

BEYOND PREEMPTION

FORCE AND LEGITIMACY
IN A CHANGING WORLD

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editor

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The Evolution of Humanitarian Intervention and the Responsibility to Protect

SUSAN E. RICE AND ANDREW J. LOOMIS

IN THE MIDDLE months of 1944, Soviet, British, Chinese, and American statesmen met in Washington to begin to design a postwar architecture that could secure lasting peace. These officials were not quixotic utopians expecting their words on paper to deter future wars. Rather, their deliberations, and those that followed until the June 1945 signing of the UN Charter, presumed that power would remain in the foreground of interstate relations and be shared among strong states. Only by accepting the privileged position of the strong states could the emerging world order generate the coordination necessary to reduce the risk of recurrent major wars. The rules could only be effective to the extent that they were enforced by the strongest states.

The leaders of the Allied nations were realists who focused on national interests, embraced the efficacy of national strength buoyed by military and economic health, and denounced as naïve the view that principles alone could guarantee order. They eschewed Wilsonian idealism and the failed League of Nations. Instead, their views reflected Thomas Hobbes's admonition that "covenants without the sword are but words, and of no strength to secure a man."¹ Thus the system they built was premised on the reality, indeed the utility, of national power.

Human rights were a peripheral consideration in those early days of geopolitics that emerged from the ashes of the Second World War. President

Franklin Roosevelt was more sympathetic to the idea of elevating human rights to a central place in the UN Charter than his British and Soviet counterparts. However, the requirements of political pragmatism, strong resistance from Churchill and Stalin, and Roosevelt's increasing frailty and eventual death in April 1945 conspired to sideline human rights as a core component of the postwar agreement. Respect for national sovereignty and the prohibition of wars of aggression were the twin foundations upon which the nascent UN system was built. Still, human rights did receive brief mention in Article 55, Chapter 9, of the UN Charter, reflecting the Allied powers' judgment that the internal character of the Axis powers had helped fuel Europe's descent into violence.

Only subsequently did the international community begin in earnest to craft a legal architecture that responded directly to the horrors of the Holocaust and the terrible human costs of World War II. On December 9, 1948, the UN General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), which defined genocide and made it punishable as a crime under international law. Although the U.S. signed this seminal treaty immediately, and it came into force in 1951, the U.S. Senate did not ratify the Genocide Convention until 1980. The Universal Declaration of Human Rights, unanimously adopted the day after the Genocide Convention by the UN General Assembly, proclaimed the "inherent dignity and . . . the equal and inalienable rights of all members of the human family" and laid the foundation of declared human rights.² A raft of subsequent agreements outlawed racial discrimination, torture, and arbitrary detention. Two conventions on economic, social, and cultural rights and on civil and political rights, adopted in 1966, legislated what the Universal Declaration of Human Rights proclaimed. As a new language of rights was being born, the delicate balance began to shift from the inviolability of state sovereignty toward a commitment to protect human welfare.

The ideological conflict of the cold war helped solidify the importance of human rights in the consciousness of western democracies. The ringing language of "freedom versus tyranny" that had been born in opposition to fascism quickly found a second life in the struggle between capitalism and communism, between free and repressive nations. It is no accident that Winston Churchill's famous speech in Fulton, Missouri, in which he coined the term "iron curtain," also warned that ". . . we must never cease to proclaim in fearless tones the great principles of freedom and the

rights of man.”³ In his inaugural address, President John Kennedy insisted that “the same revolutionary beliefs for which our forbears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state, but from the hand of God. . . . Let every nation know, whether it wishes us well or ill, that we shall pay any price . . . to assure the survival and the success of liberty.”⁴ The rhetoric of the cold war, reflecting the deeper ideological struggle between east and west, pitted those who respected rights against those who did not. While the action taken by western democracies to uphold human rights lagged behind the high ideals espoused by their leaders, free nations, led by the United States, began to integrate human rights into their foreign policy calculations.

At the same time, a more expansive view of who deserved individual rights slowly percolated into the global public consciousness. New pressures laid waste to the centuries-old system of colonial rule. Fresh sympathies awakened as Jewish émigrés fled Soviet persecution and the abrogation of their religious freedoms. Jim Crow and legally sanctioned discrimination in the United States demanded redress and inspired new thinking about racial inequality at home and the responsibility to uphold human rights abroad.

Amnesty International first convened in 1961 and quickly became a powerful advocate for human rights and humanitarian concerns. Human Rights Watch was launched in 1978, aimed at monitoring the compliance of Eastern European countries with the provisions of the Helsinki Accords. Nongovernmental organizations began to exert their role in ensuring that international organizations and their member states took seriously the responsibility to safeguard human rights.

Mass atrocities in far-flung parts of the world underscored the persistent failure of international law to guarantee the rights and protections to which all people are entitled. After the Khmer Rouge seized power in Cambodia in 1975, nearly 2 million people were killed in the worst genocide since World War II. During his heinous rule of Uganda from 1971 to 1979, Idi Amin presided over the killing of half a million of his countrymen. Vietnamese refugees fleeing their country en masse in shoddy boats, abuses by dictators throughout Central and South America, and the harsh injustices of apartheid South Africa all seared the global public conscience.

The U.S. Congress, reflecting constituent sentiment, began to tackle the question of human rights in the 1970s, first by establishing a human

rights bureau in the State Department to monitor and report on human rights abuses abroad. President Jimmy Carter elevated the importance of human rights during his administration. President Ronald Reagan was initially skeptical of the Carter administration's preoccupation with human rights but eventually adopted rights language in supporting democratic freedoms in such places as Central America, Haiti, and the Philippines. Slowly, as a growing consciousness of human rights and freedoms took root, the costs incurred by governments for ignoring their obligations began to mount.

Yet today, more than sixty years since the founding of the United Nations, the foreign policy aim of protecting human rights and democratic freedoms may be newly imperiled. After six decades of the erratic yet eventually inexorable expansion of the concept of human rights, exhaustion with the current war in Iraq has provoked some foreign policy experts to demand a return to a traditional realism. As prominent public intellectual Anatol Lieven recently put it, "We should never launch . . . military interventions simply in response to the urgings of a humanitarian conscience. For while honorable and sincere, these urgings may also prove—as in the wretched case of the eminently well-meaning U.S.-led intervention in Somalia—to be accompanied by a total misunderstanding of the political, social, cultural and military realities of the country concerned, with disastrous results for American prestige and the lives of American and allied soldiers."⁵

Effective application of the principle that all people maintain rights on account of their humanity requires either a world of benign governments or an erosion of the principle of territorial sovereignty. Stanley Hoffmann has argued that a "triple evolution of the idea of human rights"—elementary civil and political freedoms, minority rights, and access to democratic governance—has pressed strongly against the norm of nonintervention.⁶ National leaders increasingly contend with a haunting catch-22 that while imposing on another state's internal affairs risks upending the logic of the postwar order, so too does international passivity in the face of systematic abuses of human rights and freedoms.

There is danger in the impulse to submerge liberal ideals beneath the familiar veneer of strategic realism. Since the founding of the Republic, these ideals have been touted as evidence of American greatness. Though the U.S. record is woefully mixed at home and abroad, America has enhanced its image as a benevolent rather than dominating power when

it has effectively defended individual liberties and human welfare. Francis Fukuyama bemoans how the Iraq war has wrecked prospects for germinating liberalism in illiberal regimes. He writes that what is needed “is not a return to a narrow realism but rather a *realistic* Wilsonianism that recognizes the importance to world order of what goes on *inside* states.”⁷ The proposed diminution of human rights and democratic ideals within the panoply of U.S. foreign policy goals runs counter both to American values and American interests. Moreover, it would ignore the plight of millions of people caught each year in ethnic and state-sponsored violence.

As global awareness of human rights and responsibilities grows, it should be matched by renewed calculation of how best to protect innocents from abuse and wanton violence. This analysis should cover not only norms that guide the international community toward action or inaction but also the practical challenges of mustering efficient international action to protect innocent civilians. Understanding both requires a critical evaluation of the practice of humanitarian intervention, which has evolved dramatically over the past two decades. The first part of this chapter provides such an evaluation. The second part of the chapter summarizes the findings of the Brookings Project on Force and Legitimacy and offers recommendations to bolster international will and capacity to construct effective humanitarian interventions when countries fail to fulfill their “responsibility to protect” innocent civilians.

Humanitarian Intervention: 1991–Present

Humanitarian intervention is the armed engagement by outside parties in a sovereign state on behalf of a local population facing an imminent or ongoing violation of their human rights. The increased prominence of humanitarian intervention in U.S. and UN policy is a development with profound implications. While military action to protect innocent civilians continues to be controversial both as a practical and a legal matter, only a few decades ago it was not even deemed a viable option by most national leaders. Today it has become an increasingly frequent feature of international affairs and a prominent purpose of the use of force. Somewhat paradoxically, the first post-cold war incarnation of humanitarian intervention came in the aftermath of a war fought for the explicit aim of defending state sovereignty.

THE GULF WAR

The primary international challenge of the early 1990s dramatized the complexities that states face in straddling the dual responsibility of upholding national sovereignty and protecting human welfare. On August 2, 1990, Iraqi troops crossed the Kuwaiti border in a flagrant violation of Kuwait's sovereignty and territorial integrity. The international community's condemnation came swiftly and firmly. Within twenty-four hours, the UN Security Council demanded that Iraq withdraw from Kuwait immediately and unconditionally. The United Nations passed nine separate resolutions condemning Iraqi conduct before passing UN Security Council Resolution 678 on November 29, which authorized the use of force if Iraq failed to comply with prior resolutions.

The United States worked assiduously to unite international opposition to Iraq's occupation of Kuwait. Secretary of State James Baker traveled to Moscow and throughout the Middle East within six weeks of the Iraqi invasion. President George H.W. Bush invited Iraqi foreign minister Tariq Aziz to Washington and proposed a meeting between Saddam Hussein and Secretary of State Baker in Baghdad. In all their diplomatic maneuvers, the claim consistently advanced by U.S. officials was that if the international community failed to reverse Iraqi incursions into Kuwait, its passivity would imperil the foundations of global order. President Bush and Mikhail Gorbachev, president of the Soviet Union, jointly announced their determination that "aggression cannot and will not pay" at their summit meeting in Helsinki on September 9, 1990.⁸ British prime minister Margaret Thatcher stated before the House of Commons on September 6, "If Iraq's aggression were allowed to succeed, no small state could ever feel safe again." The requirement of protecting Kuwaiti citizens was a distant consideration in the calculation of whether to intervene. The widely accepted rationale for this collective response was the importance of enforcing Kuwait's sovereign rights. Western powers formed the tip of a truly international spear in rallying forces and diplomatic support to preserve respect for territorial integrity as the bedrock of international peace and stability.

Yet as the Gulf War drew to a close in early 1991, new concerns arose over the treatment of Iraqi citizens, and the humanitarian imperative to help those imperiled civilians quickly overrode the norm that state sovereignty should remain sacrosanct. Nearly 600,000 Kurds, fleeing the Iraqi

army, retreated into the mountains of northern Iraq. By some estimates, as many as 1,000 refugees were dying each day. To address the crisis, the Security Council adopted UN Security Council Resolution (UNSCR) 688, insisting on unfettered access for humanitarian agencies and demanding an end to the repression of civilian populations, “the consequences of which threaten international peace and security in the region.”¹⁰

Respect for Iraqi sovereignty took a back seat during the run-up to UNSCR 688. The military imperatives to liberate Kuwait had already compelled coalition forces to enter Iraqi territory and bomb targets throughout the country. While UN delegates who were not serving on the Security Council did raise the concern that UNSCR 688 represented a direct assault on the concept of state sovereignty, decisionmaking in the UN Security Council was driven by facts on the ground.¹¹ Self-avowed realist Secretary of State James Baker reportedly telephoned President Bush immediately after a twelve-minute visit to a Kurdish refugee camp and recommended swift humanitarian action.¹² Within days the UN Security Council was at work on the resolution.

With a UN mandate secured, the U.S. government responded quickly. General John Shalikashvili was designated to coordinate the movement of the Kurds from the mountains to refugee camps and ultimately back to their villages. As evidence of the importance that U.S. government officials placed on humanitarian concerns, high officials—notably then chairman of the Joint Chiefs of Staff Colin Powell—rewarded Shalikashvili for his success in managing the operation. His deft handling of the refugee matter was a principal factor in his promotion to Powell’s chief aide and in his later selection to succeed Powell as chairman in 1993.¹³ U.S. action stood in stark contrast to its inaction three years earlier when reports surfaced that 100,000 Kurds, many of whom were civilians, were systematically killed by Iraqi forces. Following Operation Provide Comfort, the successful operation on behalf of the Kurds, U.S. and allied forces established a Kurdish safe area north of the thirty-sixth parallel and enforced a no-fly zone for twelve years until Saddam Hussein’s regime was toppled in 2003.

Operation Provide Comfort was a watershed in two ways. It signaled the displacement of strict conceptions of state sovereignty by the increased urgency to protect human welfare. For the first time in its history, the United Nations mandated a sovereign state to permit humanitarian agencies access to its citizenry. Second, by this action, the UN

Security Council relied on an expansive concept of “international peace and security” to include internal state dynamics in general and forced migration in particular. From 1945 up to Iraq’s 1990 invasion of Kuwait, intervention under Chapter 7 of the UN Charter was perceived to be permissible almost exclusively in the case of international aggression. Such aggression served as the original premise for Security Council action over Iraq. With the council’s decision to authorize protection of the Kurdish population in northern Iraq, leading states demonstrated a readiness to also embrace human protection as a bedrock principle upon which international peace may depend and which may also require defense by military means. Thus both the protection of national sovereignty and the protection of a civilian population were legitimized as rationale for the use of force within the six-month period of the Gulf War.

Sometimes, however, new norms are slow to establish themselves in the minds of policymakers. On the one hand, top U.S. officials strongly supported action to protect the Kurdish population in northern Iraq. Secretary of State Baker, witnessing the unfolding crisis in April 1991, reportedly said, “We’ve got to do something—and we’ve got to do it now.”¹⁴ Yet just one year later, as the humanitarian crisis facing the Bosnian Muslims intensified 1,500 miles to the west on the edge of Europe, Secretary Baker famously quipped, “We don’t have a dog in this fight.”¹⁵ It was a dictum that reflected his realist roots—if U.S. interests were not directly jeopardized by a humanitarian crisis abroad, then the United States had no cause to intervene.

SOMALIA

At the same time as the Kurdish crisis was unfolding, the first Bush administration was grappling with how to handle another acute humanitarian disaster, this one in the Horn of Africa. By the middle of President Bush’s final year in office, clans warring in a leadership vacuum had set Somalia ablaze. By September 1992 the International Committee of the Red Cross estimated that as many as 1.5 million Somalis faced imminent starvation, and as many as 5 million more relied on outside assistance for food. Nearly a million people had fled the country.

Congress got out in front of the president on the need to address the crisis. Senators Nancy Kassebaum and Paul Simon held hearings on Somalia and, in late April 1991, urged an immediate cease-fire and relief

effort. Simon separately introduced a bill the same month calling for emergency food assistance to be directed to the wider Horn of Africa.

On January 23, 1992, the UN Security Council adopted resolution 733, pressing the secretary general to increase humanitarian assistance in Somalia. In the succeeding months, the UN Security Council passed four separate resolutions calling attention to the conditions of the Somali people, urging a cessation of hostilities and authorizing the first United Nations Operation in Somalia (UNOSOM I) peacekeeping mission to assist in the provision of humanitarian aid.

However, another force was exerting pressure on the White House to do more. By the early 1990s, cable television news had become a staple of the American diet. As President Bush was campaigning for reelection in 1992, pictures of the unfolding crisis were broadcast into American living rooms. Secretary of State Lawrence Eagleburger later acknowledged that “television had a great deal to do with President Bush’s decision to go in in the first place . . . very much because of the television pictures of those starving kids.”¹⁶ The so-called CNN effect was a phrase coined during this crisis, referring to cable television’s ability to galvanize public attention and thus prompt official action over human rights conditions.

Several trends combined to trigger the Bush administration’s intervention in Somalia when it was not prepared to act in the Balkans. The administration had confidence that the operation in Somalia would be limited in scope compared to potential military action in Bosnia. Somalia was also viewed as a country devoid of a central government, easing decisions to intervene because the principle of sovereignty was less in jeopardy. National Security Adviser Brent Scowcroft suggested later that acting in Somalia signaled that the United States did not fear military intervention and that it was willing the risk Americans to save Muslim lives, even if it was wary of injecting troops to protect Muslims in former Yugoslavia. “It was not that we were afraid to intervene abroad; it was just that the circumstances weren’t right in Bosnia.” He added, “For me, Somalia gave us the ability to show they were wrong. It was a Southern Hemisphere state; it was black; it was non-Christian; it was everything that epitomized the Third World.”¹⁷ The administration apparently also anticipated a payoff in both domestic and international public opinion if it were seen as defending human welfare and reinforcing respect for human rights. “The opinions of leaders in the Third World matter

because to be a 'world leader,' you have to convince people it is in their interest to follow. If everyone hates you, it is hard to be a world leader."¹⁸

In August 1992 the Bush administration announced it would assist in airlifting Pakistani UN peacekeepers to Somalia to respond to the widespread and acute starvation. Four months later, after much debate and successive resolutions on the intolerable conditions in Somalia, the Security Council passed resolution 794. This resolution identified the conditions in Somalia as a threat to international peace and security, invoked Chapter 7 of the UN Charter, and authorized armed intervention by member states to provide a secure environment for the delivery of humanitarian relief.

American forces entered Somalia on December 8, 1992, as part of the United Task Force, a U.S.-led mission blessed by the UN Security Council with a mandate to provide the security required for relief efforts to proceed. Two days later President Bush informed Congress: "The deployment of U.S. Armed Forces under U.S. command to Somalia as part of this multilateral response to the Resolution (724) is necessary to address a major humanitarian calamity, avert related threats to international peace and security, and protect the safety of Americans and others engaged in relief operations."¹⁹ While casting the motives of the operation in the broadest possible terms—protecting lives, reinforcing regional security, and safeguarding American interests—the primary intention of the Bush administration was to feed and protect an extremely vulnerable population. The forces that President Bush committed were not intended to engage the enemy but rather to provide short-term security for relief efforts and then transfer responsibility to UNOSOM II, the second UN peacekeeping operation.

It was the ultimate outcome of this U.S. intervention that gave humanitarian intervention a black eye in the minds of U.S. policymakers and the American public. As the January 1993 transition from the Bush administration to the Clinton administration took place, a number of factors contributed to a deteriorating situation in Somalia. The U.S. handoff of leadership responsibilities to UN forces was behind schedule. While the transfer of control from U.S. to UN forces was effectively complete by May 1993, the process was dogged by setbacks on the ground. With only 4,000 U.S. troops remaining in Somalia outside the UN chain of command, UN secretary general Boutros Boutros-Ghali pushed for an expanded mandate for UN forces to actively disarm Somali warlords and

fighters. UNSCR 814, passed on March 26, 1993, provided this mandate but also made the UN forces into a direct threat to the warlords. Mohammed Aideed, the leading warlord in Mogadishu, began to fight UN forces, killing twenty-four Pakistani peacekeepers on June 5, 1993. In response, the Security Council passed UNSCR 837 on June 6, condemning the attacks, authorizing the arrest and detention of those responsible, and urging member states to contribute military equipment sufficient to deter future attacks. However, raids on UN and U.S. personnel continued, and anti-U.S. ferment spread. The American experience in Somalia ended in tragedy. On October 3, 1993, the infamous Black Hawk Down battle occurred, which claimed the lives of eighteen U.S. servicemen. The image seared in the public mind was of a dead American soldier being dragged ignominiously through the Mogadishu streets as columns of Somalis cheered. The American public was wounded and horrified, as their noble and effective humanitarian sacrifice was repaid with a horrific act of hatred. President Bill Clinton was furious. Congress was outraged, directing much of its ire at the White House. Facing legislation mandating the swift withdrawal of U.S. forces, President Clinton announced that U.S. troops would stop pursuing Aideed and leave the country within six months. Somalia's legacy in the American consciousness was to raise a crippling caution against the armed defense of human rights abroad.

While its legacy for American foreign policy is enduring, Somalia lies sufficiently removed from U.S. soil to prevent it from threatening to swamp the shores of the United States with refugees. Haiti does not.

HAITI

In the late summer months of 1991, just as Congress was beginning to pressure the White House to aid starving Somalis, a coup in Haiti installed a military junta led by Lieutenant General Raoul Cedras. Among other undesirable results, Cedras's repression spurred waves of refugees to take flight for Florida on homemade boats throughout early 1992. Bill Clinton had pounded President Bush on the campaign trail for his immoral policy of turning away Haitians bound for America on the high seas. Anticipating a change of policy, Haitians launched a new wave of boat building when Clinton was elected president in November. This unexpected consequence forced Clinton to reverse course, and upon taking office, Clinton continued the Bush administration's policy of refusing entry of Haitians into Florida. The Clinton administration also moved

those rescued at sea to Guantánamo Bay to await repatriation or resettlement elsewhere in the region. At the same time, Clinton applied other pressures on Haiti to allow the ousted, democratically elected President, Jean-Bertrand Aristide, to return to power.

In April 1993 the UN General Assembly voted to establish the International Civilian Mission for Haiti to monitor human rights and provide technical and financial assistance when Aristide returned to the presidency. Two months later the Security Council, acting under Chapter 7, unanimously imposed an international embargo on weapons and petroleum until President Aristide was permitted to return to the presidency. The pressure resulted in a political agreement at Governor's Island in July under which Cedras agreed to relinquish power. After Cedras signed an agreement permitting the return of Aristide by October, the Security Council voted to suspend the sanctions and establish the UN Mission in Haiti (UNMIH).

However, Cedras dragged his feet, and by October he had reneged on the July agreement. The United States sent several hundred American military personnel aboard the USS *Harlan County* to help implement the UN resolution that established the UNMIH. Upon reaching Haiti, only days after the Black Hawk Down trauma, the U.S. ship was greeted at the dock by a band of angry, armed Haitians, who had been whipped into a frenzy by Cedras. In violation of the Governor's Island accords, Cedras's militia opposed any U.S. presence. Ultimately, U.S. forces left Haiti before disembarking. This reversal brought further embarrassment to the U.S. government and was interpreted as a signal that the United States lacked resolve to restore democracy and end the violence in Haiti. The two UN missions were forced out of Haiti, and the Security Council reinstated the embargo.

By July 1994 the international community was fed up with the intransigence of Haiti's leaders and the deplorable human rights conditions. President Clinton ordered the Pentagon to plan for an invasion within the coming two months. Meanwhile, the Security Council adopted resolution 940, authorizing a multinational coalition to "use all necessary means to facilitate the departure from Haiti of the military leadership . . . [and] the prompt return of the legitimately elected President."²⁰ The resolution asserted that the multinational force would provide a secure environment for the reestablishment of UNMIH to continue its mission. In September, with the Eighty-Second Airborne Division aloft on its way to

Haiti, a U.S. delegation led by former president Jimmy Carter and including Senator Sam Nunn and retired general Colin Powell reached an eleventh-hour agreement with Haiti's military leaders to leave the country and allow Aristide to be restored. The agreement also ended the embargo, retired key military leaders, and paved the way for parliamentary elections. American soldiers landed in Haiti to implement this agreement joined by a twenty-eight-country, 20,000-strong multilateral force.

The period 1991–94 was remarkable for the volume and intensity of challenges foisted upon the international community in a short period time. In a single month during President Clinton's first year in office—October 1993—talks broke down between Iraq and the United Nations over Iraq's responsibility to distribute humanitarian supplies to the Kurds, rioting Somali clansmen killed eighteen servicemen, and a violent Haitian mob dissuaded U.S. forces from disembarking from the USS *Harlan County*.

RWANDA

In the early 1990s, both the principle and practice of effective humanitarian intervention were being put to the test, while the United States and the international community sought improved tools for dealing with a new character of threats. Contending with one more explosion of internal violence threatened to overload a fragile international system that, still in its adolescence, faced successive additional challenges in reconciling the new rules of human rights with the old customs of geopolitical order. Six months after the dark October month in 1993, the system failed altogether.

On April 6, 1994, gunmen shot down the plane carrying Rwandan president Juvénal Habyarimana and his Burundian counterpart. Their munitions brought down both the airplane and the uneasy power-sharing agreement between Hutus and Tutsis that had thinly papered over deep sectarian rifts that had periodically exploded in mass violence in Rwanda and neighboring Burundi as recently as late 1993. This sequence of events initiated one of the most horrific genocides of the twentieth century.

The genocide occurred despite the presence of the United Nations Assistance Mission for Rwanda (UNAMIR), a UN peacekeeping force that had deployed in 1993 to monitor the cease-fire between Rwanda's Hutus and Tutsis. From the outset the force was hobbled by its small numbers and weak mandate. When Major General Romeo Dallaire, commander of the UN forces, learned in January 1994 of a Hutu plot to

massacre Tutsi civilians, his pleas to mobilize the peacekeeping force to seize caches of Hutu weapons reportedly met opposition at UN headquarters. Protecting civilians, disarming militants, and choosing sides in the conflict were deemed beyond the scope of UNAMIR's mandate. Recent history had sowed extreme caution in the minds of high UN officials. Iqbal Riza, chief of staff to Secretary General Boutros-Ghali, reportedly said that the consensus opinion of Rwanda held by senior UN officials was "not Somalia again."²¹ Then head of UN peacekeeping operations, Kofi Annan later admitted, "You can't look at Rwanda without thinking of what happened in Somalia; in fact, they were happening almost simultaneously."²²

Two weeks after the start of the killing, with ten Belgian peacekeepers murdered and Belgium and Bangladesh preparing to withdraw the battalions that constituted the backbone of UNAMIR, the Security Council voted to reduce the size of the peacekeeping force from 2,500 to just 270 soldiers and to limit its mandate to monitoring civilians trapped in a stadium and other fixed locations.

In Washington attention shifted away from Rwanda after all embassy staff and most U.S. citizens were evacuated. A week into the crisis, Republican Senate Majority Leader Robert Dole, a forceful voice on ending the violence in Bosnia, said on a Sunday news program, "I don't think we have any national interest here. I hope we don't get involved there. I don't think we will. The Americans are out. As far as I'm concerned in Rwanda, that ought to be the end of it."²³ While there were some words of alarm expressed by members of Congress, no one called for the insertion of U.S. troops. Ten weeks into the killing, Representative Alcee Hastings offered from the floor, "Condemn the genocide, and maybe we can motivate the world and the United Nations."²⁴ With respect to the family of congressional concerns, Rwanda was largely an orphan.

Meanwhile, senior administration officials continued to struggle with competing crises. National Security Adviser Anthony Lake later said, "I was obsessed with Haiti and Bosnia during that period, so Rwanda was . . . a 'sideshow,' but not even a sideshow—a no-show."²⁵ The administration waited weeks, as it debated internally, before condemning the killing as genocide. Although news coverage of the Hutu onslaught eventually intensified, there was little appreciation initially of the scale of the killing. Few practical ideas emanated from New York or Washington on

how to stop the violence, and the editorial pages of the major newspapers leveled little criticism at U.S. and UN inaction.

Arguably, the greatest fault of the international community was its failure even to contemplate humanitarian intervention to stop the genocide. No government acted to end the killing. No one in the U.S. government formally proposed the dispatch of U.S. forces to Rwanda. As the genocide unfolded, Washington held no high-level meetings in which Rwanda formed the heart of the agenda.

The killing began a mere week after the last U.S. forces had withdrawn from Somalia, and official Washington was eager to turn its attention away from Africa. As in New York, the shadow of Somalia dimmed the imagination of U.S. policymakers, Congress, and the press alike. In the first few weeks, Washington failed to grasp the true gravity of what was transpiring—a genocide, not another spasm of violence. Thereafter, Washington, the UN, and the rest of the international community failed to consider, much less launch, any humanitarian intervention in a time frame that could have halted the genocide.

The Rwandan Armed Forces and Interahamwe militia continued killing for some 100 days. By the time the violence waned, an estimated 800,000 Tutsis and moderate Hutus had been murdered, mostly by mobs of Hutu youth wielding machetes and knives. The onslaught ended by the middle of July 1994, when forces from the Rwandan Patriotic Front entered the country from Uganda, seized the capital, Kigali, and drove out the Hutu genocidaires.

When the French government sought UN Security Council approval to intervene in Rwanda under Operation Turquoise, Washington dared not object—chagrined, if not motivated, by its own inaction. Senior U.S. officials, accustomed to largely cooperative relations with France, failed to adequately question French motives. As a consequence the international community committed yet another sin of omission—allowing France, with its close historic ties to the Hutu leadership, to provide protection to the perpetrators of genocide as they fled alongside refugees into neighboring Zaire.

Only then, when faced with yet another massive humanitarian crisis, did the United States decide to deploy forces. In July 1994 the U.S. government finally mobilized its forces to assist the million refugees crammed into unsanitary, cholera-prone camps. At the height of the relief operation,

2,600 U.S. troops from various points in East Africa contributed to the effort. Regrettably, these forces were employed, albeit with the best of intentions, not to shield the victims of genocide (as it was too late to do so) but instead to shelter and water another set of desperates—the perpetrators of genocide, their sympathizers, and the refugees that they used as human shields.

BOSNIA

The Bosnian crisis, which began three years before the Rwandan genocide and continued for a year after its completion, commanded a great deal more international attention. Tensions between ethnolinguistic groups in Yugoslavia had been muted under the firm hand of Tito, who from 1945 until his death in 1980 curtailed expressions of ethnic nationalism. After Tito a weak constitution worked against the consolidation of a strong central government. This arrangement allowed political opportunists to exploit ethnic divisions and use propaganda to build power among their respective ethnic kin.

The most notorious perpetrator was Slobodan Milosevic, who ascended to the presidency of Serbia in 1989. He had secured strong grassroots support by brashly defending minority Serbs in the heavily Albanian-populated Serb province of Kosovo. His strong pro-Serbian nationalist rhetoric sent tremors throughout Yugoslavia. Anxieties were particularly acute in those ethnically mixed republics in which nationalist passions had been kept at bay by a mixture of strategies involving both repression and the delicate fostering of a civic (Yugoslav) identity. The most endangered of these republics was the most heterogeneous—Bosnia-Herzegovina.

The same year Milosevic took the presidency, Warren Zimmermann was newly appointed as U.S. ambassador to Yugoslavia. He had a strong record as an advocate of human rights, having led the U.S. delegation to the Review Conference of Helsinki signatory states that aimed to advance human rights concerns in the Soviet Union and its satellite states. Ambassador Zimmermann took a new message to the Yugoslav leaders when he made his introductory calls in Belgrade. Although human rights concerns had not been prioritized by Washington during the cold war, Yugoslavia's "failures in the human rights area . . . now loomed larger." The U.S. government was insistent that the unity of the country had to be consistent with Yugoslavia's "progress toward democracy."²⁶

Yet the rights of ethnic minorities in parts of Yugoslavia already were under assault. Two years later, with growing anxiety throughout Yugoslavia about ethnic-based violence and Serbian repression, the country began to unravel. On June 25, 1991, Slovenia and Croatia declared their independence from Yugoslavia. After a cascade of events, including a punishing war between Serb-dominated Yugoslavia and Croatia, the leaders of ethnically diverse Bosnia-Herzegovina announced plans for Bosnia's separation from the remainder of Yugoslavia. Given the substantial Serb and Croat populations in Bosnia, the call for independence triggered all-out war over Bosnian territory. Serb and Croat troops clashed in Bosnia, while Serb forces were particularly aggressive in assailing the Bosnian Muslim population to carve out territory for their fellow Serbs.

As news began to flow from the Balkans, western media outlets vividly reported repression of Bosnian Muslim and Croat populations by Bosnian Serb officials as well as details of forcible relocation, widespread rape and violence, and extensive killing by the Serbian military. Human rights organizations bravely documented the descent into savagery. Nonetheless, two influential publications both reflected and helped justify the initial hesitation that prevailed among U.S. officials in the early years of the Bosnian war. Samuel Huntington, in his famous 1993 *Foreign Affairs* article "Clash of Civilizations," argued that warfare on the horizon would take place across ethnic, religious, and linguistic fault lines rather than along political or ideological divisions as in the past.²⁷ Published the same year was Robert Kaplan's *Balkan Ghosts*, which claimed that "ancient ethnic hatreds" were the principal source of violence in southeast Europe.²⁸ Both pieces were grounded in the assumption that ethnic homogeneity existed in conflicting communities. The theses also rested on the notion of endemic interethnic animosity and failed to account for the critical role of demagogues who fuel interethnic hostility for personal gain. In effect, these works suggested that if such ethnic hatreds had plagued the region for centuries, it would be folly to attempt to resolve these during a short period of history with something as brief as an outside intervention. Early in the trajectory of the Bosnian war, Defense Secretary Dick Cheney declared on CNN, "It's tragic, but the Balkans have been a hotbed of conflict . . . for centuries."²⁹ President Bush cast the war as the result of "age-old animosities . . . century-old feuds."³⁰

At the United Nations in late 1991, officials deflected calls for an armed intervention to stop the bloodshed. While Lord Peter Carrington,

acting on behalf of the European Community, attempted to develop a peace plan, outgoing UN secretary general Javier Pérez de Cuéllar dispatched former U.S. secretary of state Cyrus Vance to the region. An advantage that Vance had over Carrington was that he could offer a UN peacekeeping force, and he brokered an agreement that provided for the withdrawal of Serb forces from Croatia. The UN Protection Force (UNPROFOR) was deployed to southern Croatia to reinforce the peace agreement by separating Serb and Croat forces. As the fighting intensified in Bosnia, UNPROFOR's mandate gradually expanded—first to the delivery of humanitarian supplies and protection of released civilian prisoners and then to monitor Serbian compliance with the UN no-fly zone over Bosnia. The Security Council failed, however, to authorize an increase in force levels sufficient to carry out the expanding mandate.

At the same time, the incoming UN secretary general Boutros-Ghali reportedly maintained that “Yugoslavia is a European problem. Let the Europeans deal with it.”³¹ This attitude, combined with the member states' lack of resolve to forcefully confront the ethnic violence, established a pattern, arguably, of well-intentioned passivity regarding the problem of Serbian aggression.

Humanitarian efforts continued, but Western officials remained reluctant to employ military force. In July 1992 Sadako Ogata, UN High Commissioner for Refugees, advanced a response plan. The objectives were respect for human rights and humanitarian law, preventive protection, humanitarian access to those in need, measures to meet special humanitarian needs, temporary protection measures, material assistance, and repair and rehabilitation.³² One month later the Security Council called for “all measures necessary” to ensure that humanitarian supplies were delivered to Bosnia.³³

Bush administration officials were uninterested in a military option in 1991 and 1992. Secretary of State Baker announced his preference for Europe to solve the problem. Deputy Secretary of State Lawrence Eagleburger, a former ambassador to Yugoslavia, struck a defeatist chord: “The tragedy is not something that can be settled from outside and it's about damn well time that everybody understood that. . . . There is nothing the outside world can do about it.”³⁴

After the administration transitioned from Bush to Clinton, there was greater receptivity to lower-level officials' proposals for the use of force. Still, the new administration was also initially reluctant to implement

such options. Yet as the genocide in Bosnia persisted, pressure for military intervention continued to mount, including from some in Congress. Polls also revealed a growing public concern with perceptions that a history of genocide in Europe was repeating itself. In May 1993 Secretary of State Warren Christopher went to Europe to consult on, rather than to sell forcefully, a new policy coined “lift and strike”—lift the arms embargo and strike the Serb forces. Europeans responded frostily to the proposal, not least because their peacekeeping forces might be caught in the middle, and lift and strike was shelved.

Then in June 1995 news of a massacre by Serb forces at Srebrenica sent shock waves through U.S. and European publics, as it crystallized the dual perception of Serbian malevolence and UN impotence. Serb general Ratko Mladic and his forces seized the so-called UN safe area (“protected” by lightly armed UNPROFOR troops) and slaughtered as many as 7,400 Muslims. Reports that Serb forces were separating the draft-age men from the women, children, and elderly, and that large numbers of men had disappeared underscored the genocidal character of the killing.

With increased public attention, congressional pressure, allied support, as well as a successful Croatian offensive against Serb forces in eastern Croatia all converging, the Clinton administration—spurred by National Security Adviser Anthony Lake and UN Ambassador Madeleine Albright—decided to take bold action to end the violence in Bosnia. Clinton dispatched Lake to shuttle across Europe to build support for an invigorated policy through an intense series of negotiations, backed by the threat to use force if a negotiated solution proved unattainable. Lake’s efforts were bolstered by tragedy when on August 28, 1995, a Bosnian Serb shell exploded in a Sarajevo marketplace, killing several dozen people. International attention and Western resolve had already begun to converge, and this final act of defiance of U.S., European, and UN calls for restraint triggered NATO air strikes, starting August 30, that targeted Bosnian Serb installations near Sarajevo. Combining the air strikes with invigorated diplomatic efforts proved to be the right combination to end the war.

On November 21, 1995, after twenty days of negotiations spearheaded by U.S. Assistant Secretary of State Richard Holbrooke at the Wright-Patterson Air Force Base in Dayton, Ohio, the presidents of Croatia, Yugoslavia, and Bosnia signed the peace accord ending the war in Bosnia. Yet, in spite of all the delicate issues resolved in the peace talks,

the issue of the status of Kosovo remained unsettled. It would later become the issue that would prompt the fullest expression of President Clinton's readiness to use military force to save lives.

KOSOVO

In the semiautonomous province of Kosovo in southern Yugoslavia, the Albanian community, which constituted 90 percent of the population, had little effective political power. Polemical counterclaims over competing ancestral histories and territorial affiliation were fiercely levied by the Albanian and minority Serb populations. Kosovo was contested land, a flash point for largely dormant Serb and Albanian animosities.

In 1989 the Serbian Assembly under the direction of Milosevic effectively stripped Kosovo of its autonomous status, initiating increased repression and violence. In March 1998 a few hundred Albanian Kosovo Liberation Army insurgents assembled to seek redress of their claims. By July, incited by claims of Serb oppression, the Kosovo Liberation Army had grown to several thousand.³⁵ Humanitarian conditions for the Muslim Kosovar Albanians worsened.

Despite concessions by Milosevic in a series of high-level diplomatic efforts in the fall of 1998 and early spring of 1999, nearly 80,000 Albanians were forced by Serb forces to flee their homes between the end of December and mid-March 1999.³⁶ On March 24, 1999, NATO launched Operation Allied Force to halt the violence against Albanian civilians and to arrest the further decay of humanitarian conditions in Kosovo. The NATO-led bombing campaign continued until June 11, 1999, when Milosevic relented, agreeing to end all violence in Kosovo, withdraw all Serb forces, and submit to an international presence under UN auspices. Authorized under Chapter 7 of the UN Charter, the UN would oversee a process to establish a semblance of self-government and enhance economic and political conditions in the region. NATO swiftly deployed a force to Kosovo to provide security. A complementary UN civilian mission remains to assist refugees and displaced persons, help maintain law and order, and protect human rights.

The Kosovo bombing campaign was highly controversial because it was launched by NATO without UN Security Council authorization. While the United States and its European partners sought, and would have strongly preferred, such authorization, the prospect of a Russian

and perhaps a Chinese veto dissuaded them from pressing for a Security Council vote explicitly authorizing the use of force. Officials in Western governments felt that their cause was just, and a vote in the Security Council was not essential for them to act. NATO blessing, they maintained, would suffice. They cited a long series of UN resolutions challenging Serbian treatment of the Albanian population in Kosovo, in particular UNSCR 1199, approved on September 23, 1998, by a vote of 14-0, which called for the immediate withdrawal of Serbian forces from Kosovo. The same resolution referenced Chapter 7 of the UN Charter, which allows for enforcement action to maintain international peace and security.³⁷ U.S. officials heralded this resolution as legal justification for the use of force and thus bypassed the unambiguous legitimization that an explicit Security Council authorization would have provided.

The lack of UN support complicated but ultimately did not preclude U.S. efforts to gain European leaders' agreement to confront Serbian forces militarily. While most NATO countries have long argued that a Security Council mandate was required for offensive military force to be legally authorized, in the end the humanitarian conditions in Kosovo persuaded European states to join in the effort to protect civilians.

French president Jacques Chirac argued that military force was justified in the face of a humanitarian crisis: "In this particular case, we have a resolution which does open the way to the possibility of military action. I would add, and repeat, that the humanitarian situation constitutes a ground that can justify an exception to a rule. . . . France would not hesitate to join those who would like to intervene in order to assist those who are in danger."³⁸

On October 6, 1998, French foreign minister Hubert Védrine and Italian prime minister Romano Prodi together stated that "our shared position of principle . . . is that, before any military intervention . . . the Security Council must adopt a Resolution authorizing that intervention. But in the specific case of Kosovo, on which a Resolution citing Chapter VII has already been adopted, we must . . . keep a very close eye on the humanitarian aspect of the situation . . . which can demand very rapid . . . implementation of measures to deal with an emergency."³⁹

British prime minister Tony Blair was as forthright as any allied leader in his insistence that intervention was morally justified and that Milosevic must answer for the war crimes committed under his direction. "There

are no half-measures to his brutality, and there can be no half-measures about how we deal with it. No compromise, no fudge, no half-baked deals,” he said in making the case for joining the U.S.-led military intervention. Blair later defended U.S. leadership, saying “America has once again shown that it has the vision to see that instability, chaos and racial genocide in the heart of Europe will never affect Europe alone.”⁴⁰

Even German chancellor Gerhard Schröder faithfully supported the air war. It was the first time the German military participated in combat since the Second World War.

United Nations Secretary General Kofi Annan contributed to the sense that the humanitarian norm of protecting human lives had outpaced the norm of sovereign inviolability. Although he asserted that the UN Security Council was solely responsible for authorizing nondefensive military force, he also acknowledged that “there are times when the use of force may be legitimate in the pursuit of peace.”⁴¹

The Independent International Commission on Kosovo, initiated by Swedish prime minister Göran Persson and endorsed by Secretary General Annan, found that the U.S.-led war in Kosovo was “illegal but legitimate.”⁴² The finding held that despite circumventing the Security Council, NATO answered a growing humanitarian disaster, a function that the UN Security Council was unable to fulfill. “The intervention was justified,” the commission found, “because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.”⁴³ NATO violated the letter of the law but acted in accordance with the spirit of the UN Charter.⁴⁴

For the principle of human rights and the practice of humanitarian intervention, Kosovo was a crowning moment. In Kosovo states risked the charge of illegality in pursuit of what they deemed legitimate humanitarian imperatives. At the time many UN member states vigorously protested NATO action in Kosovo. However, after the military campaign ended, the UN Security Council passed resolution 1244 that, in effect, legalized NATO action retroactively.

DARFUR

While the United States led decisive intervention in Kosovo, which was retroactively endorsed by the international community, the process was not a harbinger of things to come. Nowhere is this more evident than in

Darfur. Massive crimes against humanity, perpetrated by the government of Sudan and its Janjaweed militia, started in 2003 and persist in 2007. The U.S. government has rightly termed these crimes “genocide” while the UN and others prefer to call them “crimes” or “atrocities.” Terminology aside, the facts remain: as many as 450,000 have been killed and 2.5 million displaced or rendered refugees. Khartoum-sponsored violence has spilled over into Chad and the Central African Republic, threatening thousands more civilians and destabilizing fragile neighboring governments.

There can be little doubt that the scale of atrocities in Darfur surpasses any reasonable interpretation of the threshold for action contemplated under the “responsibility to protect.” Yet the international community has failed over a period of four years to halt the killing. China and Russia have chilled any efforts at meaningful sanctions. A U.S.- and Nigerian-brokered peace agreement, signed in May 2006 by only one of the three Darfuri groups rebelling against the Sudanese government, was doomed from the start. Violence has only increased since the Darfur Peace Agreement was signed. Indeed, subsequent to the agreement, Khartoum launched successive massive offensives against civilians in Darfur—in effect, a second wave of genocide.

To its credit, in 2004 the nascent African Union (AU) deployed a force that reached almost 7,000. Its mandate was to report on cease-fire violations, “assist in the process of confidence building,” and “contribute to a secure environment” so that humanitarian relief could be delivered and internally displaced persons and refugees could return home.⁴⁵ While it has been the only international actor willing to face bullets to save civilians in Darfur, the undermanned, underresourced AU force has been consistently hobbled by a weak mandate and inadequate logistical and financial support, despite contributions from NATO and Western governments. In 2006 the AU finally acknowledged the obvious: it is unable by itself to secure hundreds of thousands at risk across an area the size of France. The African Union called for an enlarged UN force to replace it, and the UN Security Council passed resolution 1706 in August 2006, authorizing the deployment of a robust 22,000-person force with a Chapter 7 mandate.

The force has not deployed, however, because the government of Sudan has refused to permit it. In September 2006 Sudan agreed to allow the AU to remain under an extended mandate. Shortly thereafter, the

United States threatened an unspecified confrontation with Khartoum should it continue to resist a UN force. However, instead of following through on that threat, the United States, UN, African Union, China, and European countries agreed in November to establish a “hybrid” UN-AU force, as the third in a three-stage process to gradually introduce UN elements into Darfur. The concept of a hybrid force came into existence in an effort to win Khartoum’s assent to the deployment of more troops. The hybrid force is to be financed by the UN and enjoy UN logistical support. The troops, the secretary general’s special representative for Sudan, and the force commander (appointed jointly by the UN and AU) are all to come from Africa, if possible. The command and control arrangements are muddled in a manner reminiscent of UNPROFOR–NATO “dual key” arrangement that failed in Bosnia. Finally, the hybrid force is to operate under a (presumably weaker) mandate derived from the AU rather than the UN and will consist of a substantially smaller contingent than originally envisioned (17,000 versus 22,000). In short, the hybrid arrangement falls far short of the measures that the Security Council approved in resolution 1706 to protect civilians in Darfur.

However, the Sudanese government has refused to accept the hybrid force. The United States threatened in November 2006 to resort to “plan B”—punitive steps against Khartoum—if by December 31, 2006, the Sudanese government did not stop attacks against civilians in Darfur and agree unequivocally to the UN-AU hybrid force. The government of Sudan did not take either step, but there is no indication that the United States will resort to plan B. The net result is that for four years the perpetrators of genocide have been allowed to veto effective international action to stop it. This tragic situation highlights the dilemmas of respecting state sovereignty versus violating state sovereignty in order to protect the innocent.

International Norms and the Responsibility to Protect

The evolution of humanitarian intervention has occurred in stages. During the Gulf War, the Security Council’s requirement that Iraqi leaders permit access to humanitarian agencies was a pivotal point in the international community’s commitment to human welfare. Subsequently, UN member states increasingly accepted the premise that internal strife, including the abuse of human rights within sovereign boundaries, can

fuel large-scale civil conflict. Civil wars, in turn, often spill over to undermine regional or international peace and security. The UN Security Council's actions on the basis of this recognition effectively broadened the definition of permissible uses of force under Chapter 7 of the UN Charter. Representative of this trend over the last fifteen years are the UN-led or -blessed interventions in Bosnia, Haiti, Sierra Leone, Liberia, East Timor, and the Democratic Republic of the Congo—all under Chapter 7 of the UN Charter. A notable, final leap was the willingness of states to use military force in Kosovo on behalf of foreign nationals absent an explicit Security Council mandate. After a decade of difficult decisions as to whether or not to intervene to save civilians, at the start of the twenty-first century, international attention turned to how and when to combat atrocities.

While imperfect interpretations of historical experience, moral necessity, and military capability had been the primary guidelines for policy throughout the 1990s, the international community craved a new set of normative guidelines that could shape action and guide decisionmaking in the future. Toward this end the International Commission on Intervention and State Sovereignty (ICISS), cochaired by Gareth Evans and Mohamed Sahnoun, launched the international normative debate over this issue in earnest in December 2001 when it released a comprehensive and groundbreaking report entitled *The Responsibility to Protect*.⁴⁶ This report was commissioned by the government of Canada and reflected the consensus of a diverse group of international statesmen. Its principal conclusion was that national sovereignty, while vitally important, is neither inviolable nor a legitimate justification for inaction by the international community when sovereign governments are unwilling or unable to protect their citizens from large-scale violations of human rights, crimes against humanity, ethnic cleansing, or genocide. The ICISS stressed that the foremost responsibility to protect citizens of a nation lies with the government of that nation. However, when governments cannot do so, or when governments themselves perpetrate massive human rights abuses, then the international community can and should act forcefully—as a last resort—when peaceful means have failed, using minimal necessary force and, ideally, with UN Security Council blessing. The commission defined the “responsibility to protect” (now frequently referred to as “R2P”) as comprising three elements: first, the “responsibility to prevent” violence against civilians by addressing the causes of conflict through peaceful means such as development and diplomacy; second, the “responsibility to

react” to massive abuses through diplomacy, sanctions, and, in extremis, military intervention to halt abuses; and third, the “responsibility to rebuild” in the wake of conflict and, especially, international intervention.

In addition, the ICISS addressed the crucial question of whether military action to halt atrocities can be deemed legitimate without Security Council approval. It concluded that council authorization is the gold standard of legitimacy and should be sought in all instances. Absent this authorization, the ICISS recommended three alternatives. The second-best option, in lieu of a Security Council mandate, would be UN General Assembly approval in emergency session under the Uniting for Peace procedure, as used in the case of the Korean War. If this fails, action should be taken under the jurisdiction of a relevant regional organization under Chapter 8 of the UN Charter, with Security Council approval sought subsequently. Finally, the ICISS acknowledged that if the Security Council neglected to act “in conscience-shocking situations . . . concerned states may not rule out other means to meet the gravity and urgency of that situation—and that the stature and credibility of the United Nations may suffer thereby.”⁴⁷

After the release of the ICISS report, the international normative and legal framework evolved. The debacle in Iraq and the ongoing genocide in Darfur added urgency to the conversation as U.S., UN, and international policymakers wrestled with the question: *When, and under what circumstances, is it legitimate for outsiders to use force to address a humanitarian crisis in a sovereign state?* In December 2004 the UN secretary general’s High-Level Panel on Threats, Challenges and Change endorsed the emerging norm that “there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing.”⁴⁸ However, it did not tackle the question of what to do when the Security Council does not act. Subsequently, in May 2005 UN secretary general Kofi Annan issued his own report, *In Larger Freedom*, which responded to his High-Level Panel and set the stage for the upcoming UN sixtieth anniversary summit.⁴⁹ Annan argued that the challenge was not to find alternatives to the Security Council but to make the council work better. He recommended that the Security Council adopt a resolution setting out the main principles as to when and how to use force to protect civilians, drawing substantially on the criteria put forth by the ICISS, and commit to observe these principles in future decisionmaking.

The UN Summit Declaration of 2005 adopted by the General Assembly affirmed that the UN has the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Further, member states agreed, “We are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations.”⁵⁰ In April 2006 the UN Security Council reaffirmed this statement, giving it additional weight under international law in resolution 1674.

How Others See It

In order to illuminate the nuanced attitudes that will shape and ultimately guide international action or inaction with respect to the responsibility to protect, the Brookings Institution convened a series of regionally based roundtable discussions on the theory and application of the concept. The ICISS report provided the starting point for these dialogues, which occurred between February 2004 and July 2006. Participants included experts from the United States, Europe, Mexico, China, South Asia, the Middle East, and Africa. While conversations with small groups of experts cannot be extrapolated to serve as indicators of entire national attitudes, the conversations do shed light on how policy elites in different countries approach the responsibility to protect. Most international interlocutors embraced R2P, at least in principle; however, they differed substantially over its importance, urgency, appropriate threshold for action, and whether prior UN Security Council approval of intervention was necessary.

The U.S. participants in these dialogues strongly and unanimously subscribed to the norm of the responsibility to protect. They took the view that the international community has the right, and some insisted the obligation, to act in the face of massive violations of human rights, using force if necessary. They lauded Kosovo as a precedent for action when the UN fails to respond and lamented U.S. and international paralysis over Darfur. In the case of Darfur, as with Rwanda, American participants viewed the practical constraints on international action as a function of the lack of political will and, to a lesser extent, of high-caliber African

military capacity to conduct enforcement actions. Though American participants strongly preferred that any international humanitarian intervention win Security Council approval, they did not view international law or lack of legitimacy as binding constraints on actions taken by the United States or others. In particular, they were prepared to seek alternative means of legitimizing potential interventions—whether endorsement by a relevant or concerned regional organization, an ad hoc coalition, or ex post facto Security Council legitimization. U.S. participants recognized that retroactive U.S. effort to justify, at least partially, the invasion of Iraq on humanitarian grounds complicates perceptions of America's motives in places like Darfur. Still, the American discussants remained fully committed to the R2P norm and viewed the Security Council's failure to stop the genocide in Darfur as another blot on the UN's record, which even the most charitable members of the group perceived as mixed.

African participants professed an unyielding determination to apply the responsibility to protect effectively. They noted that humanitarian challenges related to the responsibility to protect mainly manifest themselves in Africa and cost thousands of African lives. They lauded the new African Union charter for explicitly rejecting the doctrine of the inviolability of sovereign states adopted by its predecessor, the Organization of African Unity. For Africa the major constraint on effective action is neither law nor legitimacy nor lack of political will; it is insufficient African resources and capacity to execute effective enforcement action without major external support. Generous African commitments to various UN and regional operations have absorbed most excess peacekeeping capacity on the continent. The lack of steady financing other than UN-assessed contributions, a dearth of training and equipment to achieve genuine interoperability, and the rapid turnover of trained personnel remain perpetual problems for African troop contributors.

European participants endorsed the American consensus on R2P and its appropriate application. They agreed that lack of political will and of international peace enforcement capacity were the most significant factors inhibiting effective international action rather than the constraints of international law.

South Asian participants stressed the importance of state sovereignty and noninterference as key international norms. They viewed UN Security Council authorization as essential to legitimate international intervention and also highlighted the need for Security Council reform to

enhance UN legitimacy. South Asian colleagues tended to be skeptical of regional organizations acting without explicit UN blessing, but at least one participant acknowledged the possibility of retroactive UN legitimization if the world deemed the effort to be largely successful, if the intervener made a persuasive legal case for intervention, and if the intervener unconditionally accepted the costs and risks of its action.

Participants from Middle Eastern countries, especially Egyptian representatives, strongly defended national sovereignty. Even though humanitarian interventions may be conducted in the interests of the people of developing countries, they felt it was often the nations of the north exerting their superiority over those of the south. Most Arab interlocutors viewed Iraq as a highly negative precedent, heightening fears that the United States and others will use humanitarian concerns as a pretext for regime change. This perception colored their consideration of any international action in Darfur that does not receive explicit UN support. The Arab League has largely supported Khartoum's efforts to block deployment of an authorized UN force.

Many Mexican participants, for historical reasons, considered state sovereignty as sacrosanct and the principle of noninterference in the domestic affairs of other states as fundamental to their worldview. National law bars Mexican participation in UN peacekeeping operations. Mexican conferees did not agree on whether or not a state's failure to protect its citizens means the international community has a responsibility to do so. However, they all insisted that any such action, particularly involving the use of force, must have explicit UN Security Council authorization.

Finally, Chinese interlocutors accepted the responsibility to protect in concept, as does the People's Republic of China, but interpreted it narrowly in practical terms. Most suggested that there should be high thresholds for international action (for example, that half the population be affected) and that irrefutable evidence of genocide or mass atrocities be gathered and presented by "objective analysts." However, they rejected the UN's findings on Darfur as wrong or biased. One participant suggested that the R2P should only devolve to the international community when a state had collapsed, as in Somalia. Chinese participants placed strong emphasis on the necessity of Security Council backing for any intervention. At the same time, several indicated that the state of U.S.-China bilateral relations and the importance of the target country to Chinese interests might prove more important factors than the R2P when

China considers its reaction to Western-led interventions. In this vein, at least one Chinese participant posited that if a vote were held today, China might be inclined to accept NATO action in Kosovo. Others underscored that China did not object to U.S. intervention in Iraq because the bilateral relationship had improved. Finally, Chinese conferees noted that China rarely has used its Security Council veto (four times) compared to the United States and other council permanent members.

All of the participants recognized that customary international law has evolved since the promulgation of the UN Charter and its insistence on noninterference in the internal affairs of sovereign states. In recent years, they noted, the UN Security Council has defined civil conflicts as threats to international peace and security in such places as Haiti, Cambodia, Bosnia, and Liberia. The Security Council has also given broad latitude to regional organizations under Chapter 8 to act in response to humanitarian and political crises in their respective regions. Participants in our dialogues widely acknowledged that norms have evolved: in the early 1990s the UN acquiesced in the intervention in Liberia by the Economic Community of West African States Monitoring Group (ECOMOG) without a Security Council mandate, and later blessed this mission and subsequent ECOMOG action in Sierra Leone. The Security Council also deferred to NATO in the Balkans, the African Union in Burundi and Darfur, and Australia in East Timor.

The conversations revealed significantly differing approaches to the responsibility to protect. While some experts saw a fully emerged norm that had been wholeheartedly embraced by the international community, others remained deeply committed to the sanctity of national sovereignty. Strong consensus exists, however, that international customary law has evolved, and continues to evolve, on the subject of the responsibility to protect.

Recommendations for International Policy

Our series of regional policy dialogues considered various ideas to strengthen the international normative and practical foundations for humanitarian intervention in the context of massive violations of human rights. The following are proposed recommendations for international policy that draw on the regional dialogues but represent the authors' own views.

EMBRACE ALL THREE ELEMENTS OF R2P

In addition to *reacting* swiftly and effectively to massive violations of human rights, the international community needs to invest far more substantially over the long term in both *conflict prevention* and *postconflict reconstruction*.

Effective prevention requires proactive and coordinated diplomatic engagement at critical stages as the situation grows more fragile. More significantly, it requires efforts to mitigate the root causes of civil conflict—and chief among these may be poverty.⁵¹ A wide body of recent evidence shows that poverty, measured as low GNI per capita, is a significant risk factor for civil conflict. Oxford University professor Paul Collier finds that a country with \$250 GDP per capita has a 15 percent risk of falling into civil conflict over a five-year period whereas a country with a GDP of \$5,000 faces only a 1 percent risk of conflict over the same period. Good governance and democratic institutions also make critical contributions to conflict prevention by creating and distributing the benefits of economic growth effectively. Members of the Organization for Economic Cooperation and Development, developing countries, and multilateral institutions must commit to robust investments in poverty reduction and democratic institution building to create and sustain positive policy environments in underdeveloped countries.

Effective reconstruction also requires creative and sustained investments in security, democratic institution building, justice, and development. Recent research indicates that such assistance should ramp up gradually (starting with capacity building and technical assistance) and peak at year five of the postconflict period, then continue at high levels for several years. It is crucial that postconflict assistance be funded by assessed UN contributions, as peacekeeping operations are, and not left to ad hoc funding mechanisms or the whims of individual donor governments.

BUILD REGIONAL PEACE OPERATIONS CAPACITY

While some progress has been made in recent years to help developing countries enhance their peacekeeping capacity, much more remains to be done. In particular, the G-8 commitment to train and equip five interoperable subregional brigades in Africa must be fulfilled quickly, and African countries must exercise and sustain these brigades. Regional organizations with capacity limitations should seek assistance promptly

and be provided with robust logistical support as well as command, control, communications, and intelligence assistance from external coalitions and partner countries. Regional bodies' decisionmaking processes on whether or not to intervene should not require consensus from all members and should not be subject to veto by a party to the conflict.

STRENGTHEN UN CAPACITY

In 2007 the UN had deployed the second largest ground force in the world, behind only the United States. Although the UN has improved enormously its headquarters capacity over the past fifteen years, key gaps remain, many of which can be blamed on lack of commitment by the UN's most powerful members, including the United States. As of this writing, the UN still lacks any effective rapid deployment capability. Its standby forces initiative exists only on paper. The Permanent Five members, those with the most capable militaries, have all but abandoned UN peacekeeping with the notable exception of China, which has become a major contributor in recent years. Key member states also continue to balk at establishing an effective intelligence-early warning capacity for the UN, which is essential to preventive action. All of these shortcomings should be addressed with utmost urgency under the constructive leadership of the permanent members of the UN Security Council. Finally, the new Peacebuilding Commission has a great distance to travel in order to fulfill its potential.

ESTABLISH LEGITIMATE ALTERNATIVES WHEN THE SECURITY COUNCIL FAILS TO ACT

At present the international community has no agreed normative framework for halting genocide or massive crimes against humanity when the Security Council fails to do so. This is the case in Darfur where international action has been authorized but not implemented due to lack of resolve to deploy without Sudanese agreement. The following procedures and alternatives should be adopted as the international standard in such instances:

—The Permanent Five members of the UN Security Council should forswear the use of the veto to halt international intervention for humanitarian reasons, unless they publicly articulate a compelling case that their vital national interests are at stake. This is by no means a fail-safe solution

since countries can claim that their vital interests are at stake, and no multilateral body has the authority to rule on the validity of those claims. However, it would raise the political bar, help dissipate the constant but ambiguous cloud of a veto threat against humanitarian interventions, open recalcitrant nations to international scrutiny, and increase transparency.

—The UN General Assembly could be convoked in emergency session to vote on “Uniting for Peace” action when the Security Council is deadlocked.

—Decisions to support intervention by relevant or concerned regional bodies should be deemed sufficient to legitimize action by their members when Security Council authorization is sought but not forthcoming.

—When all else fails, a member state or coalition of members may intervene to save lives at their own risk and expense and seek retroactive UN or regional support. In this instance the gravity of the humanitarian crisis, the purity of humanitarian motives, and the efficacy and proportionality of the military action should be critical considerations in the achievement of *ex post facto* legitimization. Member states that take such action should be prepared to have their intervention formally condemned and penalties assessed if it fails to meet the above criteria. In addition, member states that take such action should be prepared to shoulder the costs of the postintervention responsibilities.

DO NOT FAIL DARFUR AGAIN

The newly established norm of the responsibility to protect will likely die in its crib if the international community fails to act effectively in Darfur. The best hope in this regard is the rapid deployment of a robust Chapter 7 UN force, as authorized by UNSCR 1706. If necessary, this force could be deployed without Sudanese permission. Even with UN advisers and funding, an augmented AU or even UN-AU hybrid force will likely not suffice to save enough civilians and could well prove another cruel hoax to the people of Darfur. The Security Council, acting under Chapter 7, should pass another resolution giving Sudan a very short and finite amount of time to accept the UN force unconditionally or face military consequences by member states, collectively or individually. If the Sudanese do not accept the UN force, the United States should lead an international campaign to enforce the resolution by bombing Sudanese airstrips and military assets, enforcing a no-fly zone over Darfur, and

even, perhaps, blockading Port Sudan until Sudan relents. Then UN forces, prepositioned in Chad, could deploy immediately.

If the Security Council fails to respond to the genocide in Darfur, it risks losing, for the foreseeable future, its remaining legitimacy on matters of humanitarian intervention. In the absence of Security Council action, the AU or NATO (an extraregional yet concerned and involved organization) could authorize punitive pressure, as NATO did in Kosovo in 1999. If all else fails, the United States should establish and lead what might be dubbed a “coalition of the compassionate”—and be prepared to accept the consequences.

Conclusion

It was not long ago that the human rights of a victimized population failed even to register public concern, much less initiate government action. The modern forms of human rights protections are a post-Second World War phenomenon. Humanitarian intervention dates back less than twenty years, to the protection of the Kurdish population in northern Iraq after the 1991 Gulf War. It is no small irony that the second Bush administration’s surviving rationale for the 2003 invasion of Iraq is the protection of the rights of the Iraqi people under the boot heel of Saddam Hussein. From the low-profile deployment in 1991 to the extraordinarily high-profile pitch for popular support in 2003, human rights concerns have increasingly and vigorously asserted themselves in the public discourse.

As this norm of protecting human lives and human dignity developed in the public mind, officials simultaneously began to regard civil conflict as a threat to international peace. Sovereignty also became an insufficient excuse for maintaining an impenetrable barrier between victims and an effective humanitarian response. Correspondingly, the tools that national governments had to address these concerns matured. Through the crises of Somalia, Haiti, Rwanda, Bosnia, and Kosovo, national leaders learned, their spines stiffened, and they grew accustomed to using all the tools in their toolboxes.

These trends make the failure to respond to current humanitarian disasters even more inexcusable. The outrage and alarm sounded over the continuing genocide in Darfur is a reminder of how far human rights have traveled in the public consciousness in a few short decades. Tragically, it is

also a reminder of how far there is to go in translating public concern into effective action. If the emerging norm of the responsibility to protect endangered populations fails to spur a sufficient response in Darfur, then the idea has no more utility than the paper on which it is printed. The instruments exist; sufficient government will, to date, does not. The lives of hundreds of thousands of Sudanese have already been lost; tens of thousands more are in jeopardy. And so is a principle that once bore much promise but requires implementation in real time to make any difference.

Notes

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