The Responsibility to Protect: When It's Right to Fight

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A visceral discomfort with the use of military force has traditionally been a defining characteristic of the political left. Responding to externally directed aggression, like that of Hitler in 1939 or Saddam Hussein in 1991, has rarely given progressives much trouble. But intervening in civil strife has been much harder for us to embrace. Scarred by Vietnam, we were slow to get it right when confronted through the 1990s with the successive horrors of Somalia, Bosnia, Rwanda and Kosovo. It took us most of that decade to re-learn that war can be a progressive cause: that in some circumstances, threatened genocide conspicuous among them, military intervention is not merely defensible, but a compelling obligation.

But the trouble is that there are still no agreed international rules about 'humanitarian intervention' to help us handle each new situation as it arises. Is there a general right or responsibility to intervene coercively in the affairs of another state for the purpose of protecting the people within it? If so, just when, where and how should it be exercised, and under whose authority? Whenever the issue has been debated internationally, as in the UN General Assembly in 1999 and again in 2000, sharp divisions have appeared. There have been fervent supporters of intervention on humanitarian or human rights grounds, mainly from the West - and ranged against them, mainly from developing countries, anxious defenders of state sovereignty, concerned not to allow any daylight for new missions civilisatrices or neo-imperialist adventures.

And now we have to face the issue all over again in the context of the 2003 war on Iraq. The stated primary rationales for war were Saddam's capacity and intent to threaten the US or his neighbours, and his manifest breach of Security Council disarmament resolutions. But as the evidence to support these claims becomes ever more elusive, the case for invading Iraq has come to hang on another thread entirely: Saddam's brutal repression of his own people, above all his massacres of Kurds in the late 1980s and Shiites in the early 1990s.

There is clearly some plausibility about characterising Saddam's unequivocally monstrous regime as a suitable case for military treatment. But it can't be as simple as that. When the worst atrocities were being committed more than a decade ago the West turned a blind eye, and there are many other repressive, dictatorial and murderous regimes against which the evidence and arguments are just as strong as they have been against the Saddam of the last ten years. Where do we stop?

Making the case for war against Iraq in 2003 on human protection grounds is a hard call. But making the case anywhere for military action should never be an easy one. To get those calls right, there is no substitute for going back to first principles, getting consensus around them, and

then applying them. Regrettably, none of the above is normal government practice, domestically or internationally.

The Search for Consensus on Principles

The most substantial effort so far to identify the relevant principles, and build an international consensus around them, has been the work of the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS), which presented its report, The Responsibility to Protect, to the UN Secretary General in December 2001. Initially submerged by September 11th issues, the report has been finding a steadily growing international audience, the subject not only of innumerable conferences and roundtables, but informal debate by the Security Council and preliminary process in the UN General Assembly.

The Commission's initial contribution, and perhaps its most important, was to turn the whole weary debate about the 'right to intervene' on its head, and to recharacterise it not as an argument about any 'right' at all, but rather the 'responsibility to protect' – with the relevant perspective being not that of the prospective interveners but, more appropriately, those needing support. This new language has been helpful already in de-prickling the policy debate, requiring the actors to change their lines and think afresh about what are the real issues are: the hope, and so far the experience, is that (as happened with the Brundtland Commission's introduction of the concept of 'sustainable development') entrenched opponents will find new ground on which to engage more constructively.

Another virtue of the new language is that to 'protect' implies not just intervention but a whole continuum of obligations:

-the responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk;

-the responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and

-the responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

The starting point in justifying this conceptual shift is the concept of state sovereignty itself, the essence of which should now be seen not as control but as responsibility. A large and growing gap has been developing between the codified best practice of international behaviour as articulated in the UN Charter, whose explicit language emphasises the respect owed to state sovereignty in its traditional Westphalian sense, and actual state practice as it has evolved in the 56 years since the Charter was signed: the new focus on human rights and, more recently, on human security, emphasises the limits of sovereignty. The Commission was intrigued to find, in its worldwide travels, just how much that gap was acknowledged. The defence of state

sovereignty, by even its strongest supporters, did not include any claim of the unlimited power of a state to do what it wants to its own people.

There is not yet here a sufficiently strong basis in principle and practice to claim the existence of a formal new principle of customary international law. But the Commission did argue that the 'responsibility to protect' is an emerging international norm, or guiding principle of behaviour for the international community of states, which may well over time, if further consolidated in state and intergovernmental organisation practice, become customary international law.

Of the three dimensions to the responsibility to protect, the Commission made very clear its view that prevention was the single most important. It also made clear that, as a matter of principle, the exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied. Nonetheless, the question of military action remains the central one in the debate. Whatever else it encompasses, the responsibility to protect implies above all else a responsibility to react - where necessary coercively, and in extreme cases with military coercion - to situations of compelling need for human protection.

When is Military Action Appropriate?

But what are extreme cases? Where should we draw the line in determining when military intervention is appropriate? What other conditions or restraints should apply? And who should have the ultimate authority to determine whether an intrusion into a sovereign state, involving the use of deadly force on a potentially massive scale, should actually go ahead?

These questions have generated an enormous literature, but on the core issues there is a great deal of common ground. All the relevant decision-making criteria are capable of being subsumed under the six principles summarised in the accompanying box. While it will be apparent that the formulation of these principles owes much to traditional 'just war' theory, they owe their force not to any theological doctrine but to their intuitive acceptability. And they are certainly intended to reflect universal, not just Western, values. How do these principles work in practice – and to what conclusions should they have led us in the case of Iraq 2003?

The 'just cause' threshold needs to be set high and tight, for both conceptual reasons (military intervention must be very exceptional) and practical political ones (if intervention is to happen when it is most necessary, it can't be called upon too often). The Commission identifies only two situations as legitimate triggers. No attempt is made to quantify what is 'large scale', but it is made clear that military action can be legitimate as an anticipatory measure in response to clear evidence of likely large-scale killing or ethnic cleansing. Without this possibility, the international community would be placed in the morally untenable position of being required to wait until genocide begins before being able to take action to stop it.

The threshold criteria articulated are wide enough to cover not only the deliberate perpetration of horrors of the kind occurring, or anticipated, in Bosnia, Rwanda and Kosovo, but situations as well of state collapse and the resultant exposure of the population to mass starvation and/or civil war (as in Somalia). Also potentially covered would be overwhelming natural or environmental

catastrophes, which are not in themselves man-made, but where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened.

What are not covered by the Commission's 'just cause' threshold criteria are situations of human rights violations falling short of outright killing or ethnic cleansing (such as systematic racial discrimination or political oppression), the overthrow of democratically elected governments and the rescue by a state of its own nationals on foreign territory. Although these cases are eminently deserving of external action of various kinds – including, as appropriate, political, economic or military sanctions – they don't justify military action for human protection purposes. Unless war is kept for the very worst cases, any prospect of consensus will evaporate and there will be no sense of obligation even to deal with another Rwanda.

For Iraq 2003, the threshold test cuts both ways. It would certainly have been satisfied a decade or more ago (when the West was indifferent or worse), but much less obviously so in recent years. The suspicion that a 'humanitarian intervention' justification is being pursued only because other grounds have evaporated is hard to shake off. If one is trying to build international consensus around the ICISS principles, Baghdad is not the best place to start.

On the first of the prudential criteria, there are a number of ways of helping ensure right intention, bearing in mind that what counts here is primary motive: mixed motives, in international relations as everywhere else, are a fact of life. One is to have military intervention always take place on a collective or multilateral rather than single-country basis. Another is to look to whether, and to what extent, the intervention is actually supported by the people for whose benefit the intervention is intended. Yet another is to look to whether, and to what extent, the opinion of other countries in the region has been taken into account and is supportive. In the case of Iraq these indicators do not, on balance, give the coalition much help: was the primary purpose of this intervention really to halt or avert human suffering?

Last resort does not necessarily mean that every non-military option must literally have been tried and failed: often there will simply not be the time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, in all the circumstances, if such measure had been attempted it would not have succeeded. In the case of Iraq, it continues to be strongly argued by opponents of the war that there was ample time for the inspection process to have been carried through, and that resort to military action in March 2003 was at the very least premature.

Proportional means requires that the action taken be commensurate in scale with its stated purpose, and in line with the magnitude of the original provocation. In the case of Iraq, the question has to be asked whether some 3,500 civilian deaths and 10,000 military deaths – assuming that those guesstimates are at least roughly accurate – were an appropriate trade for the end of Saddam Hussein's capacity to persecute.

Reasonable prospects means that military action can only be justified if it stands a reasonable chance of success, and will not risk triggering a greater conflagration. Application of this precautionary principle would be likely to preclude military action against any one of the five

permanent members of the Security Council, even with all other conditions for intervention met: it is difficult to imagine a major conflict being avoided, or success in the original objective being achieved. The same is true of other major powers. This raises the familiar question of double standards, to which the only answer can be this: the reality that interventions may not be able to be mounted in every case where there is justification for doing so, is no reason for them not to be mounted in any case.

In the case of Iraq 2003, the 'reasonable prospects' criterion is one of the toughest calls of all. We cannot finally answer it until we know how long Iraq's post-war misery will last, whether it is going to become a democracy or a theocracy, whether the war has concentrated the minds of other dictators, and whether al-Qaeda and like networks will now find it easier to recruit. But the auguries on these fronts are no more encouraging now than they were before the war.

On the final principle, right authority, the argument is compelling that, when it comes to authorising military intervention for human protection purposes, the United Nations, and in particular the Security Council, should be the first port of call. The difficult question – starkly raised by Kosovo, and now by Iraq – is whether it should be the last.

The ICISS Commission's unanimous view was that the UN is unquestionably the principal institution for building, consolidating and using the authority of the international community. To challenge or evade its authority is to undermine a world order based on international law and universal norms. But what if the Security Council fails to discharge its own responsibility to protect in a conscience-shocking situation crying out for action, as was the case with Kosovo? A real question arises as to which of two evils is the worse: the damage to international order if the Security Council is bypassed, or the damage to that order if human beings are slaughtered while the Security Council stands by.

The Commission's response to this dilemma was to give a clear political message: if an individual state or ad hoc coalition steps in, fully observes and respects all the necessary threshold and precautionary criteria, intervenes successfully, and is seen to have done so by world public opinion, then this is likely to have enduringly serious consequences for the stature and credibility of the UN itself. That is pretty much what happened with the U.S. and NATO intervention in Kosovo, and the UN cannot afford to drop the ball too many times on that scale. In the case of Iraq, not all the evidence is in, and there is room for disagreement as to whether the various principles in the checklist outlined here have all been satisfied. But the case is not an easy one to make.

If we want the whole concept of The Responsibility to Protect to take root – and in the 21st century to ensure, above all else, that we have no more Rwandas on our collective conscience – the international community will have to work rather harder on identifying and applying credible principles for intervention in general and military action in particular. Progressive governments can and should be taking the lead.

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