legality of such action under international law, and whether customary international law has been established by state practice post-1945 that would justify intervention without authorization. The first conclusion was that without Council authorization, legally there is no general right of intervention. On the second point, the report concludes that practice since the Cold War demonstrates a position against intervention without Security Council approval. In most cases Security Council approval was sought, and when it was not, such as in Kosovo, considerable concern arose. However, hindsight after the tragedies of Rwanda and Srebrenica raised the spectre of alternate action when the UN is ineffective. Although state practice since the 1990s would suggest that there is a greater acceptance of intervention without authorization in extreme cases, at least on moral grounds, there is not enough evidence to conclude that intervention without authorization has been established under customary international law.[37] Clearly, Denmark believes there is a continuing role for the UN Security Council and that it is the rightful authority to approve humanitarian intervention. However, it is also apparent that some changes are required to strengthen the institution so that states are not put in a position where alternative action must be considered because of the Security Council's lack of action.

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[36] Danish Institute of International Affairs, *Humanitarian Intervention Legal and Political Aspects* (Copenhagen, Denmark: Government of Denmark, [1999]), 124.

[37] *Ibid*., 94 – 95.

The Dutch report takes the point that the debate on Security Council reform is unlikely to be successful in the near future. As is such, emergencies in which they are unable to reach a decision will continue to occur.[38] The same questions were addressed as in the Danish report: whether intervention without authorization is legal under current international law and whether this action can be considered a newly emerging right based on developing customary law. Similar conclusions were reached; there is neither a legal basis for intervention without Security Council authorization, nor an emerging customary legal basis. The Dutch report goes on to note that "the growing significance of the international duty to protect and promote fundamental human rights" is important and "… there are sufficient moral, political, and legal reasons to try and develop a separate justification for humanitarian intervention."[39] The maximum amount of legitimacy must be obtained by other means such as the General Assembly. Failing their approval, the action may still be permitted in extreme cases as an 'emergency exit', and the Dutch report recommends an assessment framework be developed for these instances. The report concludes by suggesting that that Netherlands advocate on behalf of developing a separate justification for humanitarian intervention without Security Council authorization and an assessment framework.

Turning to the last of the three reports, the Independent International Commission on Kosovo first assumed that intervening parties would obtain approval of the Security

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[38] Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *Humanitarian Intervention* (The Hague: Advisory Council on International Affairs,[2000]), 18.

[39] *Ibid*., 26, 34.

Council.[40] By making this assumption, the Commission has, in effect, accepted that the

UN Security Council is the rightful authority for humanitarian intervention. However,

the Commission also recognized that there may be instances, such as Kosovo, where the

Security Council will not or cannot provide authorization. So that intervention does not

become "unprincipled exercise of great power politics," the Commission recommended

some contextual principles to guide these types of interventions.[41]

Bonser similarly noted in 2001 that the Security Council "is in the best position to

provide legitimacy to any decision to intervene for humanitarian purposes", but he takes

this conclusion a step further by observing "there has been a corresponding decline in

political will within the Council to play a more activist role."[42] Bonser attributes this

decline to two factors: lack of resources, and the potential perceived loss of neutrality

that other UN agencies could experience in theatre in the long term if the Security

Council demonstrates a greater willingness to intervene.[43] He goes on to state that the

lack of financial resources is exacerbated by the UN's inability to coordinate the multi-

dimensional peace support operations that are characteristic of current operations. His

view is supported by a former military officer with significant UN peacekeeping

experience, Major-General L. MacKenzie, who noted that lack of resources is due to

member nations who are not prepared to provide the soldiers and equipment to undertake

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[40] Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (New York: Oxford University Press, 2000), 292.

[41] *Ibid.*, 294.

[42] Michael Bonser, "Humanitarian Intervention in the Post-Cold War World: A Cautionary Tale," *Canadian Foreign Policy* 8, no. 3 (2001), 65.

[43] *Ibid.*

UN missions properly.[44] Therefore, although the UN is the rightful authority, they are

not always prepared to act as such in times of crisis. An additional reason which Bonser

has not appeared to consider is that even if called upon to act by the Security Council, the

provision of troops and equipment is left to the individual discretion of member states

and there is no mechanism to compel them to do so if they lack their own political will.

    While the Danish, Dutch and Kosovo reports all conclude that the Security

Council is the rightful authority for humanitarian intervention, all recognize to some

extent that there may be a moral imperative for states to act without this authorization.

This is a view echoed in the Canadian debate by Bonser, who stated "ideally, these types

of operations should continue to fall under the auspices of the UN Security Council …

however this need not be a prerequisite for action in every case."[45] The three reports

further accept that this action would be considered illegal from the perspective of

international law and the Danish and Dutch reports stress Security Council reform is

required to ensure Security Council ability to authorize justifiable interventions. Thus

while the debate often points to the need for the UN Security Council to be strengthened

or reformed to become more effective, it is consistent in that the Council is nonetheless

universally recognized as the rightful authority for humanitarian intervention. The debate

focuses on the distinction between legal and legitimate interventions, and none of the

three reports offer any practical guidance regarding the actual decision to participate in a

humanitarian intervention. It is not so much that the UN Security Council is recognized

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[44] Major-General Lewis MacKenzie, "A Willing Mind and a Weak Army," *National Post*, sec. Comment, 10 May 2000, 2000.

[45] Michael Bonser, "Humanitarian Intervention in the Post-Cold War World: A Cautionary Tale," *Canadian Foreign Policy* 8, no. 3 (2001), 71.

as the rightful authority that is important, but that its authority is not enough to compel member nations to action. Nations still require sufficient political will of their own to provide the resources to participate in UN sanctioned humanitarian missions.

Balance between Non-Intervention and Universal Human Rights

The principle of non-intervention is closely tied to that of state sovereignty, and has been espoused in the UN Charter since its development in 1945. Articles 2(1) and 2(7) respectively state that the UN is based on the sovereign equality of all member states, and that the UN will not intervene in matters within the domestic jurisdiction of any state.[46] However, the creation of the Universal Declaration of Human Rights three years later, which recognized the dignity and rights of all human beings, clearly highlights that the principle of state sovereignty is not intended to be absolute or to allow states to undertake actions which would violate the principles on which the Universal Declaration was founded. The specific requirement to determine the balance between sovereignty and human rights is not articulated in either document; the writers of the UN Charter and the Universal Declaration left this task to their successors. This task is the most delicate, more so than determinations of just cause or rightful authority. The fulcrum between sovereignty and human rights is different in each case and requires careful and timely consideration to avoid violation of either. It is this issue that has the most potential to keep the Security Council from achieving consensus on intervention.

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[46] Directorate of Law Training, "Charter of the United Nations - 1945" in *Collection of Documents on the Law of Armed Conflict*, 2005 ed., ed. Directorate of Law Training (Ottawa: National Defence Headquarters, 2005), 62 - 63.

The UN Secretary-General has made numerous statements demonstrating the recognition for reconciliation of sovereignty and human rights protection. In 1991, Perez de Cuellar stated: "we are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents."[47] In an interesting preview of what was to come over the following decade, he went on to note: "we need not impale ourselves on the horns of a dilemma between respect for sovereignty and the protection of human rights."[48] His successor, Boutros Boutros-Ghali further argued that "the time of absolute and exclusive sovereignty … has passed."[49] Kofi Annan then stated that "states bent on criminal behaviour [should] know that frontiers are not the absolute defence … that massive and systematic violations of human rights … should not be allowed to stand."[50] The Secretaries-General were consistent in their message – under some circumstances, sovereignty must be subservient to the protection of human rights.

The Secretaries-General's words had the desired effect. The debate was carried into individual countries around the world. The promotion of the three reports by the governments of Denmark, the Netherlands, and Sweden, are evidence of the ongoing debate. The Danish report noted that a general right of intervention did not exist in the legal sense, however by including political and moral considerations such as human rights violations, decision-makers may conclude that, while not legal, an act of

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[47] Javier de Cuellar, *Report of the Secretary-General on the Work of the Organization* (New York: United Nations, [1991]), 7.

[48] *Ibid.*, 8.

[49] Boutros Boutros-Ghali, An Agenda for Peace (New York: United Nations, 1992), paragraph 17.

[50] Kofi Annan, "Secretary-General's Speech to the 54th Session of the General Assembly," 20 September 1999.

intervention is politically and morally justified.[51] However, the report does not provide any advice on how this conclusion is reached, as it passes the task of balancing these considerations to "decision makers, the general public and professional discussion."[52] Thus, the issue of balance was defined, but no solutions were offered.

The Dutch report commented that developments in human rights have had significant impact on state sovereignty, and that furthermore, internationalism as defined by the growing significance of international agreements, economic interdependence and the increasing role of international and non-governmental organizations, has greatly reduced state sovereignty.[53] The report then notes the need to achieve the correct balance between the ban on force between states and the protection of human rights, however does not explore how to do so in any detail.

The Independent International Commission on Kosovo noted that there is a "standoff between incompatible principles, those safeguarding the territorial integrity of states and prohibiting the non-defensive use of force, versus those seeking to protect the human rights of vulnerable populations within those states."[54] The Commission underscores the need to clarify when the balance is such that humanitarian intervention is justified. It calls for a "code of citizenship" for nations, to protect both state sovereignty

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[51] Danish Institute of International Affairs, *Humanitarian Intervention Legal and Political Aspects* (Copenhagen, Denmark: Government of Denmark, [1999]), 22.

[52] *Ibid.*, 23.

[53] Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law, *Humanitarian Intervention* (The Hague: Advisory Council on International Affairs, [2000]), 10.

[54] Independent International Commission of Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (New York: Oxford University Press, 2000), 290.

from unwarranted violation, and the human rights of its citizens. However, the report

does not define this code of citizenship.

The Danish, Dutch and Kosovo reports all state the need to understand the

balance between state sovereignty and humanitarian intervention, but none are able to

offer any constructive means of defining the balance that could be used practically in the

future by the Security Council as it considers intervention. In the Canadian context,

during the same timeframe as the three reports were published, former Foreign Affairs

Minister Lloyd Axworthy also highlighted the need for defining this elusive balance as he

stated in 2000:

> [d]uring the past decade we have witnessed the eruption, re-igniting or
> intensifying of civil conflicts on five continents. From ethnic cleansing in Bosnia
> to mass displacement in East Timor and Kosovo, to the genocide in Rwanda,
> sovereignty has protected the perpetrators, not the millions of victims.[55]

Axworthy also did not offer practical means to define the balance between state

sovereignty and human rights protection; however his contribution is nonetheless

important. As Lee points out, Axworthy was successful on an international level in

'humanist activism', for example by achieving a near-global ban on anti-personnel

mines, by providing leadership in the establishment of the International Criminal Court,

and by focusing global attention on the plight of children affected by war.[56] Furthermore,

Axworthy also challenged a variety of governments and organizations to recognize the

extent to which individuals are often threatened by their own states. As much as he was

active to promote policy and law in support of humanist issues, he went further and also

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[55] Lloyd Axworthy, "Human Rights: Humanitarian Intervention," *Vital Speeches of the Day* 66, no. 19 (15 Jul 2000, 2000), 578.

[56] Steve Lee, "The Axworthy Years: Humanist Activism and Public Democracy," *Canadian Foreign Policy* 8, no. 1 (2000), 1.

considered "the instances when conflict prevention diplomacy or the deterrent effect of new international law does not succeed."[57]   In these instances, he stated, the broader community of states must be prepared to intervene to end suffering.

Bringing the issue of balance between sovereignty and protection of human rights to the UN General Assembly in 2000, Minister Axworthy stated: "Nothing so threatens the UN's very future as this apparent contradiction between principle and power, between people's security and government's interests, between, in short, humanitarian intervention and state sovereignty."[58] Thus, an important element of Axworthy's contribution to international relations was that he both stimulated and encouraged dialogue about human security and humanitarian intervention.

During the period following Axworthy's initiation of his human security agenda, Ward contemplated the future of humanitarian intervention, in particular this tension between sovereignty and universal human rights.[59] He noted that the tension was the result of certain aspects of international relations, in particular that the high regard which sovereignty is afforded in international law is often at odds with the moral and ethical obligations of the greater community of states to intervene for humanitarian purposes. Ward goes on to question not only whether humanitarian intervention should be considered, but whether the international community has an *obligation* to violate state

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[57] Lloyd Axworthy, "Human Security and Global Governance: Putting People First," *Global Governance* 7 (2001), 21.

[58] Lloyd Axworthy, "Notes for an Address by the Honourable Lloyd Axworthy Minister of Foreign Affairs to the 55th Session of the United Nations General Assembly New York, September 14, 2000," United Nations, http://www.un.org/ga/55/webcast/statements/canadaE.htm (accessed 18 January, 2007).

[59] Lee Ward, "The Future of Humanitarian Intervention," Campion College at the University of Regina, http://www.campioncollege.ca/198.html (accessed 8 January, 2007).

sovereignty in the event of gross human rights abuses.[60] This idea of an obligation to

intervene would become one of the key concepts of the International Commission on

Intervention and State Sovereignty (ICISS). Ward believed that the successes and

failures of the interventions of the 1990s produced a near global consensus of moral

support for humanitarian intervention that "reflects a deeper and developing sense of

ethical obligation to protect the innocent and punish the wrongdoers."[61] He proposed that

Canada take the lead in developing the concept of humanitarian intervention into a

convention similar to those against genocide and torture. Many of the elements foreseen

by Ward to be required in developing this convention were eventually encompassed in

the ICISS report *The Responsibility to Protect*, including specifically defining what

intervention meant, outlining conditions both justifying and limiting intervention, and

establishing an institutional mechanism to authorize and monitor the intervention.

 The debate revealed recognition that intervention may, at times, overrule

sovereignty when gross violations of human rights occur. However, although the

discussion worked around the periphery, it did not delve deeply into the ability of the

global community to achieve consensus on when sovereignty is trumped by intervention.

States have myriad interests that might see them disagree that this critical threshold for

intervention has passed. Although humanitarian interests are obviously one, a state's

daily interaction amongst other states means that other interests may also be at play. The

ICISS Report clearly states the priority of intervention when just cause and rightful

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[60] *Ibid.*

[61] *Ibid.*

authority have been provided, yet it does not provide any practical advice on how to achieve global consensus for action.

The International Commission on Intervention and State Sovereignty

The Canadian government responded to Kofi Annan's millennium challenge to address state sovereignty and international responsibility by establishing the International Commission on Intervention and State Sovereignty on 7 September 2000. The aim of the Commission was to "promote comprehensive debate on the issues and to foster global political consensus on how to move from polemics toward action within the international system, particularly through the UN."[62] Two Commissioners were initially appointed to lead ICISS: Gareth Evans, President of the International Crisis Group and former Australian Foreign Minister, and Mohamed Sahnoun of Algeria, Special Advisor to the UN Secretary-General and formerly his Special Representative for Somalia and the Great Lakes Region of Africa. Ten others were later appointed, drawing from many parts of the globe, and from the legal, political, ethical and operational disciplines. An Advisory Board for the Commission was also appointed to provide strategic oversight, facilitate global debate and build political support for the outcomes of the initiative.[63] The Board, chaired by Minister Axworthy, was intended to build high-level support for the Commission in governments, institutions and civil society, and was to act as a key

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[62] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), Research, Bibliography and Background, 341.

[63] United Nations, "Axworthy Launches International Commission on Intervention and State Sovereignty," United Nations, http://www.iciss.ca/press1-en.asp (accessed 13 December, 2006).

advocate of the ensuing Commission report to ensure sufficient political momentum to act on any recommendations it contained.

An International Research Team was created, whose methodology was to undertake roundtable discussions in various global centres with those actually or potentially affected by interventions, those in a position to undertake interventions and others with strong or well-considered views. Those consulted would include government, inter-government, and non-government organizations, civil society, universities, and research institutes, as well as heads of major international organizations and UN agencies.[64] The Commission was given a one-year mandate to complete its work and report back to Minister Axworthy. The government of Canada intended to use the UN General Assembly session of 2001 to announce the Commission's findings and recommendations for action.

The Commission published it's report, *The Responsibility to Protect*, in December 2001. The central theme of the report, as reflected in its title, is "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe … but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."[65] The report contends that the relationship between sovereignty and intervention for the protection of human rights is complementary, as opposed to contradictory as much of the previous debate suggested.[66] This relationship is

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[64] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), Research, Bibliography and Background, 341.

[65] *Ibid*., VIII. Emphasis added.

[66] MacFarlane, S. Neil, Carolin J. Thielking and Thomas G. Weiss, "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly* 25, no. 5 (2004), 978.

portrayed in the report as the sum of the two basic principles of non-intervention and the

responsibility to protect, and is defined as:

> State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the *principle of non-intervention yields to the international responsibility to protect*.[67]

Importantly, the report shifted the debate of the previous decade from the world's right to

intervene to a state's responsibility to protect its citizens. This responsibility

encompasses three elements: the responsibility to prevent conflict which could put

populations at risk, the responsibility to react to situations with appropriate measures up

to and including military intervention, and the responsibility to rebuild afterwards to

address the cause of the situation. The three components of responsibility are as

previously articulated by Kofi Annan in his millennium report to the UN;[68] however the

Commission takes them one step further by naming prevention as the single most

important component.

The report addresses the other debate parameters of just cause and rightful

authority within its principles of military intervention. Regarding just cause, the

Commission identifies a threshold of "serious and irreparable harm" occurring or about to

occur of large scale loss of life or ethnic cleansing.[69] The report lists some precautionary

principles for the consideration of intervention: right intention, last resort, proportional

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[67] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), XI.

[68] K. Annan, *We the Peoples*. *The Role of the United Nations in the 21st Century* (New York: United Nations, [2000]), 44.

[69] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), XII.

means and reasonable prospect of success. Right authority is also a component of the Report's principles of military intervention, where the Commission unequivocally names the Security Council as the right authority and makes suggestions to improve its application, including gaining agreement from the permanent five members not to use their veto unless their national interests are at stake.

The report also contains some operational principles to guide decision makers when considering military intervention, such as establishing a clear mandate, using a common military approach among coalition partners, having unity of command and a clear chain of command, accepting that the objective is protection of a population and not defeat of a state, providing precise rules of engagement that conform to the Law of Armed Conflict, avoiding force protection as a principal objective, and coordinating as much as possible with humanitarian organizations.[70] These are principles which most nations aspire to uphold; however, their clear articulation as a set of operating principles goes much further than previous reports in providing practical information for decision makers.

The humanitarian interventions of the 1990s raised debate on just cause, rightful authority, and the balance between non-intervention and state sovereignty. The International Commission on Intervention and State Sovereignty uses Just War Tradition as a backdrop for its principles of military intervention. The principles are just cause; the precautionary principles of right intention, last resort, proportional means, and reasonable prospect of success; and right authority. With respect to just cause, the potential requirement to have values and national interests intersect in order to participate in an

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[70] *Ibid.*, XIII.

intervention suggest that political will is a necessary component. Reasonable consensus was reached in all three of the notable reports produced in 1999/2000 on the reasons for intervention: genocide, crimes against humanity and war crimes against large groups of civilians. The ICISS report concludes that large scale loss of life and ethnic cleansing are just cause for intervention; however political will is also required.

In regard to right authority, the Security Council might be the rightful authority for humanitarian intervention, but there could be a moral imperative for states to act without this authorization. The ICISS report clearly names the Security Council as the right authority. While the Commission does not condone coalitions of like-minded states taking matters into its own hands if the Security Council cannot reach a decision, it does warn the UN that this might happen, which would diminish the UN's credibility in the future. However, once the UN has authorized an intervention, political will is required within member states to muster resources.

On the question of the balance between sovereignty and protection of human rights, the previous reports and earlier debate outlined the need for balance; however they were unable to provide any clear direction on achieving the balance. The Commission saw the relationship as complementary, not contradictory and clearly stated that the principle of non-intervention yields to the international responsibility to protect. However, it is important to note that global consensus will be required on the balance point for any intervention under consideration in order for the UN Security Council to approve it.

The Responsibility to Protect synthesized the debate of the previous decade. It answered the questions of just cause, right authority and the balance between sovereignty

and intervention. By providing clear answers, the Report succeeded as no others had in the past. Yet, is it enough to assure action in the event of gross violations of human rights? Political will is still necessary to ensure resources are committed when the just cause threshold has been passed and the UN Security Council approves the intervention; global consensus will be a pre-condition for its approval. The report's aim of fostering global political consensus needs to be considered through an examination of the responses to the ICISS report, and most importantly, through the international community's actions in the face of another crisis like Rwanda.

CHAPTER 2 – RESPONSES TO *THE RESPONSIBILITY TO PROTECT*

Interventions in intra-state conflicts in the 1990s in Somalia, Rwanda, Bosnia and Kosovo generated world-wide debate surrounding the issues of just cause, rightful authority, and the balance between sovereignty and the protection of human rights. The debate highlighted the complexity of the situation; however, clear solutions to these three issues did not emerge until the report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (the Report), which was published in December 2001. The Commission concluded that large scale loss of life and ethnic cleansing were grounds for intervention. It also stated that the UN Security Council was the rightful authority to sanction intervention on behalf of the international community. Furthermore, the Commission determined that sovereignty and protection of human rights were complementary principles, and that a state had the responsibility to protect its citizens against avoidable catastrophe. However, if a state proved unable or unwilling to do so, the international community would bear the responsibility to act. In these cases, the principle of non-intervention would be subordinate to the international responsibility to protect.

The Report contained clear answers to the questions raised in the debate over the previous decade, and in this way, the Commission was successful. However, its aim was to achieve global consensus on moving from rhetoric to action within the international system, particularly through the UN. Success in this area can be partially judged through an examination of the responses to the Report. A more complete assessment of the

Commission's success will be reflected in the international community's response to the next crisis involving large scale loss of life or ethnic cleansing.

The three general responses to the Report were support, dissension, and intermediate views ranging from cautious optimism to moderate skepticism. Based on the responses produced, where even some proponents acknowledge the Report to be a small, incremental improvement in intervention for humanitarian purposes rather than a guide to action, the Report was not, in itself, successful in generating global consensus required for action in future times of need. In particular, the Report did not address in any practical manner either the generation of the political will required to provide resources, nor the achievement of global consensus that intervention should supersede sovereignty under certain circumstances.

Opponents of the ICISS Report

Four main arguments stand out in opposition to the ICISS Report. The first objection rejects the concept of humanitarian intervention from an ideological perspective. The second objection opposes some of the fundamental concepts of the responsibility to protect, including the principle that sovereignty brings with it a responsibility for the needs and rights of its citizens. The third objection is that the Report did not reach global consensus, partially because of the framework within which it was developed. The fourth objection is based on the fear that support of the responsibility to protect in other countries may make the supporters liable to its use in their own country.

The first objection was expressed in the roundtable consultation with non-governmental and other interested organizations held in Beijing in June 2001, and is also reflected in the discussions of the St Petersburg roundtable of July 2001. Elements of the argument are further supported by a number of academics in the West. The consultations in Beijing included a former Chinese Ambassador, former and active UN officials, representatives from the China Institute of International Studies and the Institute of International Relations at the Academy of Foreign Affairs, and a member of the School of International Studies at Peking University. The group concluded that, from the Chinese perspective, the "conceptualization of humanitarian intervention [was] a total fallacy."[71]

The Chinese outlined three main flaws in the concept of humanitarian intervention. The first is that it falls outside the use of force under Article 51 of the UN Charter[72] and outside the UN mandate for restoring international peace, and therefore has no legal basis. Humanitarian intervention is the use of force for moral, and not legal, reasons, which the Chinese group considered questionable since the moral standards behind it are often controversial and not universally accepted. This view is acknowledged by Bonser, who states that a country's interests also have to be engaged to support an intervention.[73] Since an intervening country may have interests other than

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[71] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 392.

[72] Article 51 notes the inherent right of individual or collective self defence if an armed attack occurs against a member of the UN. Directorate of Law Training, "Charter of the United Nations - 1945" in *Collection of Documents on the Law of Armed Conflict*, 2005 ed., ed. Directorate of Law Training (Ottawa: National Defence Headquarters, 2005), 66.

[73] Michael Bonser, "Humanitarian Intervention in the Post-Cold War World: A Cautionary Tale," *Canadian Foreign Policy* 8, no. 3 (2001), 71.

humanitarian, the entire action is brought into question. The Chinese group further stated that intervening parties could exploit interventions for purposes other than humanitarian ones. This argument is similar to Ludlow's, who states that intervention could establish a dangerous precedent with potential for abuse in future cases.[74] The Chinese position in this case then, is that universal acceptance of humanitarian intervention may be proven by it being written into the UN Charter, but that it should only be invoked by intervening countries that have no interests in the action other than humanitarian.

The second flaw in the concept of humanitarian intervention expressed during the Chinese consultation is that human rights taking precedence over sovereignty is a false theory. They argue that Western human rights theory is based on the individual's rights at the expense of collective rights. However, according to the Chinese, intervention takes the individual rights which are being abused, attributes them to a group and makes them cause for action on behalf of the group. The Chinese view is that the theory of human rights over sovereignty is thus incoherent and they conclude humanitarian intervention is based on ulterior political motives.

The third flaw identified by the Chinese is that Western powers approach international human rights issues with dual standards. A number of examples illustrate this point, including the US attitude towards apartheid in South Africa and racialist rule in Southern Rhodesia, and NATO's apparent double standard toward the ethnic cleansing in the Balkans.[75] The Chinese thus conclude that "certain Western powers have played

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[74] D. R. L. Ludlow, "Humanitarian Intervention and the Rwandan Genocide," www.lib.unb.ca/texts/jcs/spring99/ludlow.htm (accessed January 18, 2007), 7.

[75] Although not specifically explained in the discussions, it is assumed that the double standard to which the Chinese referred is that ethnic cleansing occurred in Croatia and Krajina between 1991 – 1995

with noble principles to serve their own hegemonic interests."[76] There is support to this view in the West, where some fear that responsibility to protect can become synonymous with American hegemony.[77] In fact, this argument is lent credence by initial US attempts to justify invasion into Iraq on humanitarian grounds.[78] Clearly the Iraq conflict does not fall within the bounds of the responsibility to protect as the just cause threshold cannot be satisfied. Neither large scale loss of life nor ethnic cleansing apply, and bringing democracy to Iraq is not grounds for intervention. Nor is the war on terror just cause under the responsibility to protect, as the concept refers to a government's failing to protect its own citizens and does not apply to external populations.

Russia, similar to China, had concerns with the concept of a responsibility to protect, but remained in opposition to intervention in general, rather than the more specific concept of humanitarian intervention. This opposition had its roots with interventions into Russia at the time of the 1917 Revolution when the Western allies periodically provided assistance to White army units, and grew during the Cold War after interventions by the West in Soviet areas of influence.[79] In the post-Cold War period, Russian opposition to intervention was based on concern over Western unilateralism, and

and in parts of Bosnia from 1992 – 1995, however NATO did not act until the ethnic cleansing occurred in Kosovo in 1999, thus implying a double standard for action on behalf of various ethnic groups.

[76] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 392.

[77] Rosemary Foot, S Neil MacFarlane and Michael Mastanduno in MacFarlane, S. Neil, Carolin J. Thielking and Thomas G. Weiss, "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly* 25, no. 5 (2004), 979.

[78] Ramesh Thakur, "Iraq and the Responsibility to Protect," *Behind the Headlines* 62, no. 1 (2004), 7.

[79] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 394.

the perception that interventions were poorly planned and ineffective.[80] Toward the end

of the 20th century, the Russian government became somewhat more open to the

discussion of humanitarian intervention and some Russian academics were taking more

progressive views.[81] However, until these views are expressed openly and broadly by the

Russian government, their attitude toward intervention is not expected to change

significantly.

The second major objection to the ICISS Report, after outright opposition to

humanitarian intervention, is based on disagreement over fundamental elements of the

concept of a responsibility to protect. Warner addresses the Commission's core

proposition that the international community is responsible for protecting the human

rights of individuals if their state is unwilling or unable to do so. He argues that, given

conditions of incapability or unwillingness to act, humanitarian intervention is not

intervention into the domestic affairs of a sovereign state, but instead substitutes for the

internal government which has either abdicated or abandoned its obligations to it's

citizens.[82] Thus the actions of the international community are not taken on behalf of the

state, but *instead* of the state. This substitution is temporary until a legitimate authority is

reestablished in the state that can take up these obligations. Warner further points out

that the Commission directs the responsibility to rebuild the state, in the end, towards

those who live in it. The ICISS Report states: "the long-term aim of international actors

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[80] *Ibid.*

[81] *Ibid.*, 395.

[82] Daniel Warner, "The Responsibility to Protect and Irresponsible, Cynical Engagement," *Millennium* 32, no. 1 (2003), 113 - 115.

[the interveners] in a post-conflict situation is 'to do themselves out of a job'".[83] Those

who live in the state must ultimately take over the responsibilities that the interveners

bore during the intervention.

However, the Report emphasizes the ultimate withdrawal of intervening forces

and notes there could be some negative aspects to the intervening force staying in

location, with respect to sovereignty, dependency, distortion and the aim of regaining

local ownership. Continued presence of the intervening force can be seen to undermine

the state's sovereignty. Dependency could result if the intervening force does not take

local priorities into account, or excludes the local leadership from decisions. With

respect to distortion, this might be the effect on the local economy when large amounts of

foreign funding are brought to a country during the rebuilding phase. Finally, should the

intervening force take too much responsibility in the political processes of the state, there

is a danger that the opposing sides of the conflict will not take ownership of the peace

process and their relationship will not mature to the point where the intervening force is

no longer needed.[84] Warner notes that the Report's emphasis on these components of the

'Responsibility to Rebuild' - sovereignty, dependency and distortion, and achieving local

ownership - coupled with the importance of defining an exit strategy, constitute reasons

for the intervening forces to leave the state. He proposes that the intervening forces leave

because the international community cannot protect the human rights of individuals, and

thus the state must again do so. Warner believes the emphasis on departure is an

admission that the international community lacks the ability to safeguard the individuals'

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[83] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 44.

[84] *Ibid*., 44, 45.

human rights, rather than a desire to return the state's sovereignty to it's citizens.[85] By

not proposing a responsibility to protect beyond the original state to which the

Commission would see the country return, the Commission report is therefore deemed

inadequate. Thus the most basic element of the responsibility to protect - that the

international community is responsible for protecting the human rights of individuals

under certain circumstances – is being challenged. Moreover, it is suggested that it is

incapable of doing so. Therefore the Report's proposals do not reach far enough on the

responsibility to rebuild the failed country.

Newman disagrees with another fundamental principle of the responsibility to

protect, namely that sovereignty includes responsibilities towards the needs and rights of

a state's citizens.[86] He points out that acceptance and care of this responsibility is not a

prerequisite for state sovereignty and that the sovereignty of states failing to protect

individual rights is not questioned by the international community except in the worst

cases. He uses several interventions authorized under Chapter VII of the UN Charter in

the 1990s, such as Iraq, Somalia, Haiti and East Timor, to illustrate that the UN Security

Council, in each case, emphasized in its resolution the importance of the sovereignty and

territorial integrity of the state in question. In accordance with Newman's argument that

sovereignty need not include responsibilities towards a state's citizens, there appears to

be no decrease in recognition of a state's sovereignty when human rights are abused.

Thus Newman questions the validity of a fundamental of the responsibility to protect,

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[85] Daniel Warner, "The Responsibility to Protect and Irresponsible, Cynical Engagement," *Millennium* 32, no. 1 (2003), 114.

[86] Edward Newman, "Humanitarian Intervention, Legality and Legitimacy," *International Journal of Human Rights* 6, no. 4 (2002), 118.

namely that responsibility of a state towards it's citizens is an integral part of that state's sovereignty. The rejection of this principle casts some doubt on the outcome of the Report.

There is a third primary objection to the ICISS Report. In addition to those who reject humanitarian intervention outright and those that disagree with some fundamental concepts embedded within the responsibility to protect, some object to the report because it does not represent a genuinely global dialogue and thus did not achieve global consensus. Ryan comments that, despite the variety of locations where the Commission engaged in consultation, it operated in a liberal internationalist framework throughout. If the responsibility to protect is to apply globally, there will be demands for more realist perspectives to be incorporated to account for perspectives from other than liberal internationalists.[87] Similarly, Newman points to the Chinese, Russian and Indian opposition of the Kosovo intervention as proof of absence of universal consensus on humanitarian intervention outside of the Western community of states.[88] Welsh notes that although most members of the international community have accepted an obligation to prevent and punish genocide through the ratification of conventions, this acceptance does not tacitly sanction humanitarian intervention.[89] Welsh's view thus supports the theme of lack of global consensus as an objection to *The Responsibility to Protect*.

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[87] David Ryan, "Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect." *International Affairs* 78, no. 4 (2002), 891.

[88] Edward Newman, "Humanitarian Intervention, Legality and Legitimacy," *International Journal of Human Rights* 6, no. 4 (2002), 105.

[89] Jennifer Welsh, "From Right to Responsibility: Humanitarian Intervention and International Society," *Global Governance* 8, no. 4 (2002), 511.

The fourth main objection to the ICISS Report is based on the idea that support of the responsibility to protect in other countries may make the concept applicable in one's own country. This is not an objection that has been specifically stated by any one nation; however one may speculate whether Russian and Chinese opposition is based in part on a fear of this idea. Russian caution may be based on the situation in Chechnya, where the long-standing conflict and desire to keep Chechnya from separating have resulted in allegations of human rights abuses.[90] With respect to China, a number of human rights abuse accusations have been leveled at them over recent years. Amnesty International's 2005 Report, covering events from January to December 2004, notes: "there was progress toward reform in some areas, but this failed to have a significant impact on serious and widespread human rights violations perpetrated across the country."[91] The report goes on to state that political crackdowns continued on specific religious groups such as the Falun Gong, unofficial Christian groups, and so-called 'religious extremists' in Xinjiang and Tibet. Furthermore, Amnesty International reports that the visit of the UN Special Rapporteur on torture was postponed, and that international human rights non-governmental organizations continue to be denied access to conduct independent research, leading one to speculate that China may have issues that it does not wish to open to the international community.

One may also speculate why the US took four years to express publicly their support of the principle of the responsibility to protect. In September 2005, they joined

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[90] Kester Kenn Klomegah, "Russia: Torture 'Systematic, Widespread' in Chechnya," *Global Information Network* (1 December 2006, 2006), 1; Musa Sadulayev, "Russia Accused of Torture: Chechnya's New Chief Trying to Deflect Blame," *The Montreal Gazette*, sec. News, 17 March 2007.

[91] Amnesty International, "Amnesty International Report 2005," Amnesty International, http://web.amnesty.org/report2005/chn-summary-eng (accessed 16 March, 2007).

in the UN General Assembly's adoption of the World Summit Outcome Document, of which Article 139 refers to the responsibility to protect and contains a provision for a guaranteed central role for the UN Security Council, relying on the principles of the UN Charter and international law.[92] One may perhaps draw parallels to the US not yet lending their endorsement to the International Criminal Court, as they may not wish to subject their citizens to the judgment of those outside the US courts. While it is not being proposed that the US have human rights issues that they might wish to keep as domestic business similar to China, it may be suspected that initially the US did not wish to participate in an international system which they felt did not apply to themselves. However, the point is now moot given their recent support to the concept. This support is an important step in achieving global consensus in the future due to the influence wielded by the US within the international community.

Opponents of the responsibility to protect concept fall into four main groups: those who reject humanitarian intervention in its entirety, those who disagree with some of the fundamental concepts inherent in the responsibility to protect, those who do not believe the concept has achieved global consensus, and those who fear the concept could be reciprocal. Leaving the last group aside as an 'undeclared viewpoint', all note shortcomings of the report as a result of their particular perspective, however all but the outright rejectionists also concede that the report is an important step in furthering the debate.

The Middle Ground – Cautious Optimists and Moderate Skeptics

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[92] John R. Crook, "US Officials Endorse "Responsibility to Protect" through Security Council Action," *American Journal of International Law* 100, no. 2 (April 2006, 2006), 463.

Opinions which cannot be said to be either in opposition to or in support of the ICISS report fall into the middle ground including cautious optimists and moderate skeptics. According to MacFarlane, this middle ground is made up of two predominate opinions: those who note that the debate on humanitarian intervention has largely been overshadowed by the war on terror, and those who judge that the change from the "right to intervene" to the "responsibility to protect" is merely a shift in vocabulary.[93]

The impact of 11 September 2001 has almost eclipsed the debate over humanitarian intervention. The terrorist attacks in the US occurred right when the Commission was finalizing its report. The event was, therefore, at the forefront of their thoughts, and it is mentioned in the second line of the Report, perhaps foreshadowing the opinion the events had overridden the debate on humanitarian intervention, "… until the horrifying events of 11 September 2001 brought to centre stage the international response to terrorism, the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions."[94]

As further evidence of the Commission's preoccupation with the attacks, the Report's Foreword includes a specific section dealing with the relationship of September 2001 to the Commission's work. It states that the Report does not deal with the type of challenge posed by these attacks because responding to terrorist attacks in one's own state is fundamentally different than considering human protection claims in another state.[95] The Report clearly states that international law is unequivocal regarding the

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[93] S. Neil MacFarlane, Carolin J. Thielking and Thomas G. Weiss, "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly* 25, no. 5 (2004), 980.

[94] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), VII.

rights of the United States in this situation, as supported by Article 51 of the UN Charter and demonstrated by the unanimous support to Resolutions 1368 and 1373, which both deal with threats to international peace and security caused by terrorist acts. While stressing the difference between the situation faced by the United States and that of a generic humanitarian intervention, the Report notes that its precautionary principles of right intention, last resort, proportional means and reasonable prospects are still applicable in terrorist situations.

The Report dealt only briefly with the events of 9/11. Nonetheless, MacFarlane argues that the international relations community did not.[96] Similarly, Weiss pointed out that by the end of the 1990s, almost half of the main articles in *Ethics & International Affairs* were on the topic of humanitarian intervention; however, after 9/11, the new focus became a discussion of the rules for pre-emptive war and fighting terrorism.[97] MacFarlane notes in 2004 that a number of international security journals had virtually no mention of humanitarian intervention since September 2001, notably *International Security*, *International Organization*, *World Politics* and *Security Studies*. Additional reviews of *International Political Science Review*, *International Affairs*, and *Security Dialogue* from 2002 - 2007 support MacFarlane's view. There is very little discussion of this topic in the literature with the exception of *Security Dialogue*, which devoted the majority of one issue to humanitarian intervention in 2002. In fact, until a relatively

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[95] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), VIII.

[96] S. Neil MacFarlane, Carolin J. Thielking and Thomas G. Weiss, "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly* 25, no. 5 (2004), 980.

[97] Thomas G. Weiss, "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era," *Security Dialogue* 35, no. 2 (2004), 136.

recent focus on the human rights abuses in the Sudan, there has been a lack of attention to humanitarian intervention in scholarly journals.

During this period of minimal debate, there was some examination of the possible overlap between humanitarian intervention and the actions of the United States and United Kingdom in Iraq. Some suggested that the regime change undertaken in Iraq might be considered a humanitarian intervention. Among others, Thakur, Barsa, and Heinze all concluded that Iraq fails the test to be considered a responsibility to protect type of intervention. The action did not meet the stated requirements for motives of the intervener, just cause, force as a last resort, reasonable prospects for success, proportionality, and right authority.[98] As Thakur points out, the humanitarian motive was adduced after the failure to find weapons of mass destruction in Iraq and the inability to establish links between Saddam Hussein and Osama bin Laden.[99] Both Thakur and Heinze point out that associating action taken in Iraq with humanitarian intervention risks eroding support for the responsibility to protect, and causing future genuine interventions to be viewed with the same suspicion with which much of the world views the current US initiative in Iraq.[100] Thus while the debate on Iraq as a humanitarian intervention was raised, it was more to distance the concept of a responsibility to protect from the US claim that the Iraq invasion was humanitarian than it was to justify it. The initial linkage

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[98] Ramesh Thakur, "Iraq and the Responsibility to Protect," *Behind the Headlines* 62, no. 1 (2004), 8 - 9; Pavel Barsa, "Waging War in the Name of Human Rights?" *Perspectives* 24 (2005), 13 – 15; Eric A. Heinze, "Humanitarian Intervention and the War in Iraq: Norms, Discourse, and State Practice," *Parameters* 36, no. 1 (2006), 22 - 32.

[99] Ramesh Thakur, "Iraq and the Responsibility to Protect," *Behind the Headlines* 62, no. 1 (2004), 7.

[100] *Ibid.*, 8; Eric A. Heinze, "Humanitarian Intervention and the War in Iraq: Norms, Discourse, and State Practice," *Parameters* 36, no. 1 (2006), 32.

of the war on terror to the responsibility to protect does not appear to have maintained its significance as the war continued. Over time, the original reason for US intervention became less important than the consequences of their withdrawal from the region.

Although the link between Iraq and humanitarian intervention was not well established, Roberts notes that the post 9/11 US National Security Strategy had an impact on the responsibility to protect.[101] This American document stresses intervention on a variety of grounds, including fighting terrorism, promoting freedom, and anticipating and countering threats to the American people.[102] Most importantly, its emphasis on unilateral intervention is contrary to the non-intervention norm with which the broader community of states had been wrestling since the end of the Cold War. Roberts states that the US National Security Strategy will affect the way the message of *The Responsibility to Protect* is understood.[103] The ICISS Report emphasizes right intention, with military intervention as a last resort, whereas the principles of the US National Security Strategy reinforce the suspicions of those who believe intervening forces have ulterior political motives. Williams notes that for those states who fear the erosion of sovereignty, the US' plans for unilateral intervention and claims for an exemption of its military from the International Criminal Court, may justify their fears.[104] Acknowledging the temporary resurgence of the debate on humanitarian intervention in light of the US-

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[101] Adam Roberts, "The Price of Protection," *Survival* 44, no. 4 (2002), 161.

[102] Government United States, *The National Security Strategy of the United States* (Washington, USA: Government of the United States, 2006), 1, 18.

[103] Adam Roberts, "The Price of Protection," *Survival* 44, no. 4 (2002), 161.

[104] Ian Williams, "Righting the Wrongs of Past Interventions: A Review of the International Commission on Intervention and State Sovereignty," *The International Journal of Human Rights* 6, no. 3 (2002), 110.

led invasion of Iraq, the implication of the absence of scholarly debate in the aftermath of 9/11 is that the ICISS Report did not shape world opinion on the subject significantly.

The second grouping of opinions in the middle ground of neither accepting nor rejecting the ICISS report includes those who view the responsibility to protect as a change to the vocabulary of the debate without a change in substance from the discussion of the previous decade. Although complimentary to the Commission in general for producing a 'visionary yet realistic' report, Dorn commented that the Commission's suggested criteria of just cause, right intention, last resort, proportional means, reasonable prospects, and right authority are virtually unchanged from Saint Augustine's Just War tradition developed 1600 years ago.[105] He went on to state that the ICISS Report should have refined the intervention criteria for the modern day, but did not. Furthermore, the Commission could have tested the criteria through analysis against recent interventions to prove their worth. Dorn agrees with Langille that the Commission could have recommended better early warning and response processes, a stronger UN mandate to monitor potential intervention situations, and more power to investigate sanctions and monitor human rights abuses in location; these aspects could have given the Report more substance and reduced criticism that is simply represents a shift in vocabulary.[106] However, even this shift in vocabulary was useful to put the focus on the victims of human rights abuses, a change in perspective which may remove some of the obstacles to

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[105] Erika Simpson, "The Responsibility to Protect: A Seminar on the Report of the International Commission on Intervention and State Sovereignty" (University of Toronto, Toronto, Canada, Canadian Pugwash Group, 23 March 2002, 2002), 4.

[106] *Ibid*.

taking action when necessary. However, in and of itself, the change in rhetoric is not enough and the report could have gone further in the areas of authority, will and capacity.

Proponents of the ICISS Report

There is a third major grouping of opinions which support the ICISS Report and suggest that it is a necessary step in establishing the protection of human rights as an international norm. Some believe that the Report will greatly enable humanitarian intervention. At the same time, many proponents acknowledge that it may only be one smaller, but still necessary, step in the incremental improvement of the process.[107] They believe that the issues of authority to intervene and political will have not yet been resolved, but will need to be for the process to be most beneficial. However, in general, proponents of the Report agree that *The Responsibility to Protect* is the most successful attempt to deal with the sovereignty versus intervention debate ongoing since the end of the Cold War.

Then-UN Secretary-General Kofi Annan strongly supported the ICISS Report when it was published. He stated that the Report "represents the most comprehensive and carefully thought-out response we have seen to date" to his millennium challenge.[108] In particular Kofi Annan says in the report:

> how to protect individual lives while maintaining and even strengthening the sovereignty of States has become clearer with the publication of this report. You are taking away the last excuses of the international community for doing nothing when doing something can save lives. I can offer no higher praise.[109]

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[107] MacFarlane, S. Neil, Carolin J. Thielking and Thomas G. Weiss, "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?" *Third World Quarterly* 25, no. 5 (2004), 981.

[108] Kofi Annan, *United Nations Press Release SG/SM/8125 Secretary-General Addresses International Peace Academy Seminar on 'the Responsibility to Protect'*, 15 February 2002), 1.

At the same time, Annan acknowledged there was still progress to be made. Lack of

political will, national interest too narrowly defined, and indifference can lead to inaction

or insufficient action.

United Kingdom Prime Minister Tony Blair also praised the Report. In 1999

Blair spoke to the Chicago Economic Club and outlined a doctrine for the international

community regarding intervention based on halting or preventing humanitarian disasters

such as genocide or ethnic cleansing. He listed five major considerations for military

intervention: a sure cause, last resort, reasonable prospects, capability to remain after the

fight is over, and the involvement of national interests.[110] Although the ICISS Report

goes deeper than Blair's speech in Chicago, his considerations are similar to the ICISS

Report's intervention criteria.

Tanguy is supportive of the ICISS Report and comments that it provides useful

benchmarks by which to judge interventions in the future, but believes it is an

incremental step that still requires right authority and political will to be addressed.[111]

The Report states clearly that the UN Security Council is the rightful authority. At the

same time, the Report provides alternative options should the Security Council fail to act

and warns that "concerned states may not rule out other means to meet the gravity and

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[109] *Ibid.*, 2.

[110] Tony Blair, "Prime Minister's Speech: Doctrine of the International Community at the Economic Club," Government of the United Kingdom, www.number-10.gov.uk/output/Page1297.asp (accessed 21 February 2007).

[111] Joelle Tanguy, "Redefining Sovereignty and Intervention," *Ethics and International Affairs* 17, no. 1 (2003), 148.

urgency of that situation"[112] By providing alternatives, the Report implies that while the Security Council may be the rightful authority, it may not be the final authority.

Regarding political will, Fast points out that ICISS Report leaves the question unanswered on how to engender sufficient impetus to react when the intervention criteria are reached.[113] The ICISS Report discussed the requirement for political will, acknowledging that unless it can be engendered when action is required, the debate about intervention for humanitarian purposes will be academic only.[114] The Report contains a section on mobilizing both domestic and international political will. With respect to domestic political will, the Report states that the key is neutralizing domestic opposition. Factors such as size and power, geography, and the nature of the politics and culture of a state are all important to this goal, but mobilizing domestic will often comes down to the personal leadership of key individuals such as political leaders and non-governmental organizations. Regarding international political will, *The Responsibility to Protect* states that arguments must be generated that appeal to morality, resource concerns, and institutional and political interests.[115] While the Report lays out the importance of generating political will, and some of the factors that will affect doing so, it does not offer any useful guidance for how decision makers can do so.

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[112] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), XIII.

[113] Larissa Fast, "Reframing the Intervention Debate: A Responsibility to Protect," *Ploughshares Monitor* 23, no. 1 (2002), 5.

[114] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, [2001]), 70.

[115] *Ibid.*, 70 - 73.

More than five years after the Report was published, Evans, one of the two co-chairs of the Commission, commented specifically on generating the political will to act:

> as always, this is the biggest and hardest piece of unfinished business … finding the necessary political will … should not be a matter for lamentation, but mobilization. Political will is not hiding in a cupboard or under a stone somewhere waiting to be discovered: it has to be painstakingly built.[116]

Similar to the ICISS Report, Evans does not offer any guidance on how to generate political will, however he does put the onus on decision makers to build it, as opposed to simply hoping it will materialize when needed.

The Responsibility to Protect generated a wide range of reactions from academics, government, civil society and non-government organizations. Positions may be grouped into three main categories: opponents to the Report, a middle ground ranging from cautious optimists to moderate skeptics, and proponents of the Report. Opponents had four main arguments. Some rejected humanitarian intervention outright, others opposed certain fundamental concepts presented by the responsibility to protect, others objected that the Report did not achieve global consensus, and still others appeared unconvinced that the concept should be reciprocal. The middle ground was populated by opinions which either noted that the debate on humanitarian intervention has been overshadowed by the war on terror or that the shift from the right to intervene to the responsibility to protect is merely a change in vocabulary and not substance. Proponents of the report were divided into two perspectives: those who felt the Report will serve as a guide to action that will greatly enable humanitarian intervention and those who acknowledge it as a significant step, but one that represents a smaller, incremental improvement in

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[116] Gareth Evans, "Making Idealism Realistic: The Responsibility to Protect as a New Global Security Norm," International Crisis Group, www.crisisgroup.org/home/index.cfm?id=4658&1=1 (accessed 21 February 2007, 2007).

intervention for humanitarian purposes. Both groups of proponents agree that *The Responsibility to Protect* is the most successful attempt to date to deal with the sovereignty versus intervention debate.

Recall that the aim of the report was to achieve global consensus on how to move from rhetoric to action within the international system for humanitarian intervention. The success of the Report in doing so may be judged in part by the reaction it provoked. What may be concluded from the various reactions to the ICISS Report is that it was successful in clarifying certain issues, but was less successful generating consensus that will lead to action when another crisis like Rwanda arises. Notably, the Report did not provide practical advice to policy makers on how to generate political will domestically that will lead to the provision of resources, nor did it achieve global consensus that sovereignty is subservient to the protection of human rights in some instances.

CHAPTER 3 – LACK OF ACTION IN THE SUDAN

The International Commission on Intervention and State Sovereignty issued its Report, *The Responsibility to Protect*, in December 2001. It concluded that in cases of large scale loss of life or ethnic cleansing, that the international community had a responsibility to act on behalf of the victims if their state proved unable or unwilling to do so. The Darfur region in the Sudan is just such a case. The grounds for just cause are present. As the rightful authority to sanction intervention on behalf of the global community, the UN approved Security Council Resolution 1706 in August 2006. Yet so far, the world has failed Darfur. The global community did not fulfill its responsibility to prevent the conflict which put people at risk. Now they are failing to discharge their responsibility to react with appropriate measures. They have chosen instead to provide financial and material support to weak African Union forces who cannot stop the atrocities which continue to occur. No nation is willing to take the initiative and commit definite action by sending significant numbers of troops to take control of the situation. In the meantime, the Sudanese government continues to do what it wants. Darfur's plight stands in sharp contrast to that of Liberia, where traditional peacekeeping was undertaken by the UN in 2003 when humanitarian tragedy was threatening as a result of fighting between government forces and warring factions.

Tension over land and grazing rights in the Darfur region of the western Sudan between the nomadic Arabs and farmers from the Fur, Massaleet and Zagawa communities has existed for many years. The recent conflict began in 2003 when rebels, claiming that the government was oppressing black Africans in favour of Arabs, began

attacking government targets. A successful raid on a military garrison at El-Fashir was carried out in April 2003. The attack was a joint effort by two main rebel groups: the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). Suffering defeats at the hands of the rebels, the government allegedly used the Janjaweed, a militia group, as their force in a new counter-insurgency strategy.[117] The Janjaweed, acting as the Government's proxies, were outfitted as a paramilitary force. They participated in joint attacks with government troops on the groups from Fur, Massaleet and Zagawa. The Government of Sudan officially denies any links with the Janjaweed, who are generally accused of trying to clear Black Africans from large portions of territories. The Sudanese government instead claims it is only combating rebels in Darfur.

The humanitarian crisis in Darfur is a direct result of skirmishes between the Government of Sudan and the Janjaweed, and rebel forces which the Government claims are being harboured by the communities of Fur, Massaleet and Zagawa.[118] The UN estimates that up to 600,000 people were displaced by the conflict between February 2003 and December 2006.[119] The situation for women and children is particularly difficult as they are allegedly subjected to systematic violence and rape by the Janjaweed.

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[117] Wald, "Sudan Condemns UN Resolution," CNN, www.cnn.com/2004/WORLD/africa/08/01/unvote.sudan/ (accessed 11 March, 2007); Global Security, "Darfur Liberation Front/Sudan Liberation Movement/Sudan Liberation Army," Global Security, www.globalsecurity.org/military/world/para/darfur.htm (accessed 11 March, 2007).

[118] A summary of the Darfur conflict may be found at BBC News, "Q&A: Sudan's Darfur Conflict," British Broadcasting Company, http://news.bbc.co.uk/1/hi/world/africa/3496731.stm (accessed 11 March, 2007); or Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars* (Oxford: James Currey, 2003), 139 – 141.

[119] Global Security, "Darfur Liberation Front/Sudan Liberation Movement/Sudan Liberation Army," Global Security, www.globalsecurity.org/military/world/para/darfur.htm (accessed 11 March, 2007).

A peace agreement was signed in May 2006 by the SLA and the Government of Sudan. However, it did not include the other key rebel group, the JEM. Political differences between the SLA and the JEM were exacerbated in August 2006 when Minni Minnawi, leader of one faction of the SLA, accepted the role of policy advisor to Sudan's President. The SLA has since been accused by Amnesty International of abuses against people opposed to the peace agreement. On the other side of the peace agreement, the Government of Sudan had promised to disarm the Janjaweed, but this development has failed to happen. The security situation has worsened over the past year.[120] This situation suggests that the Darfur Peace Agreement has not improved the plight of the people in the region.

Approximately 7000 African Union troops have been deployed to Darfur. However this number is realistically too small to cover an area the size of France. The UN Security Council passed Resolution 1706 in August 2006 that stated the situation in the Sudan continues to constitute a threat to international peace and security, and requested that the UN Secretary-General transition the African Union mission to a UN operation. The resolution approved introduction of up to 17,300 troops and up to 3,300 civilian police personnel. However, of critical importance, the Resolution specifically requested the consent of the Government of Sudan for the deployment in order not to upset the tentative Darfur peace process. The Government of Sudan has accepted the deployment of a limited number of UN police officers, military advisers and equipment, but has yet to give support to the larger force outlined in the UN Security Council Resolution. One might question what incentive the Sudanese government has to agree

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[120] International Crisis Group, "Crisis in Darfur," International Crisis Group, http://www.crisisgroup.org/home/index.cfm?id=3060&1=1 (accessed 11 March, 2007).

with the larger force, when the international community continues to send aid and money to the country and the UN has done nothing to enforce the conditions of previous resolutions despite recognition of the atrocities being committed.

When Kofi Annan, then UN Secretary-General, issued his now famous challenge in 2000 for the global community to reach consensus on how to respond to the next Rwanda, it was widely celebrated. Coming out of a decade where 'humanitarian issues … played a historically unprecedented role in international politics,'[121] and the Security Council having passed twice as many resolutions between 1990 and 1994 than they had during the first 45 years of UN history, international consensus on the way ahead appeared possible. When the International Commission on Intervention and State Sovereignty published their report, *The Responsibility to Protect*, it clarified that large scale loss of life and ethnic cleansing were just cause for intervention, that under these circumstances the principle of non-intervention would be subordinate to the international responsibility to protect, and that the UN Security Council was the rightful authority to sanction intervention on behalf of the international community.

The aim of the Report was to achieve global consensus in moving from words to action in the name of the responsibility to protect. The success of the Report could be judged by the international community's response to it, and more importantly, in their response to the next humanitarian crisis. International responses to the Report suggest that while it was useful in clarifying the points of just cause, the balance between intervention and sovereignty, and right authority, which previously had been the subject of considerable debate, it was not successful in generating global consensus that will lead

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[121] Adam Roberts in Thomas G. Weiss, "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era," *Security Dialogue* 35, no. 2 (2004), 136.

to action in future times of need. The situation in Darfur shows continued obstacles to action in the face of a real, ongoing humanitarian crisis and calls into question the real influence of the Report. These obstacles are the difficulties achieving consensus internationally and generating political will domestically in countries who have the capacity to send troops, particularly western countries such as the US, UK, and Canada.

Global Consensus

In his address to the UN General Assembly in September 2006, then-UN Secretary-General Kofi Annan recalled the UN's endorsement of the Responsibility to Protect in September 2005. He commented that Darfur was the test of the global community's commitment to the principle:

> Sadly, once again the biggest challenge comes from Africa – from Darfur, where the continued spectacle of men, women and children driven from their homes by murder, rape and the burning of their villages makes a mockery of our claim, as an international community, to shield people from the worst abuses.[122]

However, despite abstentions from China and Pakistan, the Security Council had already approved Resolution 1706 in August 2006, allowing up to 17,300 UN troops and 3,300 civilian police to deploy to Darfur. Did the approval of the Resolution signal global consensus for action? Apparently not. As of March 2007, although token numbers of UN police officers, military advisers and equipment have arrived, there is no sign that the mission will transition from it's original African Union operation, since no nations have offered troops.

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[122] Kofi Annan, *The Secretary-General's Address to the 61st Session of the General Assembly 19 September 2006* (New York: United Nations, [2006]).

Resolution 1706 had a somewhat unique provision for a humanitarian

intervention. It requested the concurrence of the Government of Sudan for the

deployment. Annan stated that "without the consent of the Sudanese government, we are

not going to be able to put in the troops."[123] It did so because, as many believe, a full-

scale ground invasion without the support of the Government of Sudan would actually do

more harm than good. Evans suggested it is probable that such an intervention in the

Sudan would lead not only to the immediate disruption of relief operations, but also to

collapse of the tenuous peace process.[124] As one of the co-chairs of the International

Commission on Intervention and State Sovereignty and the current President of the

International Crisis Group, Evans is intimately aware that the responsibility to protect

contains a criterion that the balance of consequences requires that more good than harm

be accomplished by the intervention.

Like Evans, Grono and Mozersky call for more international pressure on the

Government of Sudan to comply with UN Resolutions and sanctions.[125] All three outline

some variation of political, diplomatic, legal and coercive economic sanctions to be

employed. One may ask why the UN has not acted on these suggestions, when the

Government of Sudan has clearly not complied with the July 2004 Security Council

Resolution (UNSCR) 1556. Among other things, UNSCR 1556 gave the Government of

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[123] Secretary-Generals' Press Conference, New York, 13 September 2006 in Nick Grono, "Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006), 629.

[124] Gareth Evans, "Keynote Address by Gareth Evans to International Crisis Group Save Darfur Coalition European Policy Centre Conference, *Towards a Comprehensive Settlement for Darfur*, Brussels, 22 January 2007," International Crisis Group, http://www.crisisgroup.org/home/index.cfm?id=4625 (accessed 19 March, 2007).

[125] Mozersky, David and Allan Rock, "Canada should Lead in Darfur; 'Responsibility to Protect' More than a Slogan," *Toronto Star*, sec. A, 24 October 2006, 2006; and Nick Grono, "Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006), 629.

Sudan 30 days to disarm the Janjaweed and to bring their leaders to justice, or the Security Council would consider measures as provided by Article 41 of the UN Charter, which include economic and diplomatic measures.[126] In reality, Khartoum has been threatened with very little if it fails to comply, and what little has been threatened has not been followed through.[127] The underlying reason behind the UN Security Council's lack of action to increase the pressure on Khartoum lies in its inability to achieve the global consensus required to do so.

There are a number of stakeholders at the UN Security Council whose interests in the Sudan have blocked increased sanctions, four of which are permanent members that have a veto. Each of these four - China, Russia, the US and the UK - have national interests which make them reluctant to support additional sanctions. Moreover, China and Russia both have vested economic interests in the Sudan. China's interests lie in the Sudan's oil, which is widely recognized as an issue which would cause them to use their veto.[128] China is the Sudan's largest importer of oil. In 2003, Human Rights Watch reported that in 2000, the Sudan accounted for over two-thirds of the overseas production of China National Petroleum Company, a government-owned corporation.[129] China's

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[126] Article 41 includes provision for complete or partial interruption of economic relations and of rail, sea air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. Directorate of Law Training, "Charter of the United Nations - 1945" in *Collection of Documents on the Law of Armed Conflict*, 2005 ed., ed. Directorate of Law Training (Ottawa: National Defence Headquarters, 2005), 66.

[127] Imran Shafi, "Darfur: Actions Not Words," Chatham House, www.chathamhouse.org.uk (accessed 12 December 2006).

[128] Nick Grono, "Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006), 629; Rebecca J. Hamilton, "The Responsibility to Protect: From Document to Doctrine: But what of Implementation?" *Harvard Human Rights Journal* 19 (2006), 294; Alex J. Bellamy, "Responsibility to Protect Or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq," *Ethics and International Affairs* 19, no. 2 (2005), 45.

dependence on Sudanese crude oil has continued to expand. Russia also has significant commercial interests in the region, having sold $150 million of military equipment to the Sudanese. A defence analyst from Moscow has suggested that Russia fears that sanctions against the Sudan could provide reason for the Government of Sudan to renege on their payments.[130] In addition to commercial interests, China and Russia have reason to be cautious of UN intervention which may lead to similar action in Tibet or Chechnya.

Not related to the economic interests of China and Russia in the Sudan, US interest in maintaining its close relationship with the Government of Sudan is associated with the war on terror. Williams and Bellamy note that since 9/11, the US government has pressured the Government of Sudan to be on their side in the war on terror. The US does not want Sudan to harbour and train anti-Western terrorists as it had in the early 1990s. Therefore, while the US may not agree with the actions of the Sudanese government in the Darfur region, the government is relatively stable and the US would be cautious in taking any action that might risk a change in government who may not support a similar relationship with the US. Furthermore, the US fears that any Western intervention in Darfur could be seen as being against Muslims, which could fuel Islamic radicalism against the West.[131] Thus it is in the US' interests to support the sovereignty of the Government of Sudan in order to decrease the likelihood of a terrorist threat from that region, and thus they would be reluctant to apply the necessary pressure.

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[129] Human Rights Watch, *Sudan, Oil and Human Rights* (New York: Human Rights Watch, [2003]), 467.

[130] Peterson in Williams, Paul D. and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005), 33.

[131] Williams, Paul D. and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005), 38.

Aside from those with national interests, a number of countries have expressed objections to sanctions against the Sudan for reasons of principle. The UK has opposed sanctions both due to their desire for the Government of Sudan to take action themselves to secure the people of Darfur, and also due to concerns about undermining the Darfur peace process. Pakistan opposed sanctions because they would violate Sudanese sovereignty, and the Arab League opposed sanctions under any circumstances. [132] One may speculate that Pakistan opposed sanctions also because of their religious alignment with the Sudan as a predominately Muslim country. For motivations of economics, security from terrorism, principle, and possibly religion, there is abundant reason why additional pressure has not been placed on the Government of Sudan to take action on behalf of those whose human rights are being violated in the Darfur region. UNSCRs 1556 and 1706 were a start, but no sustained and unified pressure has been applied.

Global consensus is required to approve the economic, diplomatic and political sanctions required to pressure the Government of Sudan into acting to dispel the crisis or accepting the UN mission outlined in UNSCR 1706. It must be noted that sanctions take time to be effective and even if achieve global consensus could be achieved quickly, large numbers of people in the region may continue to die until the sanctions are successful. However, with the number of individual interests in the region, consensus will be difficult to achieve. Nevertheless, until the major stakeholders openly support this action, UNSCR 1706, regarding deploying UN troops to the Sudan, will simply be another well-intentioned document without the force to back it up. In this way, it is similar to the ICISS Report.

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[132] Alex J. Bellamy, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq," *Ethics and International Affairs* 19, no. 2 (2005), 45.

Political Will

If the international community could come together and approve the sanctions required to make the Government of Sudan accept significant numbers of UN troops, then contributing nations would still need to generate the political will domestically in order to provide the required troops for the mission. It would appear that the only political will which has been mustered in support of Darfur is from within the African Union (AU), likely due to concern about the violence spilling over into neighboring countries as well as the potential flood of refugees. The AU participation was marshaled only as a reaction to the violence in the region, not as a preventive measure to protect those at risk. Petrou reports that the "AU soldiers are grossly under-funded and under-equipped, but the rebels [in Darfur] claim that the AU also suffers from lack of will to seriously confront the Janjaweed."[133] Why then, is the West prepared to allow the AU to take the lead in Darfur? Do they believe the oft-quoted slogan, 'African solutions to African problems,' or is there another reason? Williams and Bellamy believe this approach "provided a convenient façade behind which Western powers could wash their hands of committing their own soldiers to Darfur."[134] Certainly this would explain the dichotomy between generous aid packages and moral support for Darfur in the form of voting for UNSCR 1706, and the lack of troops offered to fulfill the manpower requirements of the same resolution.

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[133] Michael Petrou, "Genocide in Slow Motion," *Maclean's*, 11 December 2006, 2006, 40.

[134] Williams, Paul D. and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005), 35.

There is no lack of political rhetoric on the need to intervene in Darfur. At the behest of Human Rights First, UN member states were encouraged to use their presentations to the General Assembly in September 2006 to send a message to the Government of Sudan that its failure to protect its people in Darfur would not be tolerated; 66 nations did so.[135] Canada in particular, given its intimate history with the concept of the responsibility to protect, came out strongly in support of action in Darfur, the first real test of the concept. In his address to the General Assembly in September 2004, Prime Minister Martin unequivocally stated:

> Darfur is a human tragedy of immense proportions .… We welcome the Security Council's expanded engagement there, although we believe the international response should be more robust .… It is good that the international community is finally moving, but it has taken far too long… The fact is, though, that, while the international community struggles with definitions, the people of Darfur struggle with disaster.… War crimes and crimes against humanity are being committed.[136]

Furthermore, in February 2005, following a NATO summit in Brussels, Martin promised to "do whatever is required, but we cannot simply sit by and watch what is happening in Darfur continue" and he pledged whatever is required to a robust peacekeeping force under consideration at the UN.[137] The Martin government appeared poised to commit forces to the UN mission. This action has not occurred.

The position of the current Conservative government has not moved Canada any closer to action. Burrows reported that Foreign Affairs Minister Peter MacKay advises

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[135] Human Rights First, "What the World is Saying about Darfur - almost Nothing," Human Rights First, http://www.humanrightsfirst.org/international_justice/darfur/about/member_states.asp (accessed 10 December, 2006).

[136] United Nations, "5th Plenary Meeting of the United Nations General Assembly" 22 September 2004, 2004), 30.

[137] Paul Koring, "Martin Vows to Ease Darfur's Suffering," *Globe and Mail*, sec. A, 23 February 2005, A1.

Prime Minister Harper on the Sudan as there is currently no Canadian envoy to Sudan and the special Sudanese task force appointed by the previous Liberal government has not had its mandate renewed. MacKay stated he recognizes the need in Sudan to help the people, which will require a multinational response.[138] However, Canada has yet to offer significant numbers of troops for the Darfur region.

In contrast to the strong statements made by the Prime Minister, Nossal provides an excellent summary of Canada's actions with respect to the Sudan. In August 2004, when the UN called for donor commitments, Canada provided $250,000 in flak jackets, helmets and other gear for the AU troops to be deployed. After criticism from fellow-Liberal David Kilgour, as well as General Roméo Dallaire, in September 2005 the Minister of Foreign Affairs announced $1 million to support human rights protection initiatives in Darfur. Shortly thereafter, $15 million was allocated to a Canadian firm to provide 15 medium lift helicopters for the AU mission, and two Canadian Forces personnel and one RCMP officer were also sent to the Sudan. In March 2005, Canada contributed $500,000 to support the International Criminal Court's activities in Darfur. The following month, 31 members of the Canadian Forces were deployed to the UN Mission in Sudan. Finally, in May 2005, a program was announced for $170 million in support of the AU mission, and a further $28 million in aid; however the package was rejected by the Government of the Sudan because of the 100 additional Canadian Forces officers to be deployed there.[139] For a country who spoke so freely on the urgent

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[138] Matthew Burrows, "Darfur Falls off Tory Agenda," Canadian Broadcasting Corporation, http://www.straight.com/article/darfur-falls-off-tory-agenda (accessed 29 March, 2007).

[139] Kim Richard Nossal, "Ear Candy: Canadian Policy toward Humanitarian Intervention and Atrocity Crimes in Darfur," *International Journal* 60, no. 4 (2005), 1026 - 1027.

requirement to take action in Darfur, the support provided by Canada was a limited contribution of equipment and support for the AU mission in its quest to provide 'African solutions to African problems.'

Looking at the actions of other Western countries, the US can be seen somewhat in parallel to Canada in that it has spoken out strongly against the atrocities in Darfur, yet has not put significant pressure on the Government of Sudan to take action.[140] President Bush and then Secretary of State Colin Powell both called the situation in Darfur genocide.[141] Both Powell and the current Secretary of State, Condoleezza Rice, visited the region. When she returned in May 2006, Rice told the UN Security Council Ministerial on Sudan:

> I have seen the unspeakable suffering and heard harrowing stories of survival, stories that are shared by 2.5 million men, women and children who were driven and displaced from their homes and who now live in camps in Sudan and Chad. For tens of thousands of others death came brutally at the hands of Janjaweed marauders. The United States has characterized this wanton campaign of violence as genocide and yesterday President Bush reaffirmed that judgment.[142]

With respect to action taken, the US has supplied much of the food to the displaced people of Darfur. Furthermore, the US abstained from the Security Council vote on the referral of the Darfur situation to the International Criminal Court (ICC), an unprecedented move by a country that has opposed the ICC in the past.[143] However, the

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[140] Nick Grono, "Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006), 627.

[141] Williams, Paul D. and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005), 31.

[142] Condoleezza Rice, "Remarks at the United Nations Security Council Ministerial on Sudan 9 may 2006," Government of United States, http://www.state.gov/secretary/rm/2006/66025.htm (accessed 20 March, 2007).

[143] Nick Grono, "Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006), 627.

US is also not prepared to commit ground troops to the Sudan, and prefers instead to provide humanitarian aid and support the AU mission. Petrou suggests that the underlying reason is that the US has no inclination to be involved in any other large-scale military intervention given their current commitment in Iraq.[144] Furthermore, should an intervention be contemplated without the Sudanese government's consent, the required commitment would grow, further reason to avoid commitment of troops. Finally, past poor US experience with intervention in Somalia is likely to make consideration of another African intervention difficult to support by the American people.

With respect to existing coalitions, the European Union (EU) has taken a similar stance to Canada and the US, supporting the AU and providing significant humanitarian aid, but not committing troops. In 2004, the EU provided considerable financial support to the AU mission, pledging $15 million USD in cash of the total $21 million USD.[145] The European Commission also allocated €92 million for humanitarian assistance to Darfur, in addition to its routine program for the Sudan of €30 million.[146] With respect to NATO, it has provided expertise and logistical support to the AU mission, but has not committed any significant ground troops to the mission.[147] NATO is also heavily engaged in Afghanistan, and there may be a limit to the operations member nations are willing to become involved in. Similar to the EU, Canada and the US, and aside from

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[144] Michael Petrou, "Genocide in Slow Motion," *Maclean's,* 11 December 2006, 2006, 37.

[145] Peace and Security Council of the African Union, *Report of the Chairperson of the Commission on the Situation in the Darfur Region of the Sudan* (Addis Ababa, Ethiopia: African Union, [2005]), 36.

[146] Williams, Paul D. and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005), 34.

[147] Nick Grono, "Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006), 627.

NATO's current commitment in Afghanistan, the most probable reason for NATO to support the AU which lacks numbers and experience to undertake a Chapter VII peace enforcement operation, is their lack of political will to provide troops.

Many nations and alliances agree that the atrocities in Darfur must be dealt with by the international community. The AU clearly needs assistance from the broader community of states in their existing mission. However, until political will is generated in member states of the United Nations to apply pressure to the Government of Sudan and provide ground troops to assist, the help being provided will be limited to humanitarian aid and moral support, attempting to address the consequences of the violence in the Sudan instead of the causes.

The ICISS Report, *The Responsibility to Protect*, was an eloquent re-packaging of an older argument in favour of humanitarian intervention. While it did provide clear responses to the debate which had raged throughout the 1990s regarding just cause, right authority and balancing sovereignty with intervention, it had yet to be tested in a situation brought on by a state's inability or incapacity to protect its people from large scale loss of life or ethnic cleansing. Darfur provides just such a test.

The loss of life ongoing in Darfur justifies international action to protect the victims. The criteria outlined in the ICISS Report have been met. The UN Security Council passed a resolution for a peace enforcement mission in August 2006. Yet due to disparate individual national interests, the global community has not achieved consensus to apply sustained pressure to the Government of Sudan to accept the UN mission. Donor nations and alliances have offered generous humanitarian aid packages, as well as equipment and support to the existing AU mission. However, none have offered

significant numbers of troops as a sign of their commitment to the Responsibility to Protect and the protection of the people of the Darfur region. Until there is global consensus that the requirement to act overrules the national interests at stake, and sufficient political will is generated to apply additional pressure to the Government of Sudan and to provide troops for the proposed UN mission, then the ICISS report will have failed to move the world from rhetoric to action.

CONCLUSION

In response to the international community's interventions in intra-state conflicts in Somalia, Rwanda, Bosnia and Kosovo, successive UN Secretaries-General made impassioned pleas to global leaders to reconcile the principles of state sovereignty with non-intervention in order to protect the victims of potential human rights violations when their states were unable or unwilling to prevent such tragedies. From its inception in 2000, the International Commission on Intervention and State Sovereignty (ICISS, the Commission) attempted to understand how these essential principles, upon which the UN is based, interconnected. Their aim was to promote discussion on the issues and to achieve global consensus on moving from debate to action within the international system, preferably through the UN. The Commission successfully promoted and provided closure to the previous debate, but did not achieve their second goal of world-wide agreement on how to act in the event of a future crisis like Rwanda.

The debate of the previous decade had focused on issues of just cause, rightful authority to approve intervention, and the balance between non-intervention and universal human rights. The Commission addressed all three matters. The Commission first concluded that large scale loss of life or ethnic cleansing are valid grounds for action to be taken to protect victims of human rights abuses. ICISS declared the UN Security Council to be the appropriate body to approve action in these instances, and clearly stated that with just cause and UN approval, sovereignty would yield to the international responsibility to protect. Importantly, the Commission changed the terminology of

humanitarian intervention to the responsibility to protect, appropriately focusing attention on the victims of atrocities in lieu of the interveners. Thus, the Commission provided satisfactory closure to the debate of the previous decade.

The ICISS Report was intended to provide a mechanism to move from debate to action when just cause and rightful authority have been fulfilled; in that objective, the *Responsibility to Protect* fails. Although grounds for just cause have been presented, agreement on their definition is not enough. Political will is also necessary in order for member states to provide resources for a mission; to generate political will, member states need to demonstrate to their citizens that in addition to just cause, their state has a national interest in participation. Similarly, the Commission categorically stated that the UN Security Council was the right authority to approve a mission. However, it did not address the fact that even after appropriate approval is obtained, resource contributions are at the discretion of member states, thus leaving lack of political will as the critical issue. With respect to striking the balance between intervention and sovereignty, the Commission concludes that with just cause and right authority, sovereignty yields to the international community's responsibility to protect. Yet the Commission does not note that the balance in any particular situation cannot be approved by the UN Security Council without the consensus of its members.

Regarding the second goal of the Commission, to create global political consensus on how to move from discussion to action, the success of the *Responsibility to Protect* is seen both through reaction to the Report and through examination of an ongoing humanitarian tragedy in the Darfur region of the Sudan. Responses to the Report came

from a wide variety of academics, government, civil society and non-government organizations and ranged from proponents to opponents, with cautious optimists and moderate skeptics taking the middle ground. Opponents had four main arguments. Some rejected humanitarian intervention outright, others opposed certain fundamental concepts presented by the responsibility to protect, others objected that the Report did not achieve global consensus, and still others appeared unconvinced that the concept should be reciprocal. The middle ground was populated by opinions which either noted that the debate on humanitarian intervention has been overshadowed by the war on terror or that the shift from the right to intervene to the responsibility to protect is merely a change in vocabulary and not substance. Proponents of the report were divided into two perspectives: those who felt the Report will serve as a guide to action that will greatly enable humanitarian intervention and those who acknowledge it as a significant step, but one that represents a smaller, incremental improvement in intervention for humanitarian purposes. Both groups of proponents agree that *The Responsibility to Protect* is the most successful attempt to date to deal with the sovereignty versus intervention debate. Given the wide range of reactions that the Report provoked, although it contributed significantly to the issue of humanitarian intervention, it cannot be said to have reached global consensus on its findings.

While *The Responsibility to Protect* is an important step in reaching the stage where state sovereignty can defer to the international responsibility to protect when specific criteria are met, it does not achieve this aim in and of itself. An examination of the Darfur region of the Sudan has illustrated the failure of the Report in moving from debate to action. The ongoing loss of life in Darfur represents just cause and justifies

international action to protect the victims. The UN Security Council has approved a significant mission to do so. However, due to various national interests, the global community has not achieved consensus to apply pressure to the Government of Sudan to accept the UN mission. Furthermore, no member states have offered significant numbers of troops as a sign of their commitment to the responsibility to protect, a clear sign that they have not generated the domestic political will to support the people of Darfur.

Darfur serves as a tragic example where the broader community of states agrees that action must to taken to stop atrocities, but they can neither achieve consensus on how to accomplish that, nor generate the political will to provide troops to actually take action. Thus while the ICISS report provides a moral and structural framework for the international community to act in the event of atrocities, lack of global consensus and political will to act has limited the realization of additional protections of humanity.

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