



House of Commons
Defence Committee

Intervention: Why, When and How?

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Volume II

Written evidence

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The Defence Committee

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Written evidence

Written Evidence from the Ministry of Defence

1. This paper is intended to inform HCDC work in the lead in to SDSR 15. It seeks to outline how HMG decides when and where to intervene with military force and how force might be used in future. Much of the detailed design work for future intervention forces is ongoing as part of the preparatory work for SDSR 15.

INTERVENTION WITHIN UK NATIONAL SECURITY STRATEGY

2. In the context of this memorandum, intervention is defined as the projection of military force (augmented by other agencies as required) outside UK sovereign territory to achieve an effect in securing, protecting or promoting UK national interests through the use or threat of force.

3. Since the mid-1990s, British Armed Forces have been involved in a number of military interventions including: in Bosnia (1992), Kosovo (1999), Sierra Leone (2000), Afghanistan (2001), Iraq (2003), Libya (2011) and Mali (2012).

4. Any military intervention in a sovereign state is likely to be controversial. Article 2(4) of the UN Charter¹ prohibits the use of force in international relations and it is well-established international law that States are prohibited from intervening in the internal matters of another state. There are well accepted exceptions to that general rule: a state's inherent right to individual or collective self-defence, as recognised by Article 51 of the UN Charter, and the right of the UN Security Council to authorise the use of force to maintain or restore international peace and security under Chapter VII of the UN Charter. A number of states, including Russia and China, both of whom have the power of veto within the UN Security Council, are reluctant to allow the international community to exercise its powers under Chapter VII where it would involve intervention in a third state.

5. If there is no UN Security Council Resolution for action, the UK would still be permitted under international law to take exceptional measures in order to alleviate a humanitarian catastrophe. The UK's position is that such a legal basis is available, under the doctrine of humanitarian intervention, provided three conditions are met:

- (a) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
- (b) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
- (c) the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (ie the minimum necessary to achieve that end and for no other purpose).

6. In 2005, the United Nations World Summit's outcome document agreed the concept of a "responsibility to protect", which has subsequently been re-affirmed by UN Security Council Resolution 1674. The "Responsibility to Protect" asserts that all States have a responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing. And that where a State is manifestly unable or unwilling to do this, that the international community has a responsibility, on a case-by-case basis, to protect those populations. This could entail the use of coercive measures, such as sanctions, or the use of force authorised by the Security Council. The responsibility to protect did not alter international law governing the use of force.

7. Military intervention therefore remains in specific cases contentious and contested. The UK Government, in the 2010 National Security Strategy, is nevertheless clear that the concept of intervention has an important role to play where other means of dealing with threats have failed:

"We will work with others to seek to prevent such crises developing, to deter malign forces and, in the last resort, to intervene militarily. We therefore need preventative and stabilisation activity, including diplomatic action and strategic intelligence capability, the ability to deter, and the ability and will to intervene militarily where absolutely necessary."

8. To this end, one of the UK's eight National Security Tasks specified within the 2010 National Security Strategy (NSS) is to: "Help resolve conflicts and contribute to stability. Where necessary, intervene overseas, including the legal use of coercive force in support of the UK's vital interests, and to protect our overseas territories and people." From the perspective of the Armed Forces, the ability to intervene is encapsulated in Military Task 6: "Defending our interests by projecting power."

9. It is important to note that military intervention remains an option of last resort in the UK's national security strategy, and should only be considered when other means have failed. The 2010 Strategic Defence and Security Review (SDSR) emphasises a strong preference against intervention, and stresses that the Armed Forces "*will focus more on tackling risks before they escalate, and on exerting UK influence, as part of a better*

¹ Article 2(4) "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

coordinated overall national security response.” This includes the concept of deterrence, which is addressed in a separate memorandum. The 2010 NSS makes clear that intervention should only be undertaken in support of the UK’s national security interests. The NSS refers to this principle as one of “*enlightened national interest*”:

“Our strategic interests and responsibilities overseas could in some circumstances justify the threat or use of military force. There will also be occasions when it is in our interests to take part in humanitarian interventions. Each situation will be different and these judgements will not necessarily be easy.”

10. The 2010 SDSR set out five principles that would govern the use of the UK’s Armed Forces:

“We will be more selective in our use of the Armed Forces, deploying them decisively at the right time but only where key UK national interests are at stake; where we have a clear strategic aim; where the likely political, economic and human costs are in proportion to the likely benefits; where we have a viable exit strategy; and where justifiable under international law.”

11. These principles are particularly applicable to military action which might be termed “discretionary”—in other words, where there is a political choice about whether or not to intervene, in what way and to what extent. At the same time, military intervention could in some circumstances be deemed “non-discretionary”, for example when justified under Article 51 of the UN Charter, which confirms the inherent right of states to collective or individual self-defence. Examples of non-discretionary interventions might include action to protect the UK’s Overseas Territories, such as the Falkland Islands, from armed attack, or the conduct of non-combatant evacuations operations (NEOs) to protect British citizens abroad. Similarly, our treaty obligations, such as our commitment to the collective defence of NATO Allies under Article 5 of the 1949 Washington Treaty, may in some circumstances require us to take military action in collective self-defence. To this end, as the 2010 NSS makes clear, the UK maintains “*the defensive and offensive capabilities needed to deploy armed force to protect UK territory and its citizens from the full range of threats from hostile action and to meet our commitments to our allies.*”

12. It is important to stress, as the NSS does, that the Armed Forces represent just one of the tools available to the UK Government in support of its national security interests and objectives, and will rarely be used in isolation. A cardinal principle of the NSS is to “*draw together, and use, all the instruments of national power, so that the sum of the British effort is much bigger than its component parts.*”

DECISION MAKING AND GOVERNANCE

13. The Building Stability Overseas Strategy (BSOS) and the International Defence Engagement Strategy (IDES) set out the UK Government’s approach to setting priorities and taking steps to ensure coherence across its conflict prevention activities, including through the use of joint funding mechanisms such as the Conflict Pool. BSOS is built around three mutually-supporting pillars: early warning of fragility and conflict; effective rapid response; and upstream prevention of fragility and conflict. It recognises the value of early intervention where necessary and lawful, in order to prevent a conflict from escalating. The focus on indicators and warnings within countries at risk of instability is an important means not just of prioritising upstream prevention activity, but also of ensuring that the Armed Forces, amongst others prepare for potential future military operations.

14. In non-humanitarian cases, the Armed Forces are likely to be involved, alongside others, in efforts to deter conflict or to coerce those who pose a potential threat to UK national interests in ways designed to avoid conflict. These activities are explained in more detail in the accompanying memorandum on deterrence, but the broad aim is to affect the decision-making of a potential adversary, persuading him that the risks of action or inaction, in the case of deterrence and coercion respectively, outweigh the potential benefits. To this end, the concept of coercive diplomacy can involve a sophisticated blend of political and economic measures, such as sanctions, backed by credible military force in the event of non-compliance.

15. In constitutional terms, the decision on whether or not to intervene militarily is the responsibility of the Cabinet. Following its establishment in 2010, the National Security Council (NSC), a Cabinet sub-committee, plays an important role in advising the Cabinet, but does not have executive authority over the decision to use force. This Government has stated that it will observe the existing convention that, before UK troops are committed to conflict, the House of Commons should have the opportunity to debate the matter, except where there was an emergency and such action would not be appropriate. The Government has furthermore reflected the existing convention in The Cabinet Manual.

16. The Secretary of State for Defence, as a member of the Cabinet shares responsibility for the political decision whether the Armed Forces should be deployed. He is the political head of the MoD as a Department of State with responsibilities for making provision for defence and the armed forces. As chairman of the Defence Council, he has a role in the giving of commands to the armed forces. It is the Defence Council, comprising Ministers, and the most senior members of the armed forces and MoD civil servants, which exercises the ultimate powers of command under the Sovereign over the Armed Forces, and accordingly has the ultimate authority under the Sovereign for military (as distinct from political) decision-making in the conduct of operations. This includes the imposition of any constraints on the use of force, such as through Rules of Engagement. The powers of command of the Defence Council are given by Letters Patent. The Secretary of State is accountable to Parliament for the decisions of the MoD and the Defence Council. He also reports to the NSC and the Cabinet.

17. In the lead-up to an intervention, it is the role of the MoD to inform and support strategic decision-making at the political level through the provision of expert military advice to shape the development of viable policy options, in conjunction with other Government Departments. As required by the Law of Armed Conflict, all military options will be designed to be consistent with the principles of military necessity, distinction and proportionality. The MoD has a dual function: as a Department of State and as the UK's strategic headquarters. In the latter role, it is supported by the Permanent Joint Headquarters, which is responsible, upon direction from the Chief of the Defence Staff, both for detailed planning, and operational command of UK forces, in overseas joint and combined operations. As a Department of State, the MoD continues to play a role supporting Ministers in the exercise of civilian, democratic control of the Armed Forces and in the political direction and oversight of the campaign at the strategic level.

18. The SDSR makes clear that the UK's Armed Forces will rarely act alone. In general, we will seek to work closely with allies and partners. Whether in formal alliance or in "coalitions of the willing", this is important both as a means of supplementing the UK's Armed Forces both in capability and mass, and often as a means of demonstrating and maintaining legitimacy. For example, it was important to the UK that the 2011 intervention in Libya was conducted not only alongside France, European and other allies, but also with support from the Arab League. It may sometimes be necessary to limit or modify the objectives of a potential intervention in order to achieve the broadest possible support from within the international community. The need to work effectively with other nations will become a larger feature of future interventions and forms a key part of planning activity.

FUTURE INTERVENTIONS

19. In advance of the 2010 SDSR, the MOD's Development, Concepts and Doctrine Centre (DCDC) published a paper entitled "*The Future Character of Conflict*" (FCOC) which examined the context within which the UK's Armed Forces would be operating out to 2029. FCOC underlined that the context in which military intervention might take place in future was highly uncertain and would pose significant challenges. It stressed that the operating environment of the future would be "*congested, cluttered, contested, connected and constrained*", with the UK becoming increasingly reliant upon allies and partners and, as a result of the pace and proliferation of technology, fighting in some cases from a position of near-parity or even relative disadvantage. The recent conflicts in Iraq and Afghanistan in particular will shape the behaviour of future adversaries, who may be less constrained than the UK in legal and ethical terms, and who will in future embrace novel approaches, including through asymmetric means. As the West's traditional technological advantage is eroded or negated, military intervention may in future be harder to do successfully. At the same time, it is possible that the drivers of conflict may actually increase, as demographic pressures and climate change increase competition for access to natural resources, and as emerging powers increase influence over the free movement of goods and people on the high seas and in international airspace.

20. A further challenge is the growing range of actors involved in conflict. Conflict between states is widely understood and subject to a substantial body of international law. Intervention against non-state actors is potentially much more problematic with the international law relating to non international armed conflicts being both scarcer and more opaque in a number of important aspects (eg detention). As well as determining the need to use force against a non-state actor, there will be a need to ensure diplomatic and communication efforts in the host country are well calibrated in a potentially much more confusing political landscape.

21. As we approach the next NSS and SDSR in 2015, we will review the findings of FCOC and will aim to adapt the Future Force to take into account new evidence and analysis. As the UK's Armed Forces draw down in Afghanistan, the UK will aim to regenerate its contingent capability for future interventions after more than a decade of counter-insurgency operations. Preparations for the SDSR will include analysis of the balance of effort and investment between the Military Tasks, in order to ensure that, wherever possible, the Armed Forces are able to contribute to the prevention or deterrence of conflict but, where necessary, to intervene in a timely, precise, intelligent and decisive manner.

LEARNING FROM EXPERIENCE

22. Capturing best practice is a vital part of improving the force. The Ministry of Defence, Joint Force Command and Front Line Commands all have a role to play in Mission Knowledge Exploitation and the MoD works with other Government Departments in capturing best practice. Afghanistan has been a good example of the forces learning from experience. Formal debriefs of commanders, presentations to successors and a host of "best practice" guides have all helped to make responses ever more coherent. The challenge is in ensuring that the same open feedback continues in an era where UK armed forces are not constantly engaged in major operations. Joint Force Command leads on the lessons process and is working to refine further the mechanism the forces use for learning from experience. This knowledge will be key in ensuring defence is well set for future tasks.

Written evidence from the United Nations Association—UK (UNA-UK)

“Wars begun in the pursuit of humanitarian rescue are now seen as different from wars fought for other purposes.” *Ian Hurd*

PREAMBLE

In the paragraphs that follow, UNA-UK will examine “humanitarian intervention” and discuss how this pertains to the United Kingdom’s current policies, and how it might be best understood to help shape UK policy in this area in the future. The paper starts with traditional perceptions of humanitarian intervention before examining the legal basis status of military intervention for human protection purposes. It then considers the principle of the “Responsibility to Protect” as currently understood and implemented within the United Nations and by member states. The final sections survey intervention in the UK context and advance recommendations for future interventions.

TRADITIONAL PERCEPTIONS OF HUMANITARIAN INTERVENTION

1. Contemporary international law may be read as either permitting or prohibiting international intervention for humanitarian reasons. As Ian Hurd has stated, “there is no consensus over the legality of intervention, in part because there is no consensus over the sources of international law more generally.” Humanitarian intervention may be seen as the most extreme end of political exertions aimed at protecting civilians.

2. External military intervention for human protection purposes, though referenced to varying degrees historically, became an important issue in the aftermath of the Cold War, particularly as interstate tensions were replaced by intrastate. As political certainties loosened and instability crept into states, in some quarters, political and ethnic tensions became heightened and spilled over into skirmishes, conflict and, on some occasions, one-sided slaughter. Generally, civilians became victims in two ways: by becoming the indirect victims of the conflict—in terms of “being caught in the crossfire” or being indirectly denied things like food and shelter; or being directly targeted to cause fear or because of the perception of belonging to a certain political or ethnic group.

3. “Intervention” has generally referred to the external deployment of a one-nation or multinational military force into another country (or its airspace or national waters) with or without the prior consent of (a) the country in question or (b) the international community as represented by the United Nations. Such variations are mirrored in the purpose and goal of the interveners but, in basic terms, may be held to be the alleviation of civilian suffering by securing or facilitating food, shelter and water and so forth; by protecting civilians through the provision of secure geographical areas or by attacking a party or parties to the conflict directly.

4. The 1990s witnessed military interventions in Somalia (1992–1995 onwards); Bosnia (1992); Rwanda (1994) and Kosovo (1999). All of these helped develop and hone the debate regarding military intervention. Rwanda tends to be seen as the ultimate failure of the international community to intervene militarily to halt the most egregious onslaught on civilians and non-civilians, that of genocide. Somalia, Bosnia and Kosovo too have generated their own demons, namely abandonment of civilians caught up in brutal conflict, ineffectiveness in protecting and issues pertaining to legitimacy, respectively.

5. However, as is stated in the Background Research Essays of the International Commission on Intervention and State Sovereignty’s (ICISS) 2011 report, “The definition of “humanitarian,” as a justification for intervention, is a high threshold of suffering. It refers to the threat or actual occurrence of large scale loss of life...massed forced migrations, and widespread abuses of human rights. Acts that shock the conscience and elicit a basic humanitarian impulse remain politically powerful.”

6. However, as great as these basic humanitarian impulses remain, humanitarian intervention remains controversial, even when recognised as being the most extreme of a host of possible options to prevent and halt threats against civilians. The controversy arises from a disconnect between the understanding that, beyond an explicit agreement arrived at between the “intervening parties” and the nation-state in question, the only legitimate intervention is one mandated by the international community through the United Nations Security Council, and which is outlined in the United Nations Charter.

INTERNATIONAL OBLIGATIONS AND FACILITATIVE LEGAL AUTHORITY

7. The international legal regime authorising the use of force is established in the UN Charter of 1945. The Charter explicitly prohibits the threat or use of force “against the territorial integrity or political independence of any state” (Article 2 (4)) and outlines that “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state” (Article 2(7)).

8. However, the Charter also permits enforcement measures with respect to threats or breaches of the peace under Chapter VII, stating that the UN Security Council “may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security”. Thus, although the use of force against another state is deemed illegal, when authorised by the Security Council for the maintenance of international peace and security it becomes legally sanctioned.

9. The primary legal obligation to the Charter is supplemented by a number of international conventions that seek to establish an international responsibility for the protection of human rights and the prevention and punishment of “acts that shock the conscience”.

10. The 1947 Convention on the Prevention and Punishment of the Crime of Genocide prohibits genocide and establishes an international responsibility to prevent it and punish the perpetrators. In this regard, the International Court of Justice ruled during *Bosnia vs Serbia (2007)* that states have a legal responsibility to take positive action to prevent acts of genocide when they have the knowledge of its likely commission and a capacity to influence suspected perpetrators. Although this finding is binding only on the parties involved, it is likely to hold precedential value for future ICJ cases. While the Convention provides little guidance on how its provisions are to be enforced, Article 8 states that,

“any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter...as they consider appropriate for the prevention and suppression of acts of genocide”.

Whether or not this includes the use of force is open to interpretation.

11. The four Geneva Conventions (1948) and subsequent Protocols (1977) establish the immunity of non-combatants in all armed conflict and require parties to cooperate to prevent violations of the law. Again, the Convention provides little guidance on its enforcement and defers to the UN Charter’s authority on all matters of enforcement (Protocol 1, Article 89). The Rome Statute of the International Criminal Court (1998) provides what is arguably the most comprehensive legal definition of “conscience-shocking acts” under the rubric of “crimes against humanity” but does not include any stipulation of the state’s responsibility to prevent these crimes.

12. While the Genocide Convention and the Geneva Conventions establish state responsibility to prevent crimes and violations, two challenges to defining international obligations to intervene for humanitarian ends remain. Firstly, as stated, there is no stipulation of whether military measures should be used to enforce the conventions’ commitments. Secondly, there remains an overriding obligation to the UN Charter. Article 103 of the Charter states that,

“in the event of a conflict between the obligations of the Members of the United Nations under the present charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

THE RESPONSIBILITY TO PROTECT

13. Despite the overriding authority of the UN Charter and the preeminence of Security Council mandated action, so-called humanitarian interventions have been justified and initiated in other ways. Emerging normative commitments developing from state practice throughout the 1990s and an evolving international consensus regarding the humanitarian responsibilities of the sovereign state means that the legal status of humanitarian intervention remains uncertain.

14. In an effort to breach this chasm between state sovereignty and state responsibility the “responsibility to protect” (R2P) was developed in 2001. As a political concept that seeks to provide guidance on upholding the states’ responsibilities to both the UN Charter and international human rights and humanitarian law, it was endorsed at the 2005 World Summit (paragraphs 138–140, Outcome Document), and asserts that

“each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.

15. Furthermore, should a state be unwilling or unable to protect its populations,

“the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from war crimes, ethnic cleansing and crimes against humanity.”

16. Should this prove unsuccessful and a state is manifestly failing to uphold its obligation to protect its populations from these crimes, then the international community has a responsibility to

“take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including under Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate”.

17. The three sections above compose R2P’s three pillars: 1) state responsibility; 2) the international community’s responsibility to assist and 3) the international community’s responsibility to take timely and decisive action. The R2P that is affirmed by UN member states differs from the common conception of “humanitarian intervention” in a number of ways and there are several points to consider in this regard:

- (a) It relates specifically to the prevention of and response to four crimes based in international law: genocide, war crimes, ethnic cleansing and crimes against humanity;
- (b) All states have a primary responsibility to protect their populations from these crimes at all times: there is never a case in which R2P is not applicable;

- (c) R2P calls specifically for the prevention of these crimes and their incitement;
- (d) Measures in the UN Charter, under Chapter VI, VII and VIII are to be used only when prevention fails or is thought likely to fail; and
- (e) Military force, akin to what is commonly known as “humanitarian intervention”, is endorsed by R2P under Chapter VII but it must be authorised by the Security Council.

While military force should not simply be considered as a measure of last resort, it must only be contemplated if peaceful means under Chapter VI and VIII are deemed likely to fail in dissuading perpetrators. It is also generally accepted that military force should be proportionate, believed to have a likely chance of success and cause more good than harm.

18. Since its adoption in 2005, the language of R2P has been used in a number of Security Council Resolutions to create peacekeeping mandates in Darfur (S/Res/1706) and South Sudan (S/Res/1996), and authorizing the use of military force in Libya (S/Res/1973), Côte d’Ivoire (S/Res/1975) and Mali (S/Res/2100).

19. A consistent response to atrocity crimes is, however, unlikely as the international community is faced with a number of significant challenges in this regard. Firstly, Security Council agreement is beholden to the particular interests of the Permanent Members and despite calls for prohibiting the use of the veto in cases where there is a clear threat of genocide, war crimes, crimes against humanity and ethnic cleansing (see ICISS (2001)), this remains highly unlikely. Secondly, there remains suspicion that military intervention represents a threat to the status of state sovereignty, particularly with regards to cases where intervention seems to be aimed at regime change rather than the protection of civilians.

20. Lessons can be learnt from recent cases, such as Libya, and can help mitigate such challenges. Firstly, military measures must form part of a wider international policy strategy for preventing atrocities by protecting populations from further atrocities, dissuading perpetrators from incitement and commission of crimes and addressing the humanitarian concerns raised by displacement. Secondly, backing for military intervention from the relevant regional and sub-regional organisation, such as the African Union, the Economic Community of West African States or the League of Arab States can be decisive in ensuring UN Security Council authorisation for intervention and bestowing increased legitimacy upon the military operation.

THE UNITED KINGDOM AND HUMANITARIAN INTERVENTION—WHEN AND HOW?

21. The ebullience in the aftermath of intervention in Libya, albeit surrounded in controversy, has given way to frustration and doubt over a thwarted intervention in Syria. Yet UK “humanitarian intervention” policies, for better or worse, go back further and are equally chequered. UK policy on the matter has been predictably oscillatory. It has been determined in response to international events; by the direction shown by UK premiers; by the exertions of other states on UK policy, most notably the United States; and has been tempered too by international perceptions and international institutions. Consistency of response has been near impossible, and it is doubtful that consistency will ever be achieved or should be sought.

22. As the 1990s set a new tone in intrastate warfare and the targeting of civilians, so too US and UK leaders of the time formulated conditions for, and types of, humanitarian intervention—the so-called “Clinton and Blair” doctrines respectively. As Prime Minister Tony Blair stated in his address to the Chicago Economic Club in April 1999,

“The most pressing foreign policy problem we face is to identify the circumstances in which we should get actively involved in other people’s conflicts. Non-interference has long been considered an important principle of international order...but the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter. When oppression produces massive flows of refugees which produce massive flows of refugees which unsettle neighbouring countries then they can properly be described as “threats to international security””.

23. In the same speech, Prime Minister Blair set out five things to consider before intervening, including: the humanitarian case; the exhaustion of diplomatic options; the possibility that military actions will work; an assessment of the long-term needs of the country; and whether national interests are best served by intervening. With the Kosovo air-campaign providing the backdrop to his remarks, it is unsurprising that specific reference was not made then to the sanctioning authority of the United Nations Security Council. However, the prime minister goes on to state that,

“If we want a world ruled by law and by international cooperation, then we have to support the UN as its central pillar. But we need to find a new way to make the UN and its Security Council work...”

24. Legally, and as clearly as such legitimacy may be defined, the UN Security Council remains at the core of mandating humanitarian intervention—the most extreme end of R2P. Even R2P does not convey legal authority, merely guidance. However, even if the composition or environment of the UN Security Council changes, the challenges facing the international community will remain.

25. Events in, inter-alia, Syria, Libya, Sierra Leone, and the politics and practicalities surrounding these, can help direct future UK policy. The UK, along with, for example, the United States or France, remains one of the few international powers with global reach. With one of only a handful of countries with a “blue-water navy”, strategic airlift, highly-trained infantry, global intelligence capabilities, residual imperial influence and

strategically-placed geographical assets (including Diego Garcia), it is inevitable that the UK will often find itself well-placed to respond to humanitarian crises.

INTERVENING: CONTEXT, LEGITIMACY, PLANNING AND ACTION

26. Recommendations pertaining to UK involvement in humanitarian intervention may include the following:

- As outlined in the Report of the International Commission on Intervention and State Sovereignty, in any given circumstance, the UK Government should assess whether populations within a country are at risk, including of:

“Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale “ethnic cleansing”, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”

- (i) Assuming that evidence of the above has been countenanced, have all political avenues, including those outlined in R2P’s second and third pillars, been exhausted?
- (ii) Military intervention for humanitarian reasons is only ever going to be the beginning: is military intervention likely to halt or alleviate threats to populations? What capacity and will is there to maintain UK forces in theatre beyond an initial intervention, or to support the deployment of, politically and practically, UN peacekeepers with, where appropriate, a robust, civilian protection mandate?
- (iii) Does regional support exist for an intervention and, where possible, will applicable regional powers be involved to help bolster legitimacy?
- (iv) Nationally, a Parliamentary vote on military action in Iraq in 2003 has been regarded by many as a precedent for prior approval in any future deployments, including military interventions undertaken for humanitarian reasons. It should be clear that, although Parliament has no legally established role in approving military action, the UK government of the day should seek parliamentary approval where possible.
- (v) The importance of gaining international endorsement, and the current government’s failure to do so on intervention in Syria, was arguably reflected in the defeat of the government’s motion in the House of Commons on 29 August 2013. The UK government should, where possible, seek, and be seen to seek, legitimacy through the preeminent international organs, namely the UN Security Council. Even in the controversial case of Kosovo in 1999, the UK and others sealed a majority council vote, albeit one that was rendered powerless by the wielding of other permanent members’ vetos.
- (vi) The UK Government has fully endorsed the Responsibility to Protect, appointing a “focal point” to coordinate cross-governmental work on the norm. Although legitimacy for humanitarian intervention is derived from the UN Charter and action is mandated by the UN Security Council, the UK Government should be guided, where possible, by the norm as outlined in the 2001 Report of the International Commission on Intervention and State Sovereignty, and as endorsed by the international community at the 2005 World Summit.

27. Ultimately, the United Kingdom must be at the forefront of insisting that sovereignty cannot be used either as a shield against abuses performed against populations within a state, intentional or unintentional, nor as an excuse not to halt such abuses. The United Kingdom must lead on urging states to uphold their commitments to the populations within their borders and, where appropriate and when necessary, work to build international support for intervening when it is clear that populations are threatened and all other channels have been exhausted.

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Alex Buskie and James Kearney

October 2013

Written evidence from Saferworld

INTRODUCTION

1. Saferworld welcomes the Defence Committee's inquiry into the future of the UK's approach to intervention as part of a broader inquiry towards the next Strategic Defence and Security Review (SDSR). As a conflict prevention and peacebuilding organisation with more than 20 years' experience working on conflict issues and programmes in around 20 conflict-affected and fragile contexts, we have focused this submission on the areas of inquiry related to Saferworld's expertise. As such, this submission focuses on the role of conflict prevention activities as part of an overall approach to "intervention" in conflict-affected or fragile contexts that aims to help societies manage conflict more peacefully.

2. UK intervention does not necessarily take the form of "boots on the ground" in support of military action such as operations in Afghanistan or Iraq. Indeed, as the Ministry of Defence (MoD) has outlined in the International Defence Engagement Strategy (IDES),² the UK's thinking already recognises that military action represents only one form of intervention amid a much broader UK toolkit for promoting long-term peace and stability.

3. Recent resistance to UK military intervention in Syria has further highlighted the limitations of military interventionist options for resolving complex security challenges, as well as decreasing appetite for traditional hard security interventions as part of the UK's response.

4. Britain's interests in the world and at home are closely tied to more stable societies overseas. As such, the last SDSR outlined the UK's ambition to improve its capacity to prevent and address overseas conflict, leading to a cross-departmental conflict prevention strategy in the Building Stability Overseas Strategy (BSOS), with a vision of "structural stability" based on citizen consent at its core.³ This cross-government strategic vision for addressing conflict points to the connections between defence, diplomacy and development interventions and shifts towards a more people-centred concept of "stability". This requires the articulation of a clear and distinct role for defence actors (taken to mean UK Government defence actors throughout) in supporting a developmental approach to addressing conflict further "upstream", with a focus on the needs of the people directly affected by conflict and instability.

5. This submission explores potential roles for defence actors in activities related to conflict prevention within a whole-of-government approach to interventions in conflict-affected and fragile contexts.

6. It also briefly touches upon wider UK policies that relate to intervention, such as conventional arms transfers and the use of armed unmanned aerial vehicles (UAVs).

7. A focus on the needs of those affected by conflict and instability must be at the heart of the UK's approach to intervention if it is to be effective in the long run. The UK already plays an important part in promoting peace and security overseas, providing military training, supporting police reform, working with civil society to promote people's security and livelihoods, and promoting international arms transfer controls and human rights through diplomatic channels. By drawing on the distinct expertise of defence, development and diplomatic actors within an overall framework for conflict prevention, the UK can continue to invest in long-term peace and stability, protecting Britain's interests at home in an increasingly interconnected world.

TAKING THE CONTEXT FIRST

8. Even where military intervention is being considered, there is no blueprint for how this might be pursued. While approaches like the doctrine of the "responsibility to protect" (or "R2P") have attempted to provide overall guidelines for interventions for the purposes of humanitarian protection—with a sliding scale of atrocities and a list of the various criteria to be considered—interventions must be led by context as well as principle.

² Ministry of Defence and Foreign and Commonwealth Office, *International Defence Engagement Strategy* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/73171/defence_engagement_strategy.pdf

³ The UK's Building Stability Overseas Strategy (2011) outlines an approach to "stability" that is "characterised in terms of political systems which are representative and legitimate, capable of managing conflict and change peacefully, and societies in which human rights and rule of law are respected, basic needs are met, security established and opportunities for social and economic development are open to all. This type of "structural stability", which is built on the consent of the population, is resilient and flexible in the face of shocks, and can evolve over time as the context changes." p.5 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67475/Building-stability-overseas-strategy.pdf

9. Saferworld welcomed the publication of a cross-departmental conflict analysis methodology in the Joint Analysis of Conflict and Stability (JACS), which is intended to inform the UK's interventions in conflict-affected states. A well-informed approach based on the unique challenges of the context is an essential starting point for planning any intervention. Saferworld would argue that taking the context first also means putting local people affected by conflict at the core of analysis, something we have focused on in our programming approach.

10. In order for this analysis to be useful for conflict prevention purposes, it must be used to inform planning, be regularly updated, and take into account the perceptions of the people who are affected by conflict and instability, including women, men, boys and girls. Taking the combined expertise of DFID's in-depth programming knowledge, the FCO's political insights, the MoD's knowledge of the defence context, while ensuring that assumptions are informed by local perceptions, provides a much stronger starting point for designing and coordinating interventions than any one department acting on its own.

11. However, implementing such an approach in practice is challenging given different departmental objectives and priorities. Strong political will and dynamic leadership is needed to turn shared analysis into a shared vision and plan for practical action to see through the vision for "stability" outlined in the BSOS.

PEOPLE'S PERSPECTIVES MATTER

12. The UK cannot simply "provide" long-term security through its interventions—it requires the active consent, participation and ownership of national authorities, security providers and local people in order to achieve lasting peace and security. However, in many cases local people have little opportunity to play a part in decisions that affect them.

13. This does not mean that defence actors themselves should carry out public perception surveys or work with local communities to identify and address their security and development needs. Support from the UK for civil society and others to carry out this work should be a key element of UK "intervention" to inform and validate the efforts of defence actors and others engaged in delivering other aspects of the UK's engagement.

14. In this way, security issues identified at a local level can also inform broader security objectives at national and regional levels. For example, a problem with small arms proliferation and misuse that is affecting communities at a local level might need to be addressed at a national level through engagement with authorities and security actors to support civilian disarmament, weapons collection and stockpile management. In these cases, by linking a "developmental approach" to security with the unique capabilities of defence actors to support these objectives where it is appropriate, broader security issues can be addressed.

UPSTREAM CONFLICT PREVENTION AND THE ROLE FOR DEFENCE

15. The BSOS recognises that violent conflict is often caused by underlying tensions built up over time. It commits the UK to investing in a more forward-looking "upstream" conflict prevention approach to interventions overseas. This is not to say that in times of crisis other types of intervention may not take precedence. However, when considering short-term military intervention for the purposes of addressing the symptoms (armed violence) of conflict, it is important to recognise that this must be complemented by a coherent and long-term approach to promoting the development of more resilient, peaceful societies by tackling conflict "upstream".

16. At times rapid military action to prevent violence spreading or diplomatic crisis response to prevent tensions from escalating into violence is necessary. The UK rightly maintains the capability to respond in this way. However, the issues that cause conflict and instability are nearly always present before tensions result in violence. As such, there are a range of intervention options available to UK actors that seek to address this. Some of these options are best pursued by development actors, such as grassroots peacebuilding within communities and ensuring that development assistance is conflict-sensitive, while others require the unique expertise and access of defence actors, including:

- 16.1 Supporting the disarmament, demobilisation and reintegration (DDR) of ex-combatants back into society. After violence has ceased and a peace settlement been agreed, ex-combatants present a unique challenge for securing long-lasting peace. Although often conducted under the auspices of the UN, UK defence actors can offer a wide range of capabilities to the military component of a peacekeeping operation and any related DDR process. As outlined in the UN's Integrated Disarmament, Demobilization and Reintegration Standards, this could include: providing security, including security of weapons and ammunition handed in during a disarmament process; information gathering and reporting on the locations, strengths and intentions of former combatants who may or will become part of a DDR programme; distributing information on a DDR programme to potential participants and the local population; offering technical expertise on the safe collection and destruction of weapons; providing logistical support to different elements of the programme.
- 16.2 Assisting with the transformation of defence assets towards civilian control and oversight of the armed forces. When armed conflict ends the excessive level of military spending often needs to be reduced to a more appropriate level and the role of security actors within society brought under civilian control. Defence transformation, which involves significant and long-lasting changes in the structure and functioning of a country's defence sector, is a critical element of broader post-conflict

intervention. Defence actors can play a key role in advising on defence policy and force structure and the coherence and coordination of defence transformation efforts, among other roles.

- 16.3 Providing support for reform of the security and justice sectors such as the police or judiciary for example through defence diplomacy and training (see sections 19–23 below)
- 16.4 Assisting with measures to control the illicit trade in small arms, including support for weapons marking and tracing, removal of anti-personnel landmines and other explosive remnants of war, and stockpile management.
- 16.5 Supporting the UK's arms transfer control regime (a role currently played by defence attaches), including pre-licensing risk assessment and end-use verification and monitoring where appropriate.

17. This list is not exhaustive. The current inquiry represents an opportunity for defence actors to further explore and articulate how they can contribute to peace and security objectives where it suits the strengths and capabilities of UK defence actors. In addition to direct military intervention there is a clear and distinct role for defence actors to play in interventions to promote peace and stability, working to compliment development and diplomatic efforts.

18. However, as previously stated, the causes of conflict are not the same in every situation and there is no template for peace and stability. What works in Afghanistan might not necessarily work in Somalia or Yemen so it is important to develop a shared understanding of what needs to change in any given context, what role the UK can play in supporting that change and what role there is for defence actors in support of it.

SUPPORTING REFORM AND DEVELOPMENT OF THE SECURITY SECTOR

19. A common form of intervention by defence and other UK actors in conflict-affected and fragile contexts is support for the security sector. The UK is well-placed to provide this support in many contexts, whether this is in technical expertise, providing human rights training for security actors, or support for reform of the police services. Much of this support is also provided in direct materiel or financial support to security services.

20. Security sector reform (SSR) offers a valuable avenue to improve the security situation for people within conflict-affected states. However, support for the security sector must move beyond a focus on supporting the equipment and training needs of a state's military and police forces. "Train and equip" models can actually cause further destabilisation if they are not informed by an understanding of the social and political context in which they are based. This support might also unintentionally reinforce the power of abusive institutions if they do not measure outcomes for individuals and communities (including marginalised groups). For example, simply relying on counting the numbers of police officers that have been trained without evaluating how they are serving their communities risks supporting forces that are abusive and contributing to community grievances, which may lead to further instability.

21. Implementing a protection, human rights-compliant and service-oriented SSR model is a key component in contributing to longer-term peace. While we recognise the need to build up the capacity of security services, including through the provision of equipment, it is important that this is complemented with robust accountability mechanisms and a service delivery model that is focused on delivering the security services that people actually need in addition to national/state security. This means thinking about support for the security sector as a bottom-up process as well as a top-down one, keeping in mind how international support for the security sector creates links of accountability to international actors that can supplant what limited accountability might exist to communities. Therefore it is particularly important to build in local accountability measures when providing security sector support, to ensure that accountability to donors strengthens local accountability as far as possible.

22. Whether the UK's support is technical, material or otherwise, it is also important to consider the political context in which the military or other security actors operate, including who benefits from these interventions (and who "loses"). Operationalising the JACS to inform support for the security sector as part of a whole of government approach, including the multidiscipline expertise of the tri-departmental Stabilisation Unit, is crucial in this respect. A strong understanding of the political economy of the security sector—including the military or security forces' role as political and economic actors—is essential in order to avoid exacerbating negative conflict dynamics when providing support. Understanding this context can help the UK structure interventions in such a way that they protect and benefit the wider civilian population. This must also take into account the impact of counter-terrorism rhetoric in legitimising indiscriminate or disproportionate use of force by government actors.⁴

23. For example, in Yemen, a divided society with deep disagreement over what constitutes the national interest, international support to the security sector, including from European actors and the United States, has in the past focused largely on providing military training and equipment for counter-terrorism purposes. This has fed into elite patronage networks that operated as militias providing security for the regime elites against citizens, rather than providing security for citizens themselves. Pursuing counterterrorism in the absence of the rule of law risks perpetuating undemocratic governance of the security sector and undermining statebuilding efforts.

⁴ Sayigh, Y. "Fixing Broken Windows": Security Sector Reform in Palestine, Lebanon, and Yemen, (2009), Carnegie Middle East Centre, available http://carnegieendowment.org/files/security_sector_reform.pdf

PREVENTING SEXUAL VIOLENCE

24. The UK's role in preventing sexual violence in conflict-affected states has become increasingly prominent over the past year. The Foreign Minister's Preventing Sexual Violence Initiative (PSVI), the new UN Security Council Resolution 2106 on sexual violence in conflict,⁵ declarations at the G8 and UN levels on stopping sexual violence, along with the deployment of a team of experts to several conflict-affected states, demonstrates the huge UK push on this issue. This is highly commendable. Saferworld believes that in order for this work to be sustainable and effective it should be integrated into the wider conflict prevention agenda, including SSR interventions as discussed in Sections 19–23.

25. Interventions to support the security sector in conflict-affected states present specific opportunities to help to prevent sexual and gender-based violence (SGBV). In many instances, security providers themselves, including international peacekeeping forces as well as national forces and police, in addition to militant groups, are perpetrators of sexual violence. For example in Somalia, where very high levels of sexual violence have been reported, particularly in camps for the internally-displaced, Saferworld consultations with civil society ahead of the 2013 Somalia conference in London highlighted ongoing concerns about a lack of command and control as well as accountability mechanisms in preventing the armed forces and militias from committing acts of sexual and gender-based violence.⁶ Participants noted the failure of the police and judiciary to investigate and punish perpetrators and linked this to poor governance and leadership, resulting in weak institutions and a structural inability to deal with cases of SGBV within those institutions. This problem has been recognised by the President of Somalia, and at the London conference, a joint UN/Somali communiqué was signed that includes commitments to vetting, codes of conduct, and prevention strategies to try and address this issue.⁷ However, there has been little progress on the ground, and it is crucial that UK interventions to support security providers in Somalia or security sector reform contribute to preventing SGBV, take a gender-sensitive approach, and ensure the vetting of individuals to ensure that those suspected of committing abuses are not incorporated into national forces pending investigations. Within the UK's support for AMISOM troops operating in Somalia, such as through teams like the Military Stabilisation Support Group (MSSG), there is an opportunity to ensure that training addresses the need for gender sensitivity and that internal structures are in place to address allegations of sexual violence and ensure effective investigations into abuses.

26. Saferworld believes that developing capable, accountable and responsive security and justice systems through a gender-sensitive approach can have a “multiplier effect” on preventing sexual and gender-based violence in armed conflict by improving access to justice for survivors, tackling impunity and preventing abuses by security and justice providers. Helping to prevent abuses also supports a wider conflict prevention agenda.⁸

UNMANNED AERIAL VEHICLES (UAVS OR DRONES)

27. The use of weapons technology such as drones has a potentially profound implication for the UK's approach to intervention. The Defence Committee's parallel inquiry on the use of remotely-piloted air systems is therefore both welcome and necessary, not only given questions around the legitimacy and legality of their use, but also for their unintended impacts.

28. Understanding the context and the UK's potential role in creating and perpetuating grievances and driving insecurity should be prioritised when considering any intervention. The use of unmanned aerial vehicles (UAVs or drones) raises questions about the consistency of the UK's approach to conflict prevention. Rather than stabilising the country, the negative impact of drone use on the lives and livelihoods of the local population may directly undermine the legitimacy of state actors in the eyes of their people and set the stage for further conflict and instability.

29. Various actors have raised concerns about the likely psychological and negative developmental impacts that drones have on local populations, particularly through their ability to loiter over areas for prolonged periods of time. Their on-going presence is blamed for causing severe mental trauma and causing unwillingness on behalf of parents to send their children to school or of farmers to work their land.⁹ A solid understanding of the extent of these different impacts and how they interact may prove very important, but at the moment this appears to be a severely under-researched field. The UK should carefully consider its use of this technology not only in relation to international law, but also against its stated longer-term objectives to create a more peaceful and stable world.

⁵ For Saferworld's analysis of this new resolution see *Turning gender rhetoric into action*, (2013), <http://www.saferworld.org.uk/news-and-views/comment/98>

⁶ See Saferworld, *Civil society voices: recommendations for the May 2013 London conference on Somalia*, (2013), <http://www.saferworld.org.uk/resources/view-resource/734> p 6

⁷ Joint Communiqué of the Federal Republic of Somalia and the United Nations on the prevention of Sexual Violence 7 May 2013, <http://unpos.unmissions.org/LinkClick.aspx?fileticket=s11uGop6Bc8%3d&tabid=11461&language=en-US>

⁸ For more on how the UK should approach gender, peace and security issues from a conflict prevention perspective, see Saferworld, *Promoting Long-term Peace Overseas*, (2013), <http://www.saferworld.org.uk/downloads/pubdocs/promoting-long-term-peace-overseas-web.pdf> p 4,5

⁹ For example, see testimony from a US Senate Judiciary committee hearing on the impact of US drone strikes in Yemen, Reuters, *Yemeni at U.S. hearing describes drone strike on his village*, (April 2013), <http://uk.reuters.com/article/2013/04/23/uk-usa-security-drones-hearing-idUKBRE93MIJ120130423>

CONTROLLING ARMS TRANSFERS

30. Another aspect of “intervention” relates to international transfers of conventional arms and ammunition and the regimes that control them. Saferworld believes there is a role for UK defence actors in support of transfer control regimes such as the newly agreed Arms Trade Treaty (ATT) and in the application of the UK’s own controls. This can take the form of defence diplomacy—to encourage signature and ratification of the ATT in countries with which the UK has defence cooperation arrangements—and contributions to the UK’s transfer control process such as pre-licensing risk assessment and post-export end-use monitoring conducted by defence attaches.

31. Another role played by UK defence actors that warrants scrutiny is that of defence export promotion. The Committee might question how the desire to promote UK defence exports through defence engagement as stated in the IDES and SDSR can be properly balanced against commitments to the role of defence engagement in conflict prevention, including through “increasing arms control engagement so as to promote regional stabilisation and reduce the risk of conflict”¹⁰ particularly in light of concerns about exports to countries on the FCO’s list of countries of human rights concern.¹¹

CONCLUSION

32. UK defence actors have a distinct role to play in contributing to international peace and security, responding to the modern threat environment and protecting Britain at home and overseas. Experiences in Afghanistan, Iraq and Libya have informed thinking on the strengths and limitations of direct military intervention, and UK conflict prevention as outlined in the BSOS and SDSR draws on a far broader UK toolkit. The whole-of-government approach to conflict prevention requires defence actors to play a distinct role within civilian-led, people-focused interventions that are informed by a robust and nuanced understanding of the context and a long-term vision for peace and security. This submission offers some examples of how UK defence actors can fulfil that role using their unique capabilities to support upstream conflict prevention efforts such as security sector reform and defence transformation. Inquiries such as this offer an opportunity to further explore and articulate ways in which defence actors can contribute to conflict prevention and ensure the consistent application of the core principles laid out in the BSOS as part of the UK’s strategic approach to intervention.

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ABOUT SAFERWORLD

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people—we believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, Asia and Europe.

Written evidence from Oxford Research Group

SUMMARY

- An enormous burden of proof is incumbent in the decision to commit the UK to use force abroad. The legal and evidentiary threshold for intervention and how appropriate data is gathered and assessed need to be clarified. This must apply equally to use of force by “unmanned” systems as to troop deployments.
- The consequences of applying, as well as removing, force are destabilising and hard to predict. Any decision to seek military intervention, as well as to end it, needs to be preceded by rigorous conflict analysis to understand the probable and possible impact on all actors and subjects.
- The UK is not always perceived positively overseas, a legacy of British interventions in scores of countries over several centuries. The UK should work more with non-traditional partners, not least to build their capacity to manage conflict regionally. Focusing procurement on offensive power-projection systems like aircraft carriers is likely to inspire competition rather than confidence abroad.
- Military intervention is a failure of diplomacy and often inappropriate. The UK should invest in prevention-as-intervention, including relevant training of diplomatic and military personnel. It should nurture sensitive early warning and response mechanisms in conflict-prone regions, including locally embedded and trusted mediators.

¹⁰ UK Government, *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review*, (2010), p 44–45

¹¹ As outlined in the Committees on Arms Export Controls 2013 annual report, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmquad/205/205.pdf>

- The UK has a responsibility when using military force to record casualties arising from its action and the wider conflict. This has pragmatic as well as moral dimensions. The UK should set guidelines for evaluating information produced by casualty recording organisations, and for relaying the UK's information requirements.

1. Introduction

1.1 Oxford Research Group (ORG) is a UK-based charity that provides information, analysis, methodology, policy advice and mediation in order to promote a more sustainable approach to global security. ORG currently runs or hosts programmes working on: sustainable security and alternatives to militarisation; the implications of remote control warfare, including “drones”; casualty recording; and mediation of several conflicts in the Middle East. ORG has previously provided written evidence to the Committee on its 2010, 2011 and 2013 inquiries into the Strategic Defence and Security Review and National Security Strategy.

1.2 This submission will focus on five issues critical to the future of the UK's intervention strategy:

- the threshold of evidence necessary to justify and trigger intervention, including “remote” interventions;
- understanding the consequences of intervention, non-intervention and disengagement;
- alliances, perceptions of the UK and the appropriateness of *who* intervenes;
- preferable alternatives to military intervention; and
- 10. the responsibility to record casualties as part of intervention.

2. Burdens of Proof—It matters how the UK decides to intervene

2.1 The UN Security Council is the only international body legally empowered to mandate military action other than national self-defence. However, it is possible that there may be occasions when the Security Council is unable or unwilling to reach a consensus view on intervention when the UK government considers all other avenues to, for example, protect civilians or prevent genocide have been exhausted. Such cases are likely to be exceedingly rare. Indeed, this was not the case over Syria, in which diplomatic avenues had not been fully explored. As such, there is an enormous burden of proof incumbent on any state that seeks to commit its military forces to combat without explicit UN mandate. This includes proof that all other means of exerting sufficient influence have been considered, tried and exhausted.

2.2 The parliamentary debate over military action in Syria and the intelligence debacle over weapons of mass destruction in Iraq highlighted the ongoing lack of clarity over the evidence necessary and sufficient for UK governments to justify and commit to military intervention. Intelligence, at least in relation to Iraq, was politicised, incomplete and inaccurate. In both cases, the legal evidence presented to parliament was a heavily edited summary of legal advice to the government and highly disputed by many scholars of international law. In the case of Syria, there was also considerable confusion over whether the government's case was legal or moral. Issues of punishment (for war crimes), protection (of civilians) and deterrence (of WMD use) were all cited by the government. Parliament should work with data providers from the intelligence and legal communities as well as civil society to understand the availability and limitations of data on conflict and issues such as WMD to establish what evidentiary threshold is necessary and sufficient for the UK to commit its forces to combat.

2.3 High visibility “boots on the ground” or “air superiority” interventions are not the only kind of interventions that require high level authorisation. Low visibility interventions such as the use of Special Forces and unmanned combat aerial vehicles (UCAVs) also constitute a choice to use deadly force in external jurisdictions and must be open to domestic scrutiny and the rule of international law. As with US drone strikes in Pakistan, Yemen and Somalia, such “discrete” intervention is highly likely to have high profile negative repercussions on the image of the UK in targeted countries. Setting thresholds for the legitimate use of such remote and autonomous technology is of vital importance as the Royal Air Force and Royal Navy re-equip with such combat systems in the next generation.

3. Consequences of intervention

3.1 The key lesson to learn from post-2001 UK military interventions in Afghanistan, Iraq and Libya is the primacy of unforeseen consequences and the probability that violent action will provoke violent and often unpredictable reaction. Conceived as a decisive and limited duration operation to “liberate” Iraq, Operation Telic lasted eight years, cost the UK some £10 billion,¹² 179 military lives and some 5,800 wounded.¹³ While the operation met all its tactical objectives, it was a strategic catastrophe, pitching Iraq into a sectarian civil war that has claimed anywhere between 115,000 and 461,000 civilian lives,¹⁴ greatly extended Iranian and al-Qaida influence, and destabilised the wider region, not least Syria. Intervention in Libya constrained (and

¹² According to UK Treasury figures of June 2010, the UK had spent £9.24 billion on the Iraq intervention since 2003. UK forces completed their withdrawal in May 2011.

¹³ MoD casualty figures to end of 2009. Not all wounded were wounded in combat.

¹⁴ The lower figure is based on Iraq Body Count's documentation of 114,973 to 126,121 civilian deaths by 7 July 2013. The upper figure is from the University Collaborative Iraq Mortality study of 2013, based on a random sample survey and includes excess mortality from causes of death additional to direct violence.

overthrew) the Gaddafi regime but it has not secured the Libyan population, territory or weapons stocks. Instability, weapons, radicalised combatants and violence have since spread to Mali, Algeria, Tunisia, Niger, Nigeria and Syria.

3.2 Any decision by the UK government to seek military intervention—on any scale—needs to be preceded by rigorous conflict analysis to understand the probable and possible impact on all actors and subjects, not just the combatant parties. This analysis must be subjected to scenario testing and the range of potential outcomes communicated effectively to government and parliament. This needs to include consideration of possible consequences within the target country (eg regime change, sectarian violence), consequences for neighbouring and regional states (eg proliferation of weapons, outflow of combatants), and consequences for the UK as well its citizens and assets abroad (eg to its reputation and “soft” power; targeting by militants). Comparable analysis and scenario planning are also needed to consider the consequences of not intervening and the consequences of maintaining or removing UK forces from a post-conflict context.

3.3 The Building Stability Overseas Strategy (BSOS) is a welcome contribution to UK policy on a range of prevention and intervention options, primarily outside the military sphere. Similarly welcome are the Joint Analysis of Conflict and Stability and elements of the National Security Strategy (NSS) and International Defence Engagement Strategy (IDES). However, there remains a lack of strategy on planning for the aftermath of military intervention: post-conflict recovery and (re)construction. The challenges and risks of disengagement have been poorly integrated into assessments and planning of military interventions. This has been very obvious in the aftermath of UK/US interventions in Afghanistan and Iraq, as well as the reticence to take decisive “state-breaking” military action in Syria. The UK needs to pay as much attention to how it transitions successfully from military to non-military involvement in conflict contexts as to the transition to military intervention.

4. *Alliances—It matters who intervenes*

4.1 In considering military or other forms of intervention, the UK must be acutely aware of how it is perceived in the rest of the world, especially outside of its traditional sphere of influence and alliances. Whereas government policies stress British traditional cultural, linguistic and diplomatic ties to large parts of the world, these are often born of imperial ties and may be seen as anachronistic or neo-colonial, much as French intervention in Côte d’Ivoire has been resisted by Ivorians. The welcome afforded to UK forces in Sierra Leone could not be expected in, for example, Zimbabwe, Iraq or Afghanistan, where British troops evoke quite different historical memories and responses.

4.2 Whether or not NATO remains an appropriate forum for ensuring the external defence of the UK mainland and North Atlantic, the use of NATO branding and structures to intervene well outside Europe—notably in Libya and Afghanistan—may be inappropriate and bolster perceptions abroad of Western or European unilateralism, neo-imperialism or crusading. Issues of inter-operability and command will remain paramount but the UK needs to consider much closer partnership with democracies well beyond Europe and the “old” or “white” Commonwealth. Unlike a generation ago, it is no longer the case that democratic and human rights considerations limit UK forces to cooperating “safely” with European, North American and Australasian militaries.

4.3 Wherever practicable, regional ownership should be the guiding principle of conflict management, including intervention, under the UN Charter. At present, this is not realistic in all regions, given incomplete or ineffective regional security institutions. However, important progress has been made in many regions, including Africa, Latin America and the Pacific. Investment in and mentoring of conflict management and response institutions, especially for upstream conflict prevention, will bolster capacity and confidence (including in the UK) in unstable regions. Implementing and reviewing the IDES provides an opportunity to rethink how the UK can best support capacity-building of regional security architectures in unstable areas as part of the UK’s strategy for prevention-as-intervention. In the long term, such actions are likely to be far more beneficial to UK and global security interests than funding offensive weapons systems, overseas bases and power projection capabilities.

4.4 The UK’s commitment to prioritising offensive and long-range weapons systems such as the F-35 Joint Combat Aircraft, Queen Elizabeth class aircraft carriers, submarine-launched cruise missiles and UCAVs predisposes the UK towards offensive intervention well beyond its borders and region. Such systems inspire destabilising competition (arms races) as well as deterrence. Instead, the UK should prioritise defensive weapons systems and the ability to use its air and naval assets, including aircraft carriers, for UN peacekeeping and humanitarian missions.

5. *Alternatives to military intervention*

5.1 There are always alternatives to the use of military force, which must be considered a failure of UK strategies for influence by peaceful means. The changing landscape of global insecurity requires that UK strategies be informed by a sustainable security analysis of the drivers of global insecurity in the long-term and what kinds of intervention are appropriate to mitigate them. As the NSS acknowledges, climate change is a reality and will radically change our environment, the extent and types of crises we face this century. Intervention through mitigation and adaptation strategies can reduce effects and impacts and save lives.

Demographic change and scarcity of resources—food, water, energy, industrial materials—must also be recognised and can be mitigated through policy choices. Economic and political marginalisation of the majority of the world’s population is the biggest driver of armed revolt and radicalisation and requires a commitment to inclusive development, not least governance, security and justice provision.

5.2 Diplomacy and development are the first lines of defence for any country interested in promoting peace outside of its borders. Commitments to increase, sustain and prioritise UK development aid for fragile states are welcome. However, reductions in spending on diplomacy in real terms and relative to defence are counter-productive, as is our diplomats’ increased orientation towards promoting trade, not least the oil and arms industries. Working with the MoD, DFID and other agencies, the FCO should increase its capacity to work with civil society and international counterparts to recognise, prevent and resolve conflicts overseas before they become deadly or provoke calls for military intervention. Such early and peaceful intervention should recognise that excluding perceived enemies like Iran, Hamas, Hezbollah and the Taliban from dialogue increases the chances of facing them in violence.

5.3 The UK should mainstream training on conflict analysis, prevention and management for all personnel from FCO, MoD, DFID and SU working in or on fragile states. Applying defence tools to stabilise and reform post-conflict or fragile environment, as outlined in the 2012 IDES, will require a rethink of training within the armed forces. This should emphasise language training (the MoD recognised lack of trained military linguists as a “pinch point” for operations in its 2012 Annual Review), cultural and historical understanding, regional specialisation, operating amongst communities in urban environments, and understanding and appreciation of longer term development or conflict prevention strategies. This would benefit both in-country operations and partnerships with non-traditional partner countries.

5.4 Early warning and early response mechanisms are crucial to the prevention and resolution of conflicts well before military intervention becomes an option. Unlike in domestic dispute arbitration, mediation in international conflict is usually only put in place after deadly conflict has entrenched positions and undermined the will for reconciliation. A preventative approach to international mediation is much preferable. Just as there are peacekeeping and peacebuilding institutions of considerable efficacy available under mandate of the UN and regional organisations, the UK should consider widening the potential for early international intervention through resourcing and training teams of trusted mediators at national, local and international levels in conflict-prone regions. Such mediation needs to be early, discrete, focused on underlying causes rather than manifestations of violence. Mediators need to be familiar with local narratives, sensitive to culture, language and gender, and embedded as appropriate within the society. The experience of the Intergovernmental Authority on Development (IGAD) through its Conflict Early Warning and Response Mechanism (CEWARN) in sensitive border regions of the Horn of Africa is one example of this approach in action.

6. *Responsibility to record casualties*

6.1 The UK’s intervention strategy should incorporate mechanisms that can contribute to a thorough understanding of harm, which would provide both pragmatic and moral benefits. One means by which this understanding can be achieved is casualty recording: the systematic and continuous recording of deaths to the level of incident and individual detail, with public acknowledgement of those killed. Casualty recording provides insight into the nature and extent of harm against a given population. It is one of the most important indications of how a conflict may be evolving and the impact, or effectiveness, of the intervener’s strategy. Neither the intervener nor independent civilian agencies can develop an authoritative record alone; data needs to be combined from multiple sources, including from intervening military forces. Such data is crucial, whether the UK’s intervention is diplomatic, military, humanitarian or development-oriented. As the 2012 dispute between NATO and the UN Commission of Inquiry on Libya over whether NATO air attacks caused civilian casualties demonstrated, protecting civilians from harm cannot rest on assurances and good intentions alone. It must be supported by accurate assessment and reporting of realities on the ground.

6.2 Protection of civilians requires assessment and evaluation by the intervening parties themselves in order to determine whether this is being achieved. In the case of military engagement, pre-strike planning should include setting up a mechanism to track harm and record deaths caused to the civilian population as a result of combat operations. Doing so would enable the UK to uphold its commitments under International Humanitarian Law and Human Rights Law insofar as casualty recording is a means by which accountability can be maintained. Moreover, recording casualties of an entire conflict environment would enable the UK to better understand the wider impact of its operations, such as whether protection is realised, and whether the original threats to civilians have been undermined or have changed.

6.3 Any authorisation of intervention should require commitment by the UK to investigate attack sites as well as casualties of the broader conflict. Although this is a direct responsibility of states involved in the conflict, states may also provide support to civil society organisations that are doing such work. As there are already civil society organisations undertaking casualty recording in a number of conflict environments, the UK should develop guidelines for evaluating information produced by such organisations; guidelines relaying the UK’s information requirements; as well as guidelines for engaging these organisations.

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Written evidence from the Henry Jackson Society

The author is President of the Henry Jackson Society and Professor of the History of European International Relations, University of Cambridge. He thanks Dr Rowan Allport of the Henry Jackson Society for his help in preparing and drafting this report on behalf of the Society. The Henry Jackson Society is a cross-partisan, British think-tank which seeks to pursue, protect and promote the principles of free and democratic societies. It focuses on Foreign and Defence policy, a remit under which it publishes research and promotes policy debate.

1. This document generally follows the headings set out in the announcement of 17 July 2013.

THE LEGITIMACY OF INTERVENTION

2. It is widely imagined that until recently, the world's politics followed a "Westphalian" model sanctifying state sovereignty. In fact, the Peace of Westphalia in 1648 specifically sanctioned outside intervention to keep the peace in Germany, and interventions in the internal affairs of other states have been routine, historically speaking.

3. Great Britain has a particularly long tradition of such interventions, most particularly with regard to the abolition of the international slave trade and slavery in Africa.

4. It is therefore imperative for parliamentarians to stop thinking of humanitarian intervention as an exception and to start understanding it as a fundamental part of the western political tradition.

5. The claim of the United Nations Security Council to act as the sole authorising body for intervention in the affairs of sovereign states needs to be seen in this broader context. It was, in any case, set aside during the Kosovo conflict, when the Council was paralysed by the attitude of Russia and China. The Report of the Independent International Commission on Kosovo (2000) described the resulting intervention as (technically) "illegal but legitimate".

6. In this spirit, we should recognise that while Security Council approval is desirable, all interventions that make us and the peoples we are trying to help safer at an acceptable cost, are legitimate.

IMPLICATIONS OF TREATY AND OTHER INTERNATIONAL OBLIGATIONS

7. Current formal UK defence obligations reside around mutual self-defence treaties. These obligations can embrace intervention, but it is not a conventional expectation of mutual defence agreements.

8. Intervention in its most well-known form is therefore more likely to fall under the far more informal concept of "international obligations". Ever since the disaster in the former Yugoslavia during the 1990s and the failure to prevent the 1994 genocide in Rwanda, the international community has sought to establish a framework to prevent a disaster of such a scale re-occurring. This culminated in the United Nations 2005 "Responsibility to Protect" (R2P) doctrine.

9. Unfortunately, the decision regarding the use of force under R2P resides with the UN Security Council, and as such any action can be vetoed by one of the Permanent Five members. Moreover, whilst R2P does impose a *moral* obligation to use force if both necessary and authorised, it does not make intervention a *legal* requirement.

10. More important than R2P, is the general obligation imposed by our membership of western international society, where the promotion of democracy and the prevention of grave human rights abuses have been widely accepted, if not always practised, norms for some time. These obligations are particularly binding on Great Britain, given her status as a permanent member of the Security Council and thus presumptively as a leading guarantor of global justice and stability.

DISCRETIONARY AND NON-DISCRETIONARY INTERVENTIONS

- 11 We cannot intervene everywhere, at once, and nor should we do so. British interventions will therefore be selective.

- 12 Interventions need to be paid for through blood and treasure, and they involve significant opportunity costs, not least in terms of political attention spans and appetite for fresh interventions. As the examples of Iraq and Syria show, failure or perceived failure in one case can seriously undermine the will and capacity to intervene in another theatre.

13 This means that the UK must be cautious about discretionary interventions. The operations in Sierra Leone, for example, advanced the national interest in the broadest sense by supporting the better side in a civil war, but they were not directed against a serious short or long term threat to British security.

14 That said, many human rights abusers also constitute a clear strategic risk. States that oppress their own populations, or fail to protect them, can also threaten us in four ways. Firstly, states such as Saddam Hussein's Iraq, engage in straightforward territorial aggression. Secondly, states such as Saudi Arabia export their internal tensions in the form of terrorism or religious extremism. Thirdly, states like Slobodan Milosevic's rump Yugoslavia and its Bosnian Serb ally undermine collective security by engaging in ethnic cleansing. Finally, states like Afghanistan (pre-2001) are too weak to prevent terrorist groups from using their territory as a base from which to launch operations against the west.

15 Against this background, we may be able to determine the time and place of our interventions, but they are not discretionary in any meaningful sense of the word.

RELATIONSHIP BETWEEN DETERRENCE, CONFLICT PREVENTION, CONTAINMENT AND INTERVENTION: WHAT SHOULD INTERVENTION BE USED FOR

16 Interventions can be *reactive*, for example the operations in Bosnia and Kosovo to stop the ethnic cleansing sponsored by Milosevic. They can be *preventive*, as in the case of the Libyan intervention designed to forestall an imminent massacre of the rebels and their families in Benghazi. There are also *pre-emptive* interventions designed to anticipate the emergence of a humanitarian crisis in some point in the future.

17 Finally, interventions can be *implied*. During the early stages of the Kosovo War, for example, the Yugoslav security forces showed comparative restraint in order to avoid a Bosnia-style NATO intervention ("A village a day keeps NATO away"). Likewise, in Syria, the Assad regime was initially concerned to avoid bringing on an intervention of the kind it had just seen in Libya.

18 There are no hard and fast criteria to determine which interventions Britain should undertake and which she should pass up. The decision will always rest on a combination of feasibility, credibility and the extent to which a humanitarian crisis is likely to develop into a strategic one.

THE NATURE OF FUTURE INTERVENTIONS

19 Future interventions should be designed to protect and promote the universal values of human rights and democracy necessary to guarantee Britain's security over the long-term, focusing particularly on crisis likely to become a strategic threat.

20 Few of the military interventions conducted by Her Majesty's Government over the past twenty years were foreseeable a decade or so before they happened: Bosnia (1995), Kosovo (1999), Iraq (2003) and Libya (2011) were all strategically unexpected. It is therefore extremely hard to predict where and when future interventions will be required.

21 The proposed intervention in Syria was aimed at resolving an escalating humanitarian crisis, enforcing the international norm prohibiting the use of chemical weapons against civilians, and weakening or even hastening the removal of a brutal dictatorship. It is likely that we will soon have to revisit the problem.

22 Our hesitation in Syria has allowed Assad to kill civilians indiscriminately. As in Bosnia, the failure to intervene in timely fashion has also eroded the multi-ethnic centre ground, fundamentally changing the character of the conflict. This has made subsequent intervention both more necessary and more fraught.

23 The Syrian crisis is a symptom of three wider and related threats to our interests: Iranian ambitions, the lack of political freedom in the Middle East, and the Shia-Sunni religious divide. This means that conflicts, with their attendant humanitarian connotations, are likely to erupt (or continue) not only in Syria and nearby Lebanon, but also in the Shiite provinces of Saudi Arabia, Bahrain and the Iranian province of Khuzestan with its Ahwazi Arab majority population. The Syrian crisis also inflames the "Kurdish Question", with severe implications for Turkey and Iraq.

PREPARATION AND READINESS OF UK ARMED FORCES FOR INTERVENTION, AND HER ABILITY TO ACT WITHOUT ALLIES

24 Britain has the capacity to intervene on a substantial scale, but its ability to do so at arm's length is limited.

25 Thanks to her ability to project conventional military might overseas, the United Kingdom is still arguably the third most powerful state in the world. Moreover, as a consequence of the withdrawal from Iraq and the drawdown in Afghanistan, the United Kingdom will soon be in a better position to launch a new intervention than at any point in the past ten years or so. For the rest of this year and throughout 2014, however, assets will remain fixed due to the Afghanistan commitment, limiting our ability to intervene elsewhere.

26 That said, UK ability to act from a "cold start" is still very limited. The only army formation available for immediate high-speed deployment in an intervention scenario is the "Airborne Task Force" (ATF) component of 16 Air Assault Brigade. Formed from one of the brigade's two "battlegroups" (an infantry battalion plus appropriate artillery, logistical, engineering and armoured support—up to 1,600 personnel in the case of the

ATF), this unit is at “high readiness” to deploy immediately. The entire brigade (which includes a number of Apache attack helicopter squadrons) is designed to be deployable within three months.

27 Under current plans, it is intended that the army will in future possess three armoured infantry brigades for use in interventions beyond the abilities of light airborne forces. In peacetime, one of these armoured infantry brigades is designated as being at high readiness, and will provide a single very high readiness battlegroup—a “Lead Armoured Task Force”—prepared for immediate deployment. However, the inherent difficulty of moving a large number of armoured vehicles will limit the speed at which this force can reach its destination. The remainder of the high readiness brigade is designed to be deployable within three months. In the event of the British Army embarking on an enduring stabilisation operation, these three brigades would combine with two deployable (with notice) infantry brigades to provide the five brigades necessary to maintain one brigade in theatre at any one time.

28 Given sufficient notice, it is planned that the army will be able to deploy up to three brigades for a limited period in order to stage a “division-level” intervention.

29 The Royal Navy (RN) has a substantial capacity to support an intervention with two helicopter carriers, two Albion class landing platform/docks, six very advanced Type 45/Daring Class destroyers, thirteen Type 23/Duke class frigates, fifteen mine countermeasures vessels, seven attack submarines, and four Vanguard class ballistic missile (Trident) carrying submarines. These forces are supported by the Royal Fleet Auxiliary, which provides the RN with both logistical support (tankers, stores and repair ships) and additional amphibious landing capabilities (via the Bay and [contractor operated] Point class transport ships).

30 The RN is able to land and sustain a battlegroup-sized force of 1,800 Royal Marines. This is performed via the use of the Response Force Task Group (RFTG), a formation that is drawn from the fleet above and can typically comprises of one helicopter carrier, one Albion class LPD, two destroyers/frigates, two Bay class landing ships, one Point class ro-ro ferry, and two tanker/stores ships. A force such as this has the ability to “loiter” in the general region in which an intervention is being considered, presenting political leaders with military options without inflaming the situation in a way that the deployment of land-based assets would.

31 Prior to the Strategic Defence and Security Review (SDSR), the RN had the theoretical ability to put the entire Royal Marine Commando brigade ashore simultaneously. However, now only one “Lead Commando Group” is able to be landed at short notice. As with the army’s air assault brigade and high readiness armoured infantry brigade, the remainder of the Commando brigade requires longer notice to deploy, and as a result of cuts to amphibious shipping would likely have to either be flown into the combat zone and/or be transported using chartered civilian transport.

32 The lack of a serviceable aircraft carrier until 2020 is a huge problem as it limits the provision of air support to an intervening force. Another difficulty is that whilst there is no doubt as to the capability of the existing vessels, particularly the Daring-Class destroyers, their expense means that the Navy has few of them. The psychological advantage of a larger fleet is thus lost, as is flexibility in mounting multiple operations. Here the French, who have a larger number of less capable ships, may have the edge in conducting “lower end” interventions.

33 Given the availability of suitable airfields in theatre, something that can by no means be guaranteed, the Royal Air Force (RAF) is potentially capable of providing extensive support to an intervening force sourced from four (soon to be five) front line Typhoon fighter/strike squadrons,¹⁵ five (soon to be three) front line Tornado strike squadrons, three Chinook helicopter squadrons, two Merlin helicopter squadrons (to be transferred the Royal Navy in 2016), two Puma Helicopter squadrons, one C-17 transport squadron, three Hercules transport squadrons, two tanker/transport squadrons, two Reaper drone squadrons, plus a broad selection of surveillance and support assets. However, it must be borne in mind that only a limited portion (perhaps a third to one half) of these force elements can be forward deployed at any one time due to training and equipment maintenance requirements, together with the need to sustain other military commitments such as the air defence of the UK.

34 Great Britain also has an important “stand-off” capacity—the ability to engage targets on the ground at effectively zero (immediate) risk to aircrew or ships’ companies. The RAF has the Storm Shadow cruise missile, which is air-launched from the Tornado strike aircraft (and, possibly in the future, also from the Typhoon), carries a penetrator warhead, and has a range of over 150 miles, placing the launch aircraft beyond the reach of any air defence missile system likely to be possessed by an opponent. Each Tornado typically carries two of these weapons. The second “zero-risk” system the RAF possesses is the Reaper drone which can carry a variety of laser-guided bombs and missiles. It is highly vulnerable, however, to both enemy aircraft and high-altitude air-defence missiles.

35 The lack of a functioning aircraft carrier currently limits the meaningful stand-off capacity of the RN to the firing of submarine-launched Tomahawk cruise missiles (range 1000 miles, warhead 1000lb). Only the seven attack submarines of the RN are currently capable of carrying them. Indeed, of the one hundred and twelve or so missiles fired at Libya on the opening night of the NATO intervention, it is reported that only two were RN-launched. During the recent “intervention-that-never-was” in Syria, it is unlikely that the RN would have fired more than five or six missiles.

¹⁵ RAF fighter and strike squadrons are usually around 12 aircraft strong

36 Many of these restrictions in the RN's abilities will be resolved in 2020 with the regeneration of the RN's aircraft carrier capability. Currently, the RN is limited only to helicopter carriers, and the only land-attack capability they possess is the handful of army Apache helicopters they can host. However, the fragility of such helicopters in the face of enemy air defences makes their use risky, which explains the conservative manner in which they were deployed in Libya.

37 All this means that, while the UK is capable of launching substantial intervention and stabilisation operations, the UK's ability to deter and intervene at arm's length is currently limited.

HOW DOES THE UK INCORPORATE LESSONS LEARNED

38 We should avoid a rigid approach to "learning lessons", despite the procedures now in place for doing so in principal departments of government. These generally tend to reflect the last experience, rather than providing a useful guide to future interventions.

39 This means that we cannot "train" policy-makers to deal with interventions. It is only possible to educate them, or for them to educate themselves through the study of past operations in all their complexity. One way of doing this would be by sending decision-makers from relevant government departments such as DfID and FCO as well as the Services on a relevant Masters course at a leading university.

CONCLUSION

40 The assumption that military intervention is a last resort needs to be re-examined. The failure to intervene at an early stage can make a subsequent intervention both more imperative and more complicated.

41 Despite cuts, Britain's armed forces remain capable of substantial military interventions, given sufficient notice. There is a case, however, for re-examining the trade-off between quality and quantity so as to enable a larger number of "lower-end" interventions. There is also an urgency about improving the immediate "stand-off" capability of the Armed Services, in order to react to the unexpected.

42 After every intervention we have tended to say "never again" and then done it again. It is therefore time to accept that intervention is part of our intellectual, cultural, political and strategic framework, and always has been. It is what we do and who we are.

October 2013

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THE LEGITIMACY AND LEGALITY OF INTERVENTION FOR HUMANITARIAN REASONS

1. The use of chemical weapons in the Syrian civil war and the international response to this has exposed fundamental differences of opinion in the UK regarding the legitimacy and legality of using armed force to alleviate human suffering. It has also demonstrated significant confusion regarding the principle of a Responsibility to Protect (R2P) and the so-called doctrine of humanitarian intervention. The UK government's legal position on humanitarian intervention is highly controversial and arguably not in line with prevailing international political and legal norms. Moreover, the parliamentary debate of 29 August 2013 on the use of chemical weapons in Syria indicated that many parliamentarians mistakenly believe that R2P allows military intervention when the United Nations is not able to act—or even that R2P is a principle to be invoked when UN action is stymied. It is not. An informed debate—which reflects broader global politics—is needed in order to build consensus on how to respond internationally to terrible abuses of human rights. Well-intentioned but ill-founded national positions on humanitarian intervention will, in the longer term, weaken the R2P principle, possibly irrecoverably. Moreover, injudicious action in this area can also have negative repercussions for the UK's broader relationships and diplomatic credibility with important states (such as China, Russia, India and Brazil) which take a more conservative position on the subject of humanitarian intervention.

2. The broader context of this controversy relates to some of the most difficult questions in international law and politics. How should international society collectively, or individual states, respond to grave and widespread abuses of human rights? How should the norm of non-intervention be balanced against the human rights of individuals in peril? Should force be used to prevent or stop human suffering, and if so, under what legal, political or moral authority? These questions have been the subject of perennial and inconclusive debates for decades—perhaps centuries—although there have arguably been substantial changes in the terms of the debate since the end of the Cold War. Human tragedies in the midst of conflict in places such as Iraq, Somalia,

Rwanda, Bosnia, Kosovo, East Timor, Sudan and Libya, amongst others, have galvanised international actors and consensus has gradually emerged on the principle that atrocities should be addressed.

3. The UK should take a leadership role in this evolving debate. However, the doctrine of “humanitarian intervention” remains problematic, and the UK should be cautious in promoting it. The use of military force for human protection purposes is in tension with state sovereignty, the bedrock of international order. Such force is also very selective; without exception it is something that is undertaken by powerful states against weaker, poor states in the developing world. Inevitably, this raises the impression that humanitarian intervention is undertaken for geo-strategic purposes.

4. The 2005 UN World Summit sought to define an international Responsibility to Protect humans in such a way that addressed these controversies. UN members accepted that individual states have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and to prevent such crimes, including their incitement. The agreement stipulated that the international community should encourage and help states to exercise this responsibility and support the UN in establishing an early warning capability. It also indicated that the international community, through the UN, has the responsibility to help to protect populations from these atrocities where national authorities are manifestly failing to protect their populations.

5. However, the UK government’s legal position, and substantial parts of the parliamentary debate on Syria, do not reflect the prevailing international consensus on R2P. If this type of thinking forms the basis of future initiatives relating to R2P it could heighten resistance to the principle internationally by countries which are wary of broad norms on human protection.

6. The UK government legal position stated that “If action in the Security Council is blocked, the UK would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime. Such a legal basis is available, under the doctrine of humanitarian intervention”. No reference to R2P is made in the legal opinion, which circumvents the UN Summit stipulation that any coercive international action undertaken to address atrocities must be “through the Security Council, in accordance with the Charter, including Chapter VII”. The legal opinion therefore appears to rest upon a customary norm of humanitarian intervention: but this is absolutely *not* generally accepted as a tenet of international law. Indeed, there is a weighty body of legal opinion that explicitly refutes the idea that intervention can legitimately occur in response to domestic human rights issues.

7. It may be possible to make a moral case which seeks to trump international law—as some political leaders sought to do in relation to Kosovo in 1999—but such an argument falls outside international law. If serious human rights abuses have destabilizing cross-border consequences they are a threat to international peace and security, and this provides a clearer and arguably more solid case for intervention.

8. After the humanitarian crises of the 1990s the International Commission on Intervention and State Sovereignty produced a report in 2001 which gave birth to the R2P idea. This indicated that the UN Security Council is the best organ for making decisions on interventions, but it suggested that “if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation.” Whilst this report made a significant impact, the weight of diplomatic opinion was resolutely against such an evolution of international law. On many occasions UN member states have reiterated that military force may only be used according to the UN Charter: in self-defence, collective self-defence, and with the approval of the Security Council in response to a threat to international peace and security. It is notable, in addition, that when the Security Council has authorized the use of force in connection with human atrocities, it has tended to link this to threats to international peace and security—in keeping with conventional rules on the use of force.

9. The UK government’s position therefore seems closer to the 2001 version of R2P (presented by a panel of experts) rather than the 2005 UN Summit declaration that was endorsed by all UN members, and which explicitly stated that international force can only be used with the approval of the Security Council.

10. The parliamentary debate also illustrated some controversial—or confused—opinions regarding R2P and humanitarian intervention. The Prime Minister’s assertion that “the principle of humanitarian intervention provides a sound legal basis for taking action” will surprise many international lawyers. He elaborated that “it cannot be the case that [a Security Council resolution] is the only way to have a legal basis for action, and we should consider for a moment what the consequences would be if that were the case. We could have a situation where a country’s Government were literally annihilating half the people in that country, but because of one veto on the Security Council we would be hampered from taking any action.” This may be a morally persuasive position, but it is contrary to the 2005 UN agreement. The Prime Minister also conflated R2P with humanitarian intervention, even though those who champion R2P go to great lengths to distinguish the two. Other members of the House alluded to R2P as a general principle “that if countries default on their responsibility to defend their own citizens, the international community as a whole has a responsibility to do so.” Yet the 2005 UN Summit outcome and subsequent international deliberations and agreements ties this strictly to a Security Council decision.

11. The parliamentary debate illustrated confusion about the procedure of R2P. It was suggested that as long as there is “a genuine attempt” at obtaining UN Security Council support for military action, this would be satisfactory for the legitimacy of action even if the Security Council did not give support. Similarly, it was suggested that what is important is that the Security Council considers and votes on the matter, but not that Security Council support was essential for taking collective military action on humanitarian grounds. It was also suggested that a Russian or Chinese veto in the Security Council would not be a bar to action: “if a proper case is made, there is scope in international law...for action to be taken even without a chapter VII Security Council resolution.” It was also suggested that if there was convincing evidence of extreme humanitarian distress, no practicable alternative to the use of force, if action was proportionate and limited in time, and there is a reasonable prospect of success, then R2P is relevant. However, none of these factors legitimizes military action under R2P without Security Council authorization. The idea that moral outrage provides a justification for humanitarian intervention, if necessary by democratic countries outside the UN, is attractive in some Western capitals but it is highly controversial in a global context.

12. Political discussion in the UK has also downplayed how controversial R2P is globally. During the parliamentary debate it was suggested—and this became a theme repeated in the days that followed—that “We cannot allow a situation whereby the international community’s ability to implement international law is thwarted by a constant veto by Russia and China” and “what do we do if 98% of the UN wish to pass a resolution but a country such as Russia blocks us?” However, this is a spurious framing of the question: scepticism towards humanitarian intervention is shared by a far broader collection of states, indicated by General Assembly debates on R2P since 2009. Opposition to humanitarian intervention *outside* UN channels is overwhelming.

13. The situation in Syria is appalling, and the desire to relieve human suffering is an admirable British trait. However, the UK’s response must be coordinated with evolving global debates on human protection. The political narrative of the government and indeed much of the opposition reflects the 1990s, but things have moved on since then. Aside from the effectiveness of using military force to ease humanitarian suffering—which is highly questionable in this case—such a course of action, without UN authority, would further damage the emerging R2P norm.

14. Aside from the debate about legality and legitimacy there are other reasons why the UK should take a cautious approach towards humanitarian intervention. Military intervention—even when aimed at preventing and stopping human suffering—in situations of ongoing armed conflicts tends to prolong and intensify violence. Intervention can create unforeseen hazards because it changes the local political balance, something amply demonstrated in Iraq, Afghanistan and Libya. Moreover, The UK public is generally sceptical of military intervention, and there is substantial survey data which indicates that the public is unclear about the objectives of recent interventions. In contrast, multilateral peacekeeping and peacebuilding intervention has a good record at promoting stability and preventing the recurrence of conflict.

15. Intervention is often oriented around military solutions, yet experience tells us that this can be of limited utility or have unintended consequences. The UK has an admirable record of promoting stability and developing through—for example—DFID and the Building Stability Overseas Strategy (BSOS). The UK campaign to prevent the use of rape and other forms of sexual violence as a weapon of war is also an excellent demonstration of leadership. Yet the investment in initiatives such as these, compared to costs of military intervention, is small. If the UK wants to address underlying (social, economic, environmental) drivers of conflict in line with its broader goals—including the Strategic Defence and Security Review), non-military forms of intervention may offer a far more effective means of promoting peace and stability. This is also far more likely to tackle the conditions in which violent extremism thrives and which can lead to atrocities.

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Written evidence from Mary Kaldor, Professor of Global Governance, Civil Society and Human Security Research Unit, London School of Economics and Political Science

Why?

1. In the aftermath of the wars in Afghanistan and Iraq, there is considerable and understandable reluctance to commit UK forces to intervention in other parts of the world. Yet the current situation in Syria, characterised by massive human rights including the shelling of civilians, forcible population expulsion, sexual violence, the provocation of sectarianism, the growth of jihadism and of criminality, the use of chemical weapons, not to mention the risk of the spread of this type of violence, illustrates the perils of non-intervention.

2. The dilemma is generally posed as a choice between intervention and non-intervention. But the issue, in my view, is what type of intervention. There is a difference between war-fighting interventions, including air strikes, which are necessarily on one side or the other and which necessarily risk civilian casualties, and what might be described as humanitarian or human security interventions. A human security intervention aims to dampen down violence not to intervene on one or other side, to minimise all loss of life, to protect and assist the victims of violence and, where possible, arrest rather than kill those responsible for violence. Human security is about the security of individuals both in physical and material terms. Human security is what people experience in rights based law-governed societies.

3. This type of intervention ought to be the centre piece of the UK's strategic thinking. In our interconnected world, it is no longer possible for nation-states to guarantee their security unilaterally. Our security depends on global security. Traditionally armed forces were designed to meet the threat of armed attack by a foreign enemy against the UK or its allies. To-day that threat is remote. The main risks, which might require the use of military force, are growing zones of insecurity, like Syria, characterised by a mix of political or sectarian conflict, human rights violations and criminality.

4. In the UK, we do have a comparative advantage in this type of intervention because of the experience in Northern Ireland, Bosnia, Sierra Leone, and elsewhere. Our ability to contribute to this type of intervention contributes in important ways to the UK voices in international fora (probably more so than expensive symbols like Trident). At present however, it is the traditional capabilities that have been ring fenced in spending cuts undermining our capabilities in this area.

When?

5. There is a case for intervention in situations of genocide, massive violations of human rights or ethnic cleansing. To be legitimate interventions have to be approved by the United Nations Security Council.

6. What is to be done if some members of the Security Council block intervention on geo-political grounds? There is an argument for developing a legal mechanism for dealing with exceptions but most importantly, any such mechanism would have to deal with the "how" as well as the "why" so as not to provide a legitimisation for classic military interventions. Interventions under the rubric of "Responsibility to Protect" or human security cannot risk the lives of those they are supposed to be protecting. A No-Fly Zone is not the same as a No Kill Zone. The intervention in Libya, for example, was authorised by the Security Council with explicit reference to Responsibility to Protect (UN Security Council Resolution 1973). However, as in Kosovo in 1999 the international community relied entirely on air strikes and essentially became the military arm of the rebels. The air strikes did prevent an attack on Benghazi and helped, after six months, to lead to a rebel victory in Tripoli. Even if the strikes are very precise, however precise, there is always some collateral damage. and of course military conflict causes suffering. Violent regime changes also give disproportionate political power to those with guns. A human security approach would have focussed on the direct protection of civilians, establishing a protected zone in Benghazi, for example and creating space for a peaceful political process.

7. Would a different approach in Libya have made it easier to take action in Syria, as some argue? Probably not. It can be assumed that Russia and China oppose intervention in Syria not only because Assad is their ally but also because they fear the success of domestic protests. But a different approach in Libya might have reduced the opposition to intervention and shifted the debate from geo-politics to the humanitarian situation in Syria and the illegitimacy of the tactics used by the regime as well as the opposition. Instead of discussing the rights or wrongs of the rebels, the international community should be focussed on how to stop the killings. The agreement on chemical weapons may be a step in that direction.

How?

8. A Human Security intervention is focussed on two goals¹⁶

1. Protecting people, minimising loss of life and meeting human need rather than on defeating enemies. It is people-centric and not enemy-centric. Of course, force may have to be used against those who attack civilians, but the use force should only be defensive and where possible, those responsible for the violence should be arrested rather than killed. An emphasis on, for example, kill or capture, merely provokes more violence. The aim is to dampen down violence not to win.
2. Intervention has to aim to establish legitimate political authority; that is the only way human security can be sustained. This means creating space for a peaceful political process and engaging with civil society. Those who carry guns are not the same as those who hold political authority and who are capable of generating trust. By civil society I mean those who care about the public interest—local municipal or tribal or religious leaders, teachers, doctors, women's groups or youth groups. In Syria, the rebels are not necessarily those who took part in the protests. They consist of defecting soldiers, young men who have taken up arms to protect their families, jihadists and Islamists, Kurdish militias as well as criminal gangs. Many of those who took part in the protests believed strongly in non-violence; they knew they could never defeat the regime militarily. It is those people who are now providing humanitarian aid, negotiating local cease fires, keeping schools and health care centres open, providing legal aid. It is these sorts of people that need to be involved in a political process.

9. To achieve this goal, intervention forces are needed that are composed of officers who have both military and civilian skills. Civilian skills include humanitarian workers, health workers, police, legal experts, as well as technicians. There needs to be a big increase in the number of women participating in these forces in order to change the extremist gender dynamics of contemporary violence that legitimises violence against civilians includes visible and systematic sexual violence. There also needs to be a whole of government approach in providing backing to such forces.

¹⁶ The Principles of Human Security are described at length in the Barcelona and Madrid reports: <http://www.lse.ac.uk/internationalDevelopment/research/CSHS/humanSecurity/barcelonaReport.pdf>; <http://www.lse.ac.uk/internationalDevelopment/research/CSHS/humanSecurity/madridReport.pdf>

10. In terms of resources, there has not to be an increase in civilian capacities and a restructuring or “rebalancing” (to use the current term) of military forces.

11. Is such an approach feasible? Actually this is more or less the approach that was taken in Northern Ireland. It was not possible to bomb Belfast or to carry out excessively kinetic attacks on the IRA because Northern Ireland was part of Britain. Fundamentally the core of human security is the attentiveness to human well being that citizens expect to receive in their own countries. It is about treating Syrians as though they were British.

November 2013

Written evidence from Dr James Pattison, Senior Lecturer in International Politics, University of Manchester

Short Bio: Pattison is an expert on humanitarian intervention and the responsibility to protect (R2P). He is the author of James Pattison (2012) *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, Updated Edition (Oxford: Oxford University Press) and James Pattison (forthcoming) *Humanitarian Intervention, Sage “Major Works” Series*, Four Volumes (London: Sage). He co-convenes the BISA working group on intervention and the responsibility to protect and has published numerous articles on this topic.

Short summary: This evidence addresses the legitimacy of intervention and, in particular which agents should engage in humanitarian intervention in the future. It surveys NATO, states, the UN, PMCs and regional organisations. It draws on my book *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, which I have sent independently.

NATO

1. Amongst currently existing interveners, NATO would probably rank as the most likely to be legitimate. This is because of its effectiveness, which can be seen both in its success in previous missions (such as in Bosnia and in Kosovo) and in its level of military infrastructure. In Bosnia, the 1995 NATO air campaign forced the Bosnian Serbs to agree to peace after three unsuccessful years of UNPROFOR intervention. In Kosovo, although NATO’s bombing campaign at first escalated the extent of the Serbian oppression, it avoided the ethnic cleansing on the scale of that seen in Bosnia. The effectiveness of these two operations was no coincidence. NATO has tremendous military and logistical resources (including a well-equipped rapid-reaction force, the NATO Response Force). In addition, when NATO does intervene, it tends to do so with the commitment to ensure, firstly, a rapid resolution to the humanitarian crisis and, secondly, long-term peace and stability.

2. In addition, NATO intervention is likely to be internally representative. Its decision-making depends on consensus; each member state must consent to the use of force. Every NATO member state is a democracy and democratic states are most likely to be responsive to their citizens’ opinions on the use of force.

3. That said, NATO has faced two major challenges that have raised doubts over its purposes and capabilities. The first is disagreement over potential members of NATO, most notably the former-Soviet states Ukraine and Georgia. This has called into question the unity and direction of NATO, and its role in the post-Cold War world vis-à-vis Russia and the EU. The second is the difficulty that the International Security Afghanistan Force (ISAF) has had in securing the requisite troop numbers. Certain NATO members, such as Germany and Italy, have been reluctant to contribute their troops both in general and in the Taliban strongholds of the south (Whitlock 2009). This has raised doubts over whether any future humanitarian intervention conducted by NATO would have sufficient commitment. This should be put in the context, however, of what is already a sizeable and sustained commitment of NATO members in the notoriously harsh conditions of Afghanistan.

4. Despite these challenges, if it is willing to intervene, NATO is still likely to be the most legitimate agent, primarily because of its effectiveness. What matters most for legitimacy is the intervener’s likely success at halting the humanitarian crisis and NATO is, at the moment, the agent most likely to be successful, given its substantial military, political, and financial capabilities.

States and coalitions of the willing

5. The track record of humanitarian intervention by states and coalitions of the willing is somewhat uneven, but, on the whole, shows that they tend to be effective (Seybolt (2007: 271–2)). On the one hand, the following interventions by states and coalitions of the willing were probably not effective: the US-led mission in Somalia to protect humanitarian corridors in 1992; French intervention in Rwanda in 1994, which was too late to stop the genocide and instead halted the advance of the Rwandan Patriotic Front—a Tutsi force, thereby allowing the unchecked exodus of the *interahamwe* murder squads to DR Congo; and the 2002 French intervention in Côte d’Ivoire to halt growing violence, which has arguably exacerbated the situation.

6. On the other hand, the following interventions by states and coalitions of the willing were probably successful: India’s 1971 intervention in East Pakistan that brought an end to the Pakistani oppression of

Bengalis (Wheeler 2000: 55); Tanzania's 1979 intervention in Uganda that removed Idi Amin from power (Wheeler 2000: 111); France's 1979 intervention in the Central Africa Republican that engineered a bloodless coup against Emperor Bokassa (ICISS 2001b: 63); the creation by the US, the UK, and France of safe havens and no-fly zones in northern Iraq to protect the Kurds in 1991; the Australian-led 1999 intervention to protect the East Timorese from the Indonesian army after the Timorese had voted for independence; and the British intervention in Sierra Leone in 2000 to prevent the United Nations Mission in Sierra Leone (UNAMSIL) from collapse.

7. Overall, then, the number of successful interventions by states are greater than the number of unsuccessful interventions. Can we expect this trend to continue? Much depends on which particular state intervenes. In particular, many mid- and large-sized Western, liberal democratic states have the required military and nonmilitary resources, and are therefore likely to be effective. But this effectiveness is likely to be limited: a number of these states would face a high level of local resistance. Where it does intervene, it is likely to face extreme local opposition (which can harm the chances of a successful outcome) and lack local perceived legitimacy. Similarly, ex-colonial masters intervening in their former colonies may also be highly unpopular amongst the local inhabitants. Such states may also lack global perceived legitimacy, which will also harm an intervener's likely effectiveness. Conversely, non-Western states, which might face less resistance, are limited to intervention in nearby or neighbouring states at best, given their lack of resources

The UN

8. The discussion that follows will consider intervention by the UN itself, rather than UN-authorized humanitarian intervention. The latter option—Security Council-authorized intervention—encompasses a number of possible interveners, including NATO, states (or coalitions of the willing), and regional organizations. To provide a more detailed analysis, I consider these options individually.

9. UN interventions have been subject to a number of criticisms, which have led many to doubt its suitability to carry out humanitarian intervention. To start with, when the UN has intervened itself, the results have often been mixed at best. The following three interventions, for example, are often highlighted for their questionable effectiveness. First, in Bosnia as many as 230,000 people died during the UNPROFOR mission (ICISS 2001b: 94). Second, the UN mission in Rwanda, UNAMIR, was unable to prevent the genocide of Tutsis and moderate Hutus, and was even downgraded in the middle of the killing. Third, the 1999 UN intervention in Sierra Leone, UNAMSIL, was unable to stop the atrocities committed by the RUF and was at the point of collapse until the British intervention in 2000 (ICISS 2001b: 109).

10. The lack of success of these missions is frequently attributed to the way in which UN operations are undertaken (eg, Seybolt 2007: 273). Rather than having a standing army of its own, readily available for quick deployment, the UN has to rely on ad hoc contributions of troops from member states. Member states are reluctant to commit their soldiers and, as a result, UN missions often do not have enough troops to fulfil their mandates. An example is the recent United Nations Mission in Darfur (UNAMID), which has had real difficulties in getting up to its full strength of 26,000 personnel. Western states, in particular, have shown a reluctance to contribute troops, which is unfortunate since their troops tend to be the best trained and to have the most equipment (Bellamy and Williams 2009).

11. Furthermore, the system of ad hoc troop deployment is laborious. First, it takes time for states to decide whether they will volunteer troops. If they do decide to commit troops, deployment can be painfully slow. In addition to delays in deployment, it can also take the Security Council much time to authorize a UN intervention in the first place.

12. When the troops do actually arrive, they frequently lack the necessary equipment. They also tend to lack standardized equipment and many have inadequate training (Kinloch-Pichat 2004: 176). In the field, there is frequently a lack of clear lines of command and control, so that it is not clear whose orders troops should be following, the orders of the UN commander or the orders of their national commander. Troops also have trouble integrating; the multinational make-up of the force means that troops speak different languages and have different cultures (Kinloch-Pichat 2004: 176–7).

13. It is important not to overexaggerate these problems. There have been several improvements to the UN's procedures and capabilities. For instance, the Security Council is now more willing to give its troops a civilian protection mandate supported by Chapter VII authorization (unlike many of the UN operations in the early 1990s). Under the current UN Secretary-General, Ban Ki-Moon, the Department of Peacekeeping Operations (DPKO) has been reorganized and the Department of Field Support has been created, which aims to provide financial, logistical, and technical support and expertise to UN peace operations. The UN has also improved its flexibility, being able to shift forces between missions (eg, from Liberia to Côte d'Ivoire). In addition, it has worked to improve its forces' fidelity to the principles of *jus in bello*. The DPKO also highlights its relative cost-effectiveness: "[w]hen costs to the UN per peacekeeper are compared to the costs of troops deployed by the United States, other developed states, the North Atlantic Treaty Organization (NATO) or regional organizations, the United Nations is the least expensive option by far" (UN 2008b: 2).

14. Moreover, the difficulties that UNAMID has had in getting up to strength in Darfur and the reluctance of certain Western states to contribute to major UN peace operations should be put into the context of what is a boom time for UN peace operations. According to the DPKO (UN 2009), as of May 2009, there are 114,577

troops, police, observers, and other officials serving on 16 UN peace operations. Moreover, the frequently highlighted inefficiencies of the UN are, in practice, often overshadowed by the understated, but notable, successes that it has with its peace operations. Even in the three operations discussed above, which are often presented as examples of the UN's ineffectiveness, UN intervention was partially effective and clearly better than no intervention at all. First, in Bosnia, the UN intervention provided humanitarian aid to 4.3 million victims and frustrated the war aims of Bosnian Serbs and the Milosevic government for a greater Serbia (Gizelis and Kosek 2005: 370; ICISS 2001*b*: 94). Second, in Rwanda, Roméo Dallaire was widely credited for protecting a number of civilians, who would have been slaughtered if it were not for his leadership. Third, the UN mission in Sierra Leone, even though it needed support from the British, has since largely stabilized the country and has helped to establish a war crimes tribunal.

15. Overall, then, the UN has a significant resources gap because of its reliance on ad hoc troops and this gap undermines its effectiveness. Although the UN is not the most effective agent, even its interventions commonly regarded as ineffective have achieved some measure of success. And, given its recent improvements, we can probably expect humanitarian intervention by the UN to have some success in the future. Indeed, the UN may sometimes be the most legitimate intervener, particularly when intervention by NATO or militarily capable Western states would face international and local resistance.

Regional and subregional organizations

16. In general, intervention by regional organizations has had varied results. The central problem is that the majority of regional organizations do not possess the infrastructure, expertise, mandate, and finance to tackle effectively a humanitarian crisis (Diehl 2005). Of course, as with state intervention, much depends on which particular regional or subregional organization intervenes.

17. Article 4 (h) of the Charter of the AU allows for the AU to intervene in grave circumstances (war crimes, genocide, and crimes against humanity) in countries that have signed up to the treaty. There are also proposals for an African Standby Force, in the control of the AU, to be in place by 2010. This would comprise five brigades of around 4,000 military personnel that would be able to respond to a variety of crises (P. Williams 2008: 314). If put in place, this could be seen as a notable step towards realizing the much-heralded "African solutions for African problems".

18. But, although a great improvement on its predecessor, the Organization of African Unity, the AU suffers from massive shortfalls in funding and equipment, and has relied heavily on external funding and equipment. For instance, the African Union Mission in Somalia (AMISOM) had difficulties in deploying its authorized strength of 8,000 troops, largely due to financial and logistical constraints (Center on International Cooperation 2008: 3). Similarly, its mission in Darfur, AMIS, faced serious shortfalls in military equipment, resources, and even basic supplies, and, as a result, was unable to do much to halt the *janjaweed* raids on the local population. Accordingly, the "African solutions for African problems" view is misleading, since, as Paul Williams (2008: 316–18) asserts, the problems are not solely African—under the responsibility to protect they are global—and the solutions cannot be solely African either, given the limited capacity of the AU.

19. ECOWAS is perhaps the most notable subregional organization for humanitarian intervention. It plans to develop a 6,500-strong standby force as part of the African Standby Force, which would give it the ability to deploy 1,500 troops within 30 days, to be followed by the remaining 5,000 troops within 90 days (Holt and Berkman 2006: 69). Previous interventions by ECOWAS, however, have had questionable effectiveness. Although its intervention in Liberia in 1990 (ECOMOG) successfully pushed back the rebel advances and restored law and order in Monrovia, it became more like a party in the conflict and was unable to establish authority in the interior (ICISS 2001*b*: 81–4). In addition, its peacekeepers allegedly committed abuses against a number of civilians and suspected rebels and provided arms support to factions opposed to Charles Taylor, thereby aiding the proliferation of rebel groups (Nowrojee 2004). Similarly, although its 1997 intervention in Sierra Leone was able to restore the ousted president, rebels remained in control in rural areas and continued to brutalize the civilian population and, in 1999, overran Freetown, murdering thousands before ECOMOG could regain control (ICISS 2001*b*: 107). ECOWAS has also intervened in Côte d'Ivoire, but its efforts stalled and it has had insufficient resources and ultimately necessitated French intervention (Nowrojee 2004). Thus, although ECOWAS has been willing to undertake a long-term engagement in the country concerned, like the AU, and as the recent action in Côte d'Ivoire has demonstrated, it ultimately lacks the funding and resources to intervene successfully.

Private military companies

20. The final option is to hire private military companies (PMCs). There are three sorts of role that PMCs could play in humanitarian intervention (see Gantz 2003; P. W. Singer 2003*a*: 184–8). The first is the most likely: PMCs could be used in a noncombat capacity to bolster another intervener's military capabilities. They could provide logistics, lift capacity, military training, communications, and other support services. In doing so, they could improve this agent's effectiveness or make an intervention possible that would otherwise struggle to get off the ground. For instance, a regional organization lacking in lift capacity could hire a PMC to provide transport for its troops. Some of the normative concerns surrounding the use of PMCs are perhaps less serious in this first sort of role, since the PMC would not be providing frontline combat services. Nevertheless, there

are still concerns over the openness of the processes by which PMCs win their contracts and the potential for conflicts of interest (Singer 2003a: 151–68).

21. By contrast, the second and third roles involve PMCs in combat. In the second role, PMCs could provide troops or bolster another agent's intervention. For instance, a UN force that is struggling to receive sufficient contributions of troops from member states could hire a PMC to fill the gaps. In addition, PMCs could provide a rapid-reaction force to intervene in response to humanitarian crisis whilst a larger, more long-term UN or regional organization force is being put together. Or, they could be hired to protect key officials and infrastructure. In this second role (like the first), then, PMCs would not be undertaking intervention themselves. Instead, they would be part of a larger, hybridized force, the benefits of which I will discuss in the next section.

22. In the third potential role, PMCs would undertake humanitarian intervention by themselves. A PMC (or several PMCs) would be hired by a state, a group of states, or an international organization to intervene, to resolve the crisis, and to rebuild afterwards. It is currently unlikely that a PMC would be employed in such a role. To start with, it is doubtful whether PMCs currently have the capacity to take on such a role. Most firms could not deploy and organize the size of force necessary for a major operation (ie, over 20,000 personnel). There would also be notable political obstacles to PMCs undertaking humanitarian intervention by themselves, given the current levels of political opposition to their use (especially in the Global South).

23. Furthermore, the use of a PMC in a combat role poses several normative concerns. These include the potentially profit-driven intentions of a private force, which may distract from the humanitarian objectives, and the lack of regulation of the private military industry, meaning that private contractors can violate principles of external *jus in bello* largely with impunity (Pattison 2008b: 150–3). The use of PMCs also raises concerns over an intervener's responsibility of care for those fighting on its behalf. Deaths of private contractors are seldom covered by the media. Political leaders are often less concerned about the loss of private contractors than regular soldiers, and private contractors do not receive the same level of support if injured in action (Krahmann 2008: 260). In addition, private contractors have frequently failed to receive the correct equipment promised to them when signing up (such as flak jackets) and, accordingly, have been at much greater risk than necessary. Moreover, PMCs are unlikely to be effective when undertaking a combat role. Although they might have the requisite military muscle, they are likely to lack many of the other qualities of effectiveness necessary for successful intervention, such as nonmilitary resources, a suitable post-war strategy for building and maintaining a peaceful resolution to the crisis, and, more indirectly, perceived legitimacy at the local and global levels (which may be harmed by the perceptions of the force as mercenaries).

Hybrid solutions

24. A growing trend has been for humanitarian intervention to be undertaken by agents acting together in hybrid operations. There are three forms of hybrid operation. The first, "sequential operations", involve different interveners succeeding each other. This includes what "spearhead" operations, where Western troops prepare the security environment on the ground in order to hand over to the UN or a regional organization. Examples are the Australian-led intervention in East Timor (INTERFET), before the establishment of the UN transitional administration, and French Operation Licorne in the Côte d'Ivoire before the arrival of the ECOWAS force. Second, "parallel operations" involve interveners operating in response to the same crisis, but under different command. Such operations often involve a more militarily capable Western state providing additional enforcement capabilities or the threat of such force. Examples include NATO action in Bosnia in support of UNPROFOR, British action in Sierra Leone in support of UNAMSIL, and Operation Artemis in support of MONUC in DR Congo in 2003. The third, "integrated operations", involve interveners operating in response to the same crisis under unified or joint command, such as the UN-AU operation in Darfur (UNAMID).

25. There has also been a growth in supportive arrangements, where one agent assists another's intervention. These involve, first, the supply of equipment and training by another intervener to bolster capacity, such as the US's Global Peace Operations Initiative, which aims to provide 75,000 extra peacekeepers worldwide. Second, they involve the provision of funding and equipment (including from PMCs) for a particular operation. For instance, the EU provided \$120 million for the AU's force in Darfur and NATO provided lift capacity (Piiparinen 2007: 371).

26. Hybrid operations and supportive arrangements can combine the strengths of particular agents and, as a result, perhaps offer the best hope for effective—and legitimate—humanitarian intervention. On the one hand, they provide Western states, NATO, and the EU with a politically viable way to intervene without committing themselves to a drawn-out occupation. On the other hand, they offer the UN (and regional organizations) much-needed funding and military capability (including access to the rapid-reaction capabilities of the NATO Response Force and EU battlegroups), and can utilize the UN's expertise in longer, peace-building operations. In addition, hybrid operations enhance flexibility and can make possible an intervention that would otherwise struggle to get off the ground (such as the AU's operation in Darfur). Indeed, some of the most successful interventions have been part of a larger hybrid operation (eg, British action in Sierra Leone and the Australian-led intervention in East Timor). In fact, most recent humanitarian interventions have been hybrid missions and future interventions can be expected to continue to rely on a combination of agents. Hybrid solutions have, for these reasons, been receiving much support.

27. Some, however, see such solutions as a way for Western states to circumvent their duties. Even when the West does provide military personnel (such as in a spearhead role), these troops, Bellamy and Williams (2009: 52) argue, might save more lives if they were integrated into a larger UN operation. As such, although the increased flexibility and the potential combination of strengths of hybrid options can be beneficial, they should not be seen as a panacea. It is important that they are not regarded by the West as a way of avoiding contributing troops. Moreover, hybrid solutions can be only the sum of their parts and the parts—the individual agents—suffer from a number of problems.

Reform: Strengthening Regional Arrangements

28. Particular attention should be paid to the strengthening of African regional organizations, such as the AU and ECOWAS, given the large number of humanitarian crises on this continent and the general reluctance of other agents to intervene in what are regarded as African quagmires. There are a number of potential improvements that might be made. The first concerns the funding of regional organizations and, in particular, the AU. As it stands, the AU relies heavily on external funding for peace operations, but this is ad hoc and unreliable. Jakkie Cilliers (2008: 158–9) proposes that there be a single point of entry for international funders wanting to assist the AU which would replace the current donor scramble and duplication of efforts.

29. The second improvement is the further training of African troops in peacekeeping with programs such as the Global Peace Operations Initiative. This would help to overcome some of the previous problems with African peacekeepers' abuse of civilians (Nowrojee 2004), as well as broadly developing African capacity for peace operations.

30. This relates to the third, most obvious improvement: increase the military resources of regional organizations. The AU, African subregional organizations, and the EU have begun to address their lack of capacity with development of the African Standby Force and the EU battlegroups respectively, both of which, when fully operational, will offer notable rapid-reaction capability. But, although already ambitious, the 25,000 troops projected for African Standby Force will probably need to be increased further, given the number of conflicts in Africa and the need for a sustained troop presence (and the expected increased reliance on this force). Likewise, although a positive development, the capacity and size of EU battlegroups need to be increased (perhaps to include greater lift capacity and logistics) so that the EU can successfully intervene to tackle large-scale humanitarian crises beyond its borders.

31. A fourth improvement would be to increase cooperation between agents, that is, further “hybridization”. As Ban Ki-Moon (2009: 28) argues in his report on the responsibility to protect, *Implementing the Responsibility to Protect*, increased global-regional collaboration is key to operationalizing the responsibility to protect.

32. It is important that these proposals for strengthened regional organizations—and in particular African regional organizations—would not lead to the rest of the international community completely washing their hands of other regions' crises (Bellamy and Williams 2005: 195; Weiss 2001: 423). Other agents, such as states and the UN, still have a moral duty to undertake humanitarian intervention even if there are regional mechanisms in place. In anticipation of this problem, it would be judicious, firstly, to strengthen regional organizations' capability to intervene even further so that other agents' lack of willingness to intervene would not be too detrimental, and, secondly, for regional organizations to highlight that they may not always be able to act and that other agents still may have the responsibility to protect.

October 2013

Written evidence from the Humanitarian Intervention Centre

ABSTRACT

This paper intends to provide Her Majesty's Government with a detailed analysis of the political and strategic considerations surrounding military intervention in order to assist the House of Commons Defence Select Committee in developing an effective policy to guide decision making in respect of future military interventions. This paper principally covers historical analysis, coverage of strategic options, non-state actors and our military capabilities.

SUMMARY

Introduction

The introduction offers a short overview of what the paper will cover, puts the issues in contemporary context and briefly informs readers of the work of the Humanitarian Intervention Centre.

Rwanda: Greatest Failure

This section offers a historic analysis of the genocide of Rwanda, which demonstrated the consequences of inaction in the face of serious human rights violations.

Iraq: Challenge to Intervention

Iraq is the most controversial and problematic case of intervention in recent years. Here it is given in-depth analysis and portrays it against the backdrop of the doctrine surrounding humanitarian intervention. This section challenges the black and white preconceptions surrounding the war in Iraq.

Options for Intervention

The options available to intervening forces are explored, and the factors which may constrain which options can be used in a given conflict.

Non-state Actors and Intervention

Non-state actors are an increasingly important factor to take into account when considering intervention. Here the three concepts of spillover, self-containment and excessive radicalisation are addressed.

Capabilities of Intervention

The British armed forces will be analysed to determine their capabilities and to what extent they align with stated objectives for future defence posture.

Conclusion

The paper will be summarised and the most salient, important and less mainstream points made are elucidated in an accessible, bullet-point format.

1. The Humanitarian Intervention Centre is a not-for-profit, independent foreign policy think tank based in London, which works with politicians, policy-makers, journalists and human rights activists to promote and engage in a debate about the consequences of action and inaction in war and conflict zones.

INTRODUCTION

2. Although it was hoped that the end of the Cold War would mark the beginning of a new era of international peace and security, the 1990s would instead only see the world grow more volatile. Following the Gulf War, events in Somalia, Haiti, Bosnia, Sierra Leone, East Timor and Kosovo, among others, demanded international attention and response, and consequently, the question of humanitarian intervention would remain in the foreground throughout.

3. Yet, as international action was often neither timely nor adequate, lacking the necessary military capabilities, finances and even political mandate, the international community would be shamefully unable to prevent some of the worst tragedies that ensued. The failures amply illustrate that while action, as in the recent case of Iraq, undoubtedly has serious costs and limitations, inaction or delayed action has consequences too—and often, much more grave.

4. Since the election of the Coalition government, the United Kingdom has faced a series of challenging and diverse series of interventions in Afghanistan, Libya and Mali. In August and September, the world retreated from international action due to the House of Commons defeat over the possibility of Syrian intervention. The chain reaction which followed led to American and French politicians asserting their authority over the direction of national foreign policy and ending any possibility of direct foreign assistance in the Syrian conflict. The conclusion of these interventions and the failure to enter the Syrian conflict has left serious questions and issues with the United Kingdom's place to intervene.

5. Militarily the future structure of Her Majesty's Armed Forces and their ability to conduct interventions while already committed in other engagements has also been widely questioned. The continued fiscal constrictions in the MOD budget, has seen a reduction in the defence capabilities of our country and questioning of our role in the world.

6. The Humanitarian Intervention Centre (HIC) has outlined the most prominent challenges that face the United Kingdom's ability to conduct independent and international interventions.

7. The HIC has sought to answer three crucial questions concerning the UK's ability for future interventions: the range of options available, the increasing importance and implications of non-state actors in interventions and the preparation and readiness of HM Armed Forces to intervene.

RWANDA: GREATEST FAILURE

8. In few cases did the failure of the international community to protect have consequences more tragic than in Rwanda, where action seemed perilously absent. Lest its memory only have evoked passionate, but ineffectual, echoes of "never again" that eventually get drowned out in the louder uproar against more recent and more controversial interventions, the Rwandan genocide of 1994 must, like the Holocaust, be solemnly and carefully considered so as to highlight the inexcusable guises and bloody costs of silence, apathy and inaction.

9. The tensions between the Hutu majority and Tutsi minority, which accounted for 85% and 14% of Rwanda's population respectively around the time of the genocide, were hardly recent. Historically, Tutsis held greater power, and under Germany and Belgium in the colonial era, the power structure would only get more centralised, with hierarchical distinctions between Tutsis and Hutus, codified and reinforced.¹⁷ By the early-1960s, when Rwanda attained independence, the tables had already turned, with around a third of the Tutsi population living in exile in neighbouring Burundi, Tanzania, Uganda and Zaire, and the Hutus in power in Rwanda.¹⁸

10. On 6 April 1994, shortly after the civil war waged between the Tutsi-rebel-group Rwandan Patriotic Front (RPF) and Hutu-dominated Rwandan government ostensibly ceased with the signing of the Arusha Accords, the airplane carrying the Hutu Rwandan President Habyarimana was shot down.¹⁹ At Arusha, both the RPF and Rwandan government had requested UN assistance in implementing the agreement, and the United Nations Assistance Mission for Rwanda (UNAMIR) was formed, but it was now unclear whether the attack was perpetrated by Tutsis, Hutu moderates or Hutus against the power-sharing government the Accords entailed.²⁰

11. Nevertheless, right after the attack, the government-controlled *Radio Television Libre des Mille Collines* exhorted Hutus to take revenge on the Tutsis, and the Rwandan government forces along with government-affiliated Hutu militias (the *Interahamwe* and *Impuzamugambi*) promptly went on a rampage, targeting Tutsis and even moderate Hutus.²¹ The *génocidaires* wielded weapons, from machetes and clubs to guns and grenades, and it was clear that the mass killing had been well-planned. By June 1994, over just a hundred days, an estimated 800,000 Tutsis and opposing Hutus had been killed in what might have been the most concentrated mass killing in history.²²

12. The reluctance of the international community to get involved was evident right from the start. The US, still confronting the ghosts of Somalia, remained hesitant not just to intervene, but also to refer to the developments as genocide, lest that legally oblige it to act as per the Genocide Convention.²³ Although Belgium had contributed significantly to UNAMIR, soon after 10 Belgian paratroopers protecting the Rwandan Prime Minister were mutilated alive and killed, Belgium withdrew its troops.²⁴ By 21 April 1994, the UN Security Council as well had resolved to reduce UNAMIR's strength from 2,500 to just 270.²⁵

13. From the justifications provided for their inaction, it appeared that the major powers and the UN lacked adequate and timely access to information as well as financial resources and troops that could be readily and rapidly deployed.²⁶ Yet, as is now known, even if the UN lacked formal intelligence operations in the field, it was not that its member states faced similar shortcomings. The US, Belgium, France and Germany had information about the imminent troubles from early on, and Belgium even called on the UN for a stronger UNAMIR mandate in February 1994.²⁷ Besides, informal UNAMIR intelligence units long transmitted warnings to Brussels and New York, and Major-General Romeo Dallaire, Force Commander of UNAMIR, informed New York as early as January about orders issued to register all Tutsi in Kigali, possibly for extermination.²⁸

14. Moreover, the rigid bureaucracy of the UN only served as additional hindrance. When his informant warned him also of a major weapons cache, Dallaire planned to raid it within 36 hours, only to be refused permission by his superiors to do so as it went beyond the mandate.²⁹ Dallaire repeatedly intimated New York of the imminent dangers and requested for a stronger mandate so he could seize weapons, but his requests were turned down at least six times.³⁰ Even his plea for reinforcement after the airplane episode in April 1994 was in vain. Right until mid-May 1994, senior officials at the Secretariat treated the troubles as armed banditry, tribal warfare and ethnic killings, hardly worthy of major intervention, rather than systematic, well-organised genocide.³¹

15. It would only be on 17 May 1994, by when it had become clear that the situation was only worsening, that the Security Council finally approved an expansion of UNAMIR's mandate, with a plan to increase the

¹⁷ Carney, J J, *Rwanda before the Genocide* (Oxford: Oxford University Press, 2014).

¹⁸ Crawford Young, M, "Zaire, Rwanda and Burundi", in Crowder, M. (ed.), *The Cambridge History of Africa*, Vol.8: c.1940—c.1975 (Cambridge: Cambridge University Press, 1984), p.734.

¹⁹ "2 African Leaders Killed in Crash", *New York Times*, 7 April 1994, p.2

²⁰ Des Forges, A, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), pp.255–260.

²¹ See Thompson, A (ed.), *The Media and the Rwanda Genocide* (London: Pluto Press, 2007).

²² Carlsson, I, Sung-Joo, H, Kupolati, R, UN, *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda* (15 December 1999), UN Doc. S/1999/1257, p.3.

²³ See Cohen, J, *One-hundred Days of Silence: America and the Rwanda Genocide* (Plymouth: Rowman & Littlefield, 2007).

²⁴ Carlsson et al., *Report of the Independent Inquiry*, UN Doc. S/1999/1257, pp.19–20.

²⁵ *Ibid.*, pp.20–22.

²⁶ Ludlow, D R L, "Humanitarian Intervention and the Rwandan Genocide", *Journal of Conflict Studies*, Vol.19, No.1 (Spring 1999).

²⁷ Des Forges, *Leave None to Tell the Story*, pp.188–243, 248–250; Grunfeld, F., Huijboom, A., *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders* (Leiden: Brill, 2007), pp.131–138.

²⁸ Outgoing Code Cable from Dallaire/UNAMIR/Kigali to Bari/DPKO/UN New York, 11 January 1994.

²⁹ *Ibid.*, Carlsson et al., *Report of the Independent Inquiry*, UN Doc. S/1999/1257, p.11.

³⁰ Grunfeld, Huijboom, *The Failure to Prevent*, pp.127–130.

³¹ Piiparinen, T, *The Transformation of UN Conflict Management: Producing Images of Genocide from Rwanda to Darfur and Beyond* (Abingdon: Routledge, 2010), pp.63–4.

strength of UNAMIR up to 5,500.³² Yet, UNAMIR II would only be authorised by 8 June, and then, owing to differences among member states on its mandate and also due to the great reluctance among member states in contributing to the mission, finding troops proved to be a struggle, their first deployment, hence, only taking place much later. So weak was the response that even by 25 July 1994, UNAMIR II had only 550 troops.³³

16. Recognising how grave the situation was, France offered to intervene in the interim period, but when it sought a multinational coalition for its UN-authorized Operation Turquoise, which was to serve mainly as a humanitarian intervention, only Senegal stepped forward. Although arguably somewhat effective in its humanitarian aims, especially the creation of safe havens, France curiously ended up offering refuge to Hutu *génocidaires*, even providing them with escape routes into Zaire, and its entry at a time when the Hutu regime it had long supported was disintegrating with the RPF clearly ascendant caused its motives for intervention to still be in doubt.³⁴

17. Eventually, international media increased its coverage of the genocide, provoking public outrage and compelling governments to act. When one considers that following the authorisation of Operation Turquoise, a force of 2,800 arrived within just hours, it makes one wonder how differently history might have turned out if calls for UNAMIR's reinforcement had been responded to just as swiftly. As Dallaire recounted, "with the 450 men under my command during this interim, we saved and directly protected over 25,000 people and moved tens of thousands between the contact lines. What could a force of 5,000 personnel have prevented?"³⁵

18. The one lesson that emerges from Rwanda is the extent to which national and international interests determine action or the absence thereof. Rwanda hardly held similar relevance as Yugoslavia and Haiti, and most major powers on the Security Council, as the Synthesis Report of the Joint Evaluation of Emergency Assistance to Rwanda noted in March 1996, were simply "uninterested in a small Central African country that was marginal to their economic and political concerns, and peripheral to international strategic rivalries."³⁶ It is impossible to explain the inaction in Rwanda without emphasising the sheer lack of political will.

19. If Rwanda warns us of the human costs of inaction, it also teaches us that inaction has financial costs. As D.R.L. Ludlow observed, "the millions of dollars required to effectively support the original UNAMIR mission pale in comparison to the billions spent on humanitarian aid in the Great Lake Regions since the genocide."³⁷ One would have hoped that Rwanda would be the last time the international community would say "never again", and yet inaction—and delayed action—would allow death to lay its icy hands on many more in East Timor, Chechnya, Darfur and, of course, Syria.

IRAQ: CHALLENGE TO INTERVENTION

20. While Rwanda stands for the greatest failure to act, the war in Iraq presents the greatest challenge to the idea of intervention in recent history. The debate about the reasons for going to war against Saddam Hussein's regime in 2003 is as yet unresolved. After no weapons of mass destruction (WMDs) were found in the post-invasion period, many remain convinced that the US and UK governments took their countries to war on a manufactured *casus belli*.

21. The HIC believes that it would have been possible for US policy-makers to explicitly refer to RtoP in the run up to the war if the protocol had been ratified instead of an emphasis on Saddam's breach of previous UNSCRs. This analysis depends upon the assumption that the war in Iraq could have been classified under the criteria of RtoP, preventing much of the dispute over the cause of the intervention.

22. Iraq is an interesting case to compare with those of Libya and Syria, as it explains the intimate relationship between RtoP and national interests, in a different manner. While in Libya benefits outweighed potential costs leading to intervention, in Syria the incentive to act against a potential veto in the UNSC is not strong enough. Iraq presents a third aspect, where Russia would have vetoed any UNSCR to have sanctioned military intervention under RtoP in order to maintain its interests in the region, while the US would have disregarded such a veto and taken action.

23. The first precautionary principle under RtoP requires that the main purpose of the intervention must be to "halt or avert human suffering".³⁸ Although the justification of the 2003 war was Iraq's breach of previous UNSCRs, the humanitarian dimension played an essential part in the overall equation.

³² Carlsson et al., *Report of the Independent Inquiry*, UN Doc. S/1999/1257, pp.22–25.

³³ *Ibid.*, pp.25, 27.

³⁴ *Rwanda: The Preventable Genocide*, The Report of the International Panel of Eminent Personalities to Investigate the 1994 Rwanda Genocide in Rwanda and the Surrounding Events, Organisation of African Unity (July 2000), 15.53–15.85; Murphy, S., *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996), pp.256–260.

³⁵ Dallaire, R., "The Rwandan Experience", in Morrison, A (ed.), *The New Peacekeeping Partnership* (Clementsport, NS: The Lester B. Pearson Canadian International Peacekeeping Training Centre, 1995), p.23.

³⁶ Eriksson, J, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience* (Copenhagen: Joint Evaluation of Emergency Assistance to Rwanda, March 1996), p.22.

³⁷ Ludlow, "Humanitarian Intervention".

³⁸ Evans, G & Sahnoun M "The Responsibility to Protect", *International Commission on Intervention and State Sovereignty* (2001) p.14 <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed on 03/11/2013)

24. When analysing Tony Blair's speech in Chicago in 1999, it becomes apparent that the brutal nature of Saddam's regime was a factor in the minds of political leaders years before Iraq: "Both [Milosevic and Hussein] have been prepared to wage vicious campaigns against sections of their own community. As a result of these destructive policies both have brought calamity on their own peoples".³⁹ He had challenged Saddam's breaches of UNSCRs three times prior to the war in 2003, once in 1997 and twice in 1998, resulting in Operations Desert Thunder and Fox.⁴⁰ Saddam was thus perceived by Blair to present a clear threat to international peace and security, given his long history of aggression and human rights violations.

25. In the build-up to the 2003 intervention, both the US and UK governments repeatedly and strongly emphasised Saddam's history of internal and foreign aggression. "The worst act of domestic criminal behaviour by a government is large-scale killings of its own people; the worst act of international criminal behaviour, attack and invasion of another country".⁴¹ Iraq was guilty of both.

26. Its systematic human rights violations were unprecedented even by the generally low standards of the Middle East. According to Grey, a terrible picture emerges with "between 70 and 125 civilian deaths per day for every one of Saddam's 8,000-odd days in power".⁴² Saddam employed chemical weapons during the Anfal campaign, which killed at least 100,000 Kurds, ordered the execution of 600,000 civilians during the course of his rule and repressed and persecuted other minorities, in particular the Shia. Externally, he was responsible for the deaths of over a million people in his war of aggression against Iran, as well as another 75,000, resulting from the invasion of Kuwait.⁴³

27. Opponents have argued that the humanitarian argument was no longer valid, since the majority of the killings took place during the 1980s and early 1990s. But that does not necessarily exclude the case of Iraq from RtoP, as "prevention is the single most important dimension" of the protocol.⁴⁴ With an increase in illegal border-crossings, severe violations of the no-fly zone over Kurdistan by the Iraqi air force, a rising oil price leading to a renewal of finances and the existing infrastructure of chemical and biological weaponry, Saddam would almost certainly have regained the ability to engage in large-scale internal repression and foreign aggression.

28. Bush and Blair have repeatedly argued that with the decreasing efficiency of the sanctions regime and Saddam's non-compliance with previous UNSCRs over a period of 12 years, there was sufficient evidence to suggest that "every non-military option for the prevention or peaceful resolution of the crisis" had been exhausted.⁴⁵

29. It is highly unlikely that there will ever be a final consensus about the legality of the 2003 war and the related question of whether or not military action was the last resort. While those who supported it read UNSCR 1441 permissively, others interpreted it restrictively. There are strong arguments that can be made on either side of the debate as to whether this intervention in 2003 was legal. The most plausible attempted justification for the war relied upon Security Council resolutions from the first Gulf war. This was the position supported by the UK and the Blair government.

30. UNSCR 1441 established that Iraq was in material breach of previous resolutions and gave the regime "a final opportunity to comply". According to operational paragraph 4, a failure to comply immediately, unconditionally and unrestrictedly constituted a further material breach per se, without further UNSC authorisation. This, in return, sanctioned "serious consequences", as indicated in operational paragraph 13.⁴⁶

31. From a legal perspective, it is critical to note that the agreement of the international community with the Iraqi regime, in the post-Gulf War period, was based upon a conditional ceasefire, outlined in UNSCR 687. Resolution 687 established the authority to use force and provided the legal basis for interventions in 1993 and 1998 under the Clinton administration. Since it had "not been terminated by the Security Council", it was possible, in the opinion of Greenwood, to revive the mandate, given a breach of obligations by Iraq.⁴⁷ UNSCR 1441 established that such a breach had occurred, not once but twice, and represented a legal reactivation of previous resolutions. As Greenwood argued, intervention was lawfully "taken in accordance with a fresh mandate from the Security Council".⁴⁸

32. RtoP further requires that any intervention is conducted using proportionate means. The first phase of the war saw US troops relatively quickly capture the most key centres of the country, including Baghdad. The process of de-Ba'athification and the disbanding of the Iraq security forces were followed by a rapidly

³⁹ Blair, T Transcript: "The Blair Doctrine", *PBS*, April 22nd 1999

http://www.pbs.org/newshour/bb/international/jan-june99/blair_doctrine4-23.html (accessed on 03/11/2013)

⁴⁰ Rubin, B & Keaney, T "Armed Forces in the Middle East: Politics and Strategy" *Cass Series on Soviet (Russian) Military Institutions*, (Routledge Chapman & Hall, 2002) p.49

⁴¹ Thakur, R "Iraq and the Responsibility to Protect", *Global Dialogue*, Volume 7 (1) (2005) p. 16-33

⁴² Grey, T "Iraq: Deaths under Saddam Hussein", *WAIS Forum on Iraq*, 25/04/2003 http://wais.stanford.edu/Iraq/iraq_deathsundersaddamhussein42503.html (accessed on 03/11/2013)

⁴³ *Ibid.*

⁴⁴ Evans, G & Sahnoun M "The Responsibility to Protect" (2001) p.13

⁴⁵ *Ibid.* (2001) p.14

⁴⁶ UN Security Council. *Resolution 1441 (S/RES/1441)*, 8 November 2002 (2002)

⁴⁷ Greenwood, C "The Legality of Using Force Against Iraq", Minutes of Evidence, Select Committee on Foreign Affairs, October 24 2002

⁴⁸ *Ibid.*

increasing insurgency, which developed into civil war by 2006 and eventually claimed the lives of more than 160,000 Iraqis.

33. However, it would be incorrect to suggest disproportionate use of force was responsible for the scale of the death toll. Even opponents of the war concede that “the main war was conducted with military efficiency, civilians were never the chief target, and indeed the coalition forces have tried to minimise civilian casualties”.⁴⁹ The most accurate figures reveal that only 13% of civilian casualties were directly caused by Western forces, whereas most deaths were caused by communal violence, Islamist groups, such as al Qaeda, and Iranian-backed insurgents.⁵⁰ The coalition forces cannot incur blame for the actions of criminal and terrorist groups and it should be noted that the focus of coalition security operations was to prevent attacks upon civilians.

34. Finally, the criterion of reasonable prospect requires that the likely consequences of action must not exceed those of inaction. It might be too early to judge but what is evident is that the US-led coalition did not shirk the responsibility of rebuilding the country, the third and final pillar under RtoP.⁵¹ Elections have taken place on a regular basis, declared transparent and legitimate by independent monitoring groups,⁵² the child mortality rate is significantly lower and Iraq has now the fastest growing economy in the region.⁵³

35. As in the case of Syria, any attempt by the US-led coalition to gain a UNSCR to enable humanitarian intervention under RtoP would very likely have been met by a vehement Russian veto.

36. Iraq was one of the few remaining Russian allies in the Middle East following the collapse of the Soviet Union and Russia’s strongest interests in the country were economic. When the US and UK pushed for smarter sanctions in the UNSC, prior to 2003, Russia embraced exactly the opposite position and lobbied hard for the lifting of the sanctions regime against Saddam.⁵⁴ In order to understand this policy, one must look at the economic and financial relationship between Moscow and Baghdad. Iraq’s debt “was in many billions of dollars resulting from the Iran-Iraq war”.⁵⁵ Furthermore, Saddam had secretly offered Moscow attractive oil contracts, a policy in line with Russian desire to retain the profits from the UN’s oil-for-food-programme.⁵⁶

37. The crucial difference between the Iraqi and Syrian crises is that the US-led coalition had already begun active preparation for war, so that, despite the absence of an enabling UNSC resolution, the US was able to act in accordance with its national interests and disregard the diplomatic obstruction of France and Russia on the UNSC.

38. The decision against Iraq was essentially determined by the perceived national interests of the US and its coalition partners. At this point, it is important to observe that national interests and the protection of human rights are not mutually exclusive but that protection of human rights can be perceived as a part of the national interest. With humanitarian intervention, domestic considerations and humanitarian motives become interlinked.

39. In conclusion, history has taught us two valuable lessons: that inaction has dire consequences in both financial and human terms and that national and international support does not necessarily have to chime to prevent or enable intervention.

⁴⁹ Thakur, R “Iraq and the Responsibility to Protect” (2005) p.5

⁵⁰ Rentoul, J “Death toll update as US leaves Iraq”, *Independent*, January 2nd 2012 <http://blogs.independent.co.uk/2012/01/02/death-toll-update-as-us-leaves-iraq/> (accessed on 03/11/2013)

⁵¹ Teson, F “Ending Tyranny in Iraq”, *Ethics & International Affairs* 19 (2) (2005) p.13

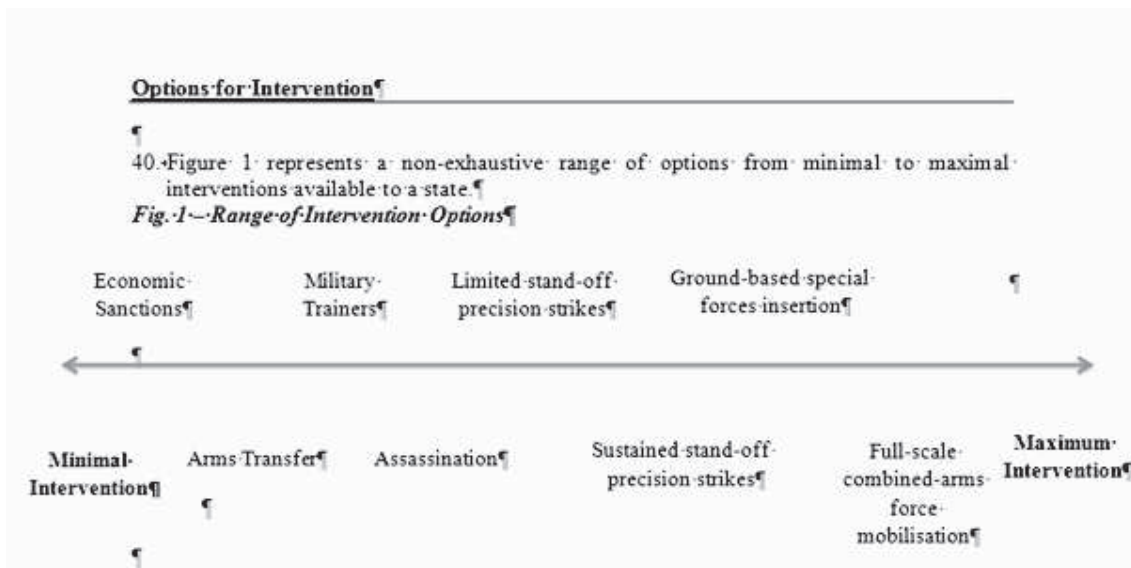
⁵² “Iraq Index”, *Freedom House 2011* (Washington and New York, 2011) p.1 <http://www.freedomhouse.org/report/freedom-world/2011/iraq> (accessed on 03/11/2013)

⁵³ Taheri, A, “A Democratic Beacon in the Fractious Arab World”, *StandPoint*, July/August (2012) <http://standpointmag.co.uk/features-july-august-12-a-democratic-beacon-in-the-fractious-arab-world-amir-taheri-iraq-saddam-hussein-george-w-bush-basra-naja> (accessed on 03/11/2013)

⁵⁴ Dunn, D “Myths, motivations and “misunderestimations”: the Bush Administration and Iraq.” *International Affairs* Vol. 79 (2) (2003) p.292

⁵⁵ Greenstock, J “Evidence to the Iraq Inquiry”, *Iran Inquiry*, November 27th 2009, p.93 <http://www.iraqinquiry.org.uk/media/40456/20091127am-final.pdf> (accessed on 03/11/2013)

⁵⁶ Katz, M (2003). “Playing the Angels: Russian Diplomacy before and after the War in Iraq”, *Middle East Policy*, Vol. 5 (1), p.43



41. There are a number of factors to be taken into consideration when examining availability and necessity of options in a humanitarian intervention. These include, but are not limited to:

1. Objective of the intervention and the urgency with which it must be achieved.
2. Attitude of the public of the intervening state towards intervention, both generally and in the specific case under consideration.
3. Capability and operability of armed forces in the intervening state.
4. Capability and operability of armed forces in the intervenee state.
5. Capability and operability of opposition groups (if any) in the intervenee state.
6. Leadership and power structure of the intervenee faction (concentrated or dispersed)
7. Leadership and power structure of opposition groups (concentrated or dispersed)
8. Degree of public support for the intervenee government.
9. Degree of public support for opposition groups.
10. Miscellaneous considerations including but not limited to- ethnic groups, geography, third parties and non-state actors.

42. Most of these variables are self-explanatory with the possible exception of numbers six and seven. These points refer to the degree of concentration of leadership and power within a single person or party in the opposing and allied factions respectively. The lower the concentration, the more likely maximum intervention will be required.

43. By applying the variables listed above to the range of intervention options in Fig. 1, it is possible to understand why no two interventions are similar. Possible intervention options change with every scenario and time period. Given that only the first and second variables can be objectively ascertained, reliability of intelligence in forecasting the third through the tenth will be important in estimating the value that these variables will have on the range of intervention options.

NON-STATE ACTORS AND INTERVENTION

44. The tenth and final variable that shrinks options for intervention includes non-state actors, as a non-homogenous grouping they can cause significant complications when considering and/or carrying out interventions. "Non-state actors" is a broad label which includes NGOs, terrorist organisations, protest movements and myriad other groups. However, this term when used in this particular context more often than not refers to armed non-state groups engaging in asymmetric warfare. They are not limited by territorial borders in the same ways that states are current international law is very much based on interactions between nation states, making application of international law difficult as UN Security Council (UNSC) resolutions etc. cannot be made against non-state actors. When considering the impact of non-state actors on intervention, there are three key concepts one should take account of.

45. *Spillover*—As non-state actors are not constrained by territorial borders, they can and do operate on a transnational basis. Where intervention in a particular country is given assent, there is the potential for conflict to spill over the originally designated borders of the conflict due to actions from non-state actors such as terrorist groups or crime cartels.

46. Pakistan is arguably an example of this spillover because the leadership of al Qaeda and other militant groups known to operate on the field of battle in Afghanistan have been based in the mountainous Waziristan

region of Pakistan, or even further afield in cities such as Quetta,⁵⁷ Abbottabad⁵⁸ and Peshawar.⁵⁹ In order to address this issue of transnational warfare, US Presidents George W. Bush and Barack Obama have taken to using Unmanned Aerial Vehicles (UAVs), colloquially referred to as “drones”. These are most often the General Atomics MQ-1 Predator⁶⁰ and MQ-9 Reaper⁶¹ systems and are armed with AGM-114 Hellfire air-to-surface missiles. Whilst hugely controversial, these have been used to great effect against militant leadership, with US intelligence officials, perhaps overoptimistically, claiming “all but two” of al Qaeda’s central leadership have been killed or captured.⁶²

47. *Self-containment*—Where intervening actors refuse or are unable to either address or acknowledge territorial spillover as described above, they become a victim of “self-containment”. Here, intervening actors are hindered by territorial boundaries and are likely unable to effectively manage the destabilising threat posed by armed transnational non-state actors. This can cause chronic problems for any ongoing intervention, as local civilians may not trust intervening military forces to guarantee their security from predations from non-state actors, particularly in border areas.

48. A potential case for self-containment could well be Syria. With Hezbollah so active in Syria, but headquartered in Lebanon with clear supply chains from Lebanon moving into Syria, it is unlikely that an intervening force would be willing or able to cross the border into Lebanon to deal with the threat from Hezbollah. Hezbollah are already believed to be conducting attacks on Syrian soil from the Lebanese Bekaa Valley⁶³ and this is causing complications to arise as Syrian government and opposition groups are retaliating with attacks of their own into Syria.⁶⁴

49. Similar complications arise with the new incarnation of al Qaeda in Iraq, now known under several names including al Qaeda in the Land of Two Rivers; the Islamic State of Iraq and the Levant and the Islamic State of Iraq and Syria (al-Sham), most commonly referred to by its abbreviation ISIS. This group operates both in Iraq and Syria, as the name might suggest, and it would be almost politically impossible to justify crossing Iraq’s borders again so soon after Operation Iraqi Freedom to deal with this group. ISIS’s transnational activities are already destabilising the Anbar province of Iraq, as well as wreaking havoc throughout Syria, particularly in the northwest around the city of Aleppo.⁶⁵ Were an intervening force to tactically defeat ISIS and drive it out of Syria, the chances are that ISIS would proceed to carry out a cross-border insurgency from Anbar province, as well as increasingly destabilising Iraq.

50. *Excessive radicalisation*—A phenomenon arising within non-state actors engaged in jihadist terrorism, excessive radicalisation involves foreign militants radicalised with rhetoric about a global jihad against the West and Muslims deemed as apostates (a practice known as *takfir*). These militants are so enamoured with the philosophy of jihad and the global objectives of destroying unbelievers and apostates and establishing an Islamic caliphate that they do not effectively engage with more local priorities and objectives such as protecting minorities and innocent civilians and maintaining the unity and integrity of the local community. Such fighters are prone to frenzied violence, excessive collateral damage and often a complete disregard for local strategies to engage with would-be supporters/sympathisers.

51. This could well be termed the *Zarqawi Syndrome*, after erstwhile leader of al Qaeda in Iraq, the Jordanian militant Abu Musab al-Zarqawi. Zarqawi came to Iraq to fight off invading Western forces and was responsible for many of the video-taped beheadings of civilians and journalists (including Kenneth Bigley⁶⁶) broadcast during the war in Iraq. Zarqawi also orchestrated an incredibly brutal campaign of sectarian bombings and attacks on the local Shia Muslim community. Al Qaeda’s central leadership did recognise that this was alienating large sections of society who would otherwise be at least sympathetic to their cause, if not outright supportive, but efforts to temper Zarqawi were largely unsuccessful.

⁵⁷ Jasmeen Manzoor, “Al Qaeda No. 2 Hiding in Quetta”, *The Washington Times*, May 12th 2009, <http://www.washingtontimes.com/news/2009/may/12/al-qaeda-no-2-hiding-in-quetta/> (accessed 23/10/2013)

⁵⁸ “Osama Bin Laden, al-Qaeda leader, dead—Barack Obama”, BBC News, 2nd May 2011, <http://www.bbc.co.uk/news/world-us-canada-13256676> (accessed 23/10/2013)

⁵⁹ Amir Mir, “Osama’s Son May be Hiding in Pakistan”, *The News (Pakistan)*, 7th May 2012, <http://www.thenews.com.pk/Todays-News-2-106998-Osamason-may-be-hiding-in-Pakistan> (accessed 23/10/2013)

⁶⁰ US Air Force, “MQ-1B Predator”, 5th January 2012, <http://archive.is/20120629212231/http://www.af.mil/information/factsheets/factsheet.asp?fsID=122> (accessed 23/10/2013)

⁶¹ US Air Force, “MQ-9 Reaper”, 18th August 2010, <http://www.af.mil/AboutUs/FactSheets/Display/tabid/224/Article/104470/mq-9-reaper.aspx> (accessed 23/10/2013)

⁶² Raf Sanchez, “All but two of Al Qaeda’s commanders “killed or captured””, *Daily Telegraph*, 23rd November 2011, <http://www.telegraph.co.uk/news/worldnews/al-qaeda/8911453/All-but-two-of-Al-Qaedas-commanders-killed-or-captured.html> (accessed 23/10/2013)

⁶³ Daily Telegraph Correspondent, “Hizbollah “launching rocket attacks into Syria””, *Daily Telegraph*, 17th October 2012, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9615925/Hizbollah-launching-rocket-attacks-into-Syria.html> (accessed 23/10/2013)

⁶⁴ “Lebanon/Syria: End Indiscriminate Cross-Border Attacks”, Human Rights Watch, April 22nd 2013, <http://www.hrw.org/news/2013/04/22/lebanonsyria-end-indiscriminate-cross-border-attacks-2> (accessed 23/10/2013)

⁶⁵ Martin Chulov, “Syrian jihadists wreak havoc as violence spreads into Iraq”, *The Guardian*, 30th September 2013, <http://www.theguardian.com/world/2013/sep/30/syrian-jihadists-wreak-havoc-violence-iraq> (accessed 23/10/2013)

⁶⁶ Damien McElroy and Aqeel Hussein, “Ken Bigley “escaped and was recaptured” by Zarqawi’s gang before he was executed”, *Daily Telegraph*, 10th October 2004, <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/1473811/Ken-Bigley-escaped-and-was-recaptured-by-Zarqawis-gang-before-he-was-executed.html> (accessed 23/10/2013)

52. This phenomenon and the potential for excessive violence should always be borne in mind and accounted for when contemplating intervention in countries significant to jihadists. However, it should also be noted that this phenomenon need not be an idiosyncratic feature unique to jihadist groups and could well occur in future with other violent groups which propagate a strong global and universal ideology, which could include, but is not limited to, other religious terrorist groups, eco-terrorists and anti-globalisation groups.

CAPABILITIES FOR INTERVENTION

53. Though intervention options vary due to circumstances and variables such as non-state actors, it is assumed that the strength and capabilities of HM Armed Forces are always ready and present to fulfil the political wish for intervention. However, the legacy of the Strategic Defence and Security Review 2010 and growing international commitments has cast a long shadow over the availability of pool capabilities.

54. Currently a significant proportion of the rapid deployment forces of the Armed Forces are committed to a standby short notice call-up commitments with the HQ Allied Rapid Reaction Corp (ARRC), NATO Response Force (NRF), and the UK led multinational Battle Group currently providing the rotating European Union Battlegroups capability. As such it is difficult to ascertain, outside of the indigenous Joint Expeditionary Force, which commitment has primacy and how all can be met with a shrinking manpower capability. An example of this competing overlap is the commitment of 16 Air Assault Brigade, it is a core foundation of the Army 2020 Vision “reaction force”⁶⁷ and the existing Joint Rapid Response Force. This year the Brigade also finds itself part of Britain’s land component command of the NRF/ARRC⁶⁸ and in all probability the July-December 2013 UK led EU Battlegroup commitment. The ability for rapid deployment as part of any intervention would place severe pressure on the 16 Air Assault Brigade to meet international commitments. The pressure will therefore fall significantly on the Royal Marines which make up just 4.4% of HM Armed Forces but 43% of the badged frontline Special Forces contingent. This pressure will only increase with the formation of the Anglo-French Combined Joint Expeditionary Force.

55. It therefore remains vital that the UK does not relent in its pursuit of enhancing European defence capabilities in both NATO and the European Union to ease this pressure. This will remain central to the viability of the partner nations playing key roles in the proposed Joint Expeditionary Force and CJEF. It is not a coincidence that currently only Jordan, United Arab Emirates and Qatar⁶⁹ (Libyan no fly-zone participants) and Denmark and Estonia⁷⁰ (both ISAF Helmand allies) have been mentioned as possible contributors. The principle underpinning both the JEF and CJEF is to seemingly avoid the bureaucratic and cumbersome NATO frameworks which often lead to disproportionate troop contributions from selective nations and significant national caveats that plagued the Afghan contributions. Although the Coalition government and international community have remained committed to the EU Battlegroup in principle, it has never been close to deployment in its six years of existence. As such the UK should robustly endorse the efforts led by Lithuania as part of their rotating European Council Presidency, to increase the national capabilities committed, flexibility in commitments and composition of Battlegroups to ease the conditions for their deployment.⁷¹ The commitment of the Ministry of Defence and Foreign Office to this cause has most recently seen substantial non-NATO forces from Sweden and Finland contributed to the NRF, which demonstrates the progress being made in this vital field.⁷²

56. Since 2010 the SDSR has had a dramatic effect upon the expeditionary capability of the Royal Navy, Royal Fleet Auxiliary and the Fleet Air Arm. The sale of RFA Largs Bay to the Royal Australian Navy and placing HMS Albion into extended readiness until 2016 was designed purely as a financial decision running contrary to the commitment for greater rapid global mobility for HM Armed Forces. It is obvious that the current Coalition strategic thinking has reversed the 1998 Strategic Defence Review focus on force projection as a primarily maritime based action,⁷³ in favour of the rapid deployment capabilities of the Royal Air Force (RAF) delivered by the tactical transport C-17 Globemasters, the future A-400M fleet and Airbus Voyagers. A demonstration of this shift is emphasised in the envisaged JEF and MOD-Foreign Office Defence Engagement strategy, in 2011 the Coalition outlined this policy as a need to tackle threats at source, by working with fragile and conflict affected countries.⁷⁴ As such the MOD utilised the stock phrase “Defence Engagement”, the use of Armed Forces expertise overseas, short of combat operation, in such a capacity that achieves influence and stability.⁷⁵ Specifically the policy would favour key allies and countries that provide the UK access, basing

⁶⁷ *Transforming The British Army: Modernising to face an unpredictable future*, Ministry of Defence (July 2012) p.4

⁶⁸ Rosie Layden, “NATO Response Force ready for action”, *British Forces News*, January 16th 2013 <http://www.youtube.com/watch?v=r7BcG4bZFpI> (accessed on 31/10/2013)

⁶⁹ Richard Norton-Taylor and Nick Hopkins, “Defence chief signals major UK military presence in Gulf”, *The Guardian*, December 18th 2012 www.theguardian.com/uk/defence-and-security-blog/2012/dec/18/british-army-the-gulf-defence (accessed on 31/10/2013)

⁷⁰ Gen. Sir David Richards, *Annual Chief of the Defence Staff Lecture*, RUSI, December 17th 2012 <http://www.rusi.org/events/past/ref:E5097A2CAA2229/> (accessed on 01/11/2013)

⁷¹ “The future of EU Battlegroups addressed in London”, *Lithuanian Presidency of the Council of the European Union 2013*, October 15th 2013 http://www.eu2013.lt/en/news/pressreleases/the-future-of-eu-battlegroups-addressed-in-london_1 (accessed on 31/10/2013)

⁷² “Sweden to join NATO Response Force and exercise Steadfast Jazz”, *North Atlantic Treaty Organisation*, 14th October 2013 http://www.nato.int/cps/en/natolive/news_104086.htm (accessed on 31/10/2013)

⁷³ *The Strategic Defence Review* (HM Stationary Office, 1998) pp.31–32

⁷⁴ *Building Stability Overseas Strategy*, Ministry of Defence-Foreign and Commonwealth Office (July 2011)

⁷⁵ Scott Cline, *International Defence Engagement: British and US Experiences*, RUSI Newsbrief, 24th June 2013

and over-flight privileges⁷⁶ thereby circumventing the reduction in maritime expeditionary capability by providing tactical air transport and RAF strike capability from friendly nations. Nevertheless the tactical capability loss must be questioned, as a single Albion class can deliver a deployable cargo capacity equivalent to thirty three C-17's or nearly one hundred A-400M's.

57. Yet the decommissioning of HMS Illustrious in 2014 leaving HMS Ocean as the sole dedicated helicopter carrier bucks the trend that is emerging in South America and the Asia-Pacific of increasing Blue Water amphibious and maritime aviation projection. Consequently the future capability of HM Armed Forces to intervene will become increasingly reliant upon other nations' willingness to accommodate significant UK military capabilities as the strength of the Royal Navy expeditionary projection capability is reduced. With the rise of the military power projection capabilities of Peoples Republic of China, Russia, India, Brazil, Japan and South Korea, the willingness of states to hedge against these growing regional powers and accept UK basing could become less assured. Moreover, the recent experience of Operation Ellamy in Libya demonstrated that friendly historical ties with the United Kingdom did not guarantee basing rights; Cyprus⁷⁷ and Malta⁷⁸ both ruled out the use of their territory for offensive military operations. The Libyan experience should serve as a warning not to become reliant on a single expeditionary force capability. The Centre recommends that Defence Engagement commitments and defence co-operation across Southeast Asia, Africa and the Middle East should be expanded significantly to foster greater relations to ensure adequate flexibility for future airlift capability.

58. The HIC strongly believes that there should be no further reduction in amphibious and littoral capability within the Royal Navy as it would seriously risk any future expeditionary force capability. Yet, the Centre also acknowledges the need for greater fiscal responsibility and does not foresee any future situation whereby both Queen Elizabeth class carriers would be required for overseas deployment, given the capacity to embark 36 F-35B. Therefore it is appropriate to maintain a reduced continual at sea carrier capability, with the second carrier held at varying high (R4-R5—20–30 days) to medium readiness (R6-R9—40–90 days⁷⁹) to enable a full continual at sea capability depending on the strategic geopolitical conditions.

59. The decision to reverse the purchase of the F-35C carrier variant (CV) is one that will have a profound effect upon UK and allied expeditionary capability. The decision to revert back to the F-35B (STOVL) variant placed short-term economy over the long-term strategic goal of NATO and the European Defence Agency of greater interoperability amongst member states. Although Defence Secretary Philip Hammond announced a saving of three years and between £2-£5 billion for the installation of the Electromagnetic Aircraft Launch System,⁸⁰ it must be questioned whether this was a false economy. United States Navy (USN) internal documents have revealed more than a dozen reasons as to why the F-35B will “sub-optimize” carrier-borne operations which includes the lack of internal stand-off weaponry.⁸¹ The MOD's own estimates projected 25% through-life reduced costs of the F-35C variant,⁸² due to the F-35B carrying 31% less fuel which reduces combat radius by 24% when compared to the F-35C.⁸³ Moreover, significant savings in training and operational conversion costs would have been made as the Fleet Air Arm pilots were relearning “cat and trap” conventional carrier landing skills with the United States Navy F/A-18E/F Super Hornet during the 2012–2018 operational carrier gap.⁸⁴ The catapult and arrestor gear capability has already demonstrated mutual compatibility with the USN Super Hornet,⁸⁵ French Aéronavale Dassault Rafale⁸⁶ and the shared Airborne early warning (AEW) E-2C Hawkeye. The UK could have developed joint Maritime Aviation Task Groups and embarked foreign components with the shared F-35C.⁸⁷ The Centre therefore argues that future interventions will have continued interoperability issues with our major naval aviation allies due to the above myopic policy decisions. As a result, the Centre urges increased defence co-operation with the much smaller future F-35B operators United States Marine Corp Aviation and Italian Marina Militare to enhance interoperable capability with the Italian flagship Cavour and future US Navy classes: America and Gerald R Ford.

60. Finally, the deployment of fourteen NATO allies and four non-NATO partners in Libya (2011) and seven NATO allies, two non-NATO partners and the RAF's own No.99 Squadrons in support of the French led

⁷⁶ *The Strategic Defence and Security Review*, 6.4 Delivery Overseas (The Stationary Office, 2010) p.66

⁷⁷ “Cyprus says against use of British bases for Libya”, *Reuters*, March 20th 2011 <http://www.reuters.com/article/2011/03/20/oukwd-uk-libya-britain-cyprus-idAFTRE72J2NJ20110320> (accessed on 31/10/2013)

⁷⁸ Christian Peregin, “Priority is safety of Malta—Gonzi”, *Times of Malta*, March 19th 2011 <http://www.timesofmalta.com/articles/view/20110319/local/priority-is-safety-of-malta-gonzi.355449#.UnNMdPmGrOM> (accessed on 31/10/2013)

⁷⁹ “Ministry of Defence: Assessing and Reporting Military Readiness”, Figure 3, Part One (National Audit Office, 2005) p.9

⁸⁰ HC Deb 10 May 2012 c140

⁸¹ Christopher Cavas, “Navy argues against Marine variant of JSF”, *Marine Corps Times*, April 30th 2007 <http://www.marinecorpstimes.com/article/20070430/NEWS/704300349/Navy-argues-against-Marine-variant-of-JSF> (accessed 01/11/2013)

⁸² *The Strategic Defence and Security Review*, Aircraft Carriers (The Stationary Office, 2010) p.23

⁸³ F-35 Specifications, Lockheed Martin <http://www.lockheedmartin.com/us/products/f35/f-35b-stovl-variant.html> <http://www.lockheedmartin.com/us/products/f35/f-35c-carrier-variant.html> (accessed 31/10/2013)

⁸⁴ Caroline Wyatt, “Royal Navy “Top Gun” pilots train to fly US fighters”, *BBC News*, 12th May 2012 <http://www.bbc.co.uk/news/uk-18041297> (accessed 01/11/2013)

⁸⁵ “Un F-18 apponte sur le Charles de Gualle et un Rafale sur l'Eisenhower”, *European Défense et Sécurité* http://www.european-security.com/n_index.php?id=5277 (accessed on 31/10/2013)

⁸⁶ Jared Hall, “French Pilots Land Abroad Truman”, *USS Harry S. Truman Public Affairs*, US Navy, May 23rd 2008 http://www.navy.mil/submit/display.asp?story_id=37366 (accessed on 1/11/2013)

⁸⁷ *The Strategic Defence and Security Review*, Aircraft Carriers (The Stationary Office, 2010) p.23

Opération Serval in Mali demonstrates the breadth of backing expected from the international community in support of intervention. Additionally, both campaigns demonstrated some progress within NATO on interoperability and sharing of aerial refuelling, transport and ISTAR assets, but more effort is needed to pool resources.

61. The Strategic Defence and Security Review (SDSR) 2010 began with a commitment that the UK would retain the capability to deploy anywhere across the globe in minimalist time.⁸⁸ The fiscal reality requires that there will be a dramatic reduction of manpower in line with other capital spending decreases, yet it is the Centres' belief that the capability and readiness of the UK Armed Forces will remain sufficient to allow for future interventions. The Centre strongly believes that the UK still remains one of the few specialised nations both capable and also with the political will to fulfil the most demanding and dangerous overseas military interventions. However, competing commitments, the future capability of Royal Navy, the F-35 variant U-turn and policy underpinning the creation of the Joint Expeditionary Force remain significant hurdles for the foreseeable future.

CONCLUSION

62. Throughout this submission, the HIC has aimed to shed light on aspects of intervention that are beyond the mainstream discourse and the obvious considerations. Below is a list of bullet points which outline our main conclusions and highlight less obvious contributions this paper hopes to make.

63. Inaction is as much a declaration of intent and policy as action.

64. Whilst many hold the opinion that the 2003 Iraq war was illegal and illegitimate, the HIC believes that a reasonable case can be made for Operation Iraqi Freedom. Had the RtoP doctrine been ratified into international law, it could have clarified the political *casus belli*.

65. The decision between protecting human rights and defending one's national interests is rarely a binary choice and not mutually exclusive.

66. There are a number of options when considering military intervention ranging from economic sanction, through airstrikes and ending at the most invasive option of a full-scale combined-arms force mobilisation.

67. There are many factors which limit the availability of intervention options in specific crises including the objective, public opinion and support for various involved actors, the capabilities of each actor involved, the leadership structures of the belligerents, geography, ethnic tensions and divides, the activities of non-state actors and more.

68. One must take account of spillover, self-containment, and excessive radicalisation/Zarqawi Syndrome when dealing with armed non-state actors, particularly those with transnational ideologies.

69. In light of the SDSR, one must be mindful of the impact that defence cuts have had and will have on our ability to honour our various overlapping military commitments.

70. Our reduced naval capabilities may impact our ability to project power abroad, as we are now over reliant on allies' granting overflying permission and air basing rights to deploy forces globally. Future interoperability issues with our allies will arise due to our decision to purchase the F-35B variant of the JSF, rather than the F-35C, this should be recognised and appropriate measures taken to minimise interoperability issues. We recommend that there be no further reduction in British amphibious or littoral capabilities.

71. Britain must continue to pursue the enhancement of defence capabilities in NATO and the EU to ease pressure on our defence structures.

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⁸⁸ *The Strategic Defence and Security Review* (The Stationary Office, 2010) pp.3–6

Further written evidence from the Humanitarian Intervention Centre

ABSTRACT

This paper intends to provide Her Majesty's Government with a comprehensive overview of the international legal framework regulating the use of military force by sovereign states and highlights some of the current issues which exist within the context of military intervention in order to assist the House of Commons Defence Select Committee in developing an effective policy to guide decision making in respect of future military interventions. This paper principally focuses on the use of military force for humanitarian purposes and the concept of pre-emptive self defence.

SUMMARY

Introduction

The introduction will explain the context of the information that is provided and the issues which are analysed within this paper. It explains that the effective operation of the international framework regulating the use of force by states, enshrined within the Charter of the United Nations, has been placed under increasing strain in the post-Cold War era by the human rights discourse and modern threats to international peace and security including the proliferation of Weapons of Mass Destruction and this has made taking decisions in relation to the use of military force increasingly difficult. The introduction details what issues the paper will address and how it proposes to assist the Committee.

The Law of the Use of Force

The unilateral use of force against the territorial integrity or political independence of sovereign states is prohibited under international law subject to two exceptions. This section will provide a comprehensive overview of the international legal framework regulating the use of military force by sovereign states including an explanation of the role of the collective security system, the power of the United Nations Security Council to authorise military intervention and the inherent right of states to use force in self defence. This section will also highlight some of the flaws in the current system which will then be explored in more detail in the other sections of the paper.

Humanitarian Intervention

Since the tragedies of Rwanda and Srebrenica and the NATO intervention in Kosovo in the 1990s, it has been widely discussed whether or not there should be a right of humanitarian intervention. This section will examine the legality of humanitarian intervention and draw upon the doctrine of the Responsibility to Protect to determine whether this position has changed. Syria will be used as a case study to illustrate when humanitarian intervention would be justified.

Legality vs Legitimacy

One of the most difficult decisions faced by states is what to do when a state is perpetrating gross human rights violations against its own peoples causing a humanitarian catastrophe to unfold but the United Nations Security Council has failed to authorise military intervention through the collective security framework, thus prohibiting lawful military intervention. This section considers whether a state or coalition of states can or should intervene in such circumstances despite the fact that any military action taken against the offending state would be technically unlawful under current international law.

Pre-Emptive Self Defence

Whilst self-defence is a well established principle of international law, the issue of pre-emptive self defence is less certain. This section will examine the legality of the practice within the context of the 2003 Iraq war and the Bush Doctrine and an analysis of the Blair Doctrine of the international community. There will also be a discussion of the possibility of using force against non-state actors in self-defence in the fight against terrorism.

Objectives and Consequences of Military Intervention

This section concerns the objectives and consequences of military intervention. After considering the role of military intervention in protecting human rights and preventing genocide, it highlights the importance of protecting civilians during military intervention. In addition this part examines the possible negative consequences for the intervening state and gives a brief outline of the supporting role of the International Criminal Court in deterring future gross human rights violations.

Occupation and Exit Strategies

This section gives a brief outline of the law on occupation, followed by an evaluation of the importance of exit strategies in military interventions. The section examines the elements of a sound exit or transitional strategy together with common obstacles which stand in the way of devising such a strategy.

INTRODUCTION

1. Following the horrors and devastation wrought by the Second World War, the international community came together and agreed to prohibit the unilateral threat or use of force by states in order to create a world characterised by peaceful coexistence rather than aggression and conflict. This new world order was enshrined in the Charter of the United Nations (“the Charter”). It was signed by fifty states in San Francisco on 26 June 1945 and provided the basis for the international legal system regulating the use of force. The United Kingdom is a signatory to the Charter and is thus bound by all of its provisions including the prohibition on the use of force.

2. The United Nations (“UN”) collective security system does however provide a means by which military force can be employed to address threats to international peace and security. This has not however always proved effective due to the highly politicised nature of the international system and this has resulted in military intervention being withheld in the face of humanitarian catastrophes or taken unlawfully outside of the international system, neither of which is an acceptable nor sustainable state of affairs.

3. It has become increasingly apparent in the post Cold War era that the international legal framework regulating the use of force between states, as codified within the Charter, is unable to respond effectively to modern threats to international peace and security including the widespread proliferation of increasingly sophisticated and deadly chemical, biological and nuclear weapons, large scale violations of human rights including crimes against humanity and genocide and the presence of well organised and armed non-state actors including terrorist groups and militias.

4. The human rights discourse has gathered significant pace over the past sixty years and it is now widely accepted by the international community that sovereign states have an obligation to protect their peoples from gross human rights violations and consequently to refrain from perpetrating such violations. The notion of state sovereignty has arguably shifted away from an absolutist conception where the state is the sole master of its internal affairs and towards one whereby the right to sovereign status, and the associated rights of non-interference, is predicated upon the effective undertaking of responsibilities expected of a state, as determined by the international community, including the protection of the fundamental human rights of its peoples.

5. Where a state fails to discharge its responsibilities the international community is required to react and take the necessary steps, which may ultimately include the use of military force, to prevent gross human rights violations occurring and to restore international peace and security. As a result there exists a clear tension between the prohibition on the use of force against states, the principle of non-interference in states internal affairs and the promotion and protection of human rights. This is a tension which has not been fully reconciled by the international community and this is reflected by the wide ranging disagreements about, and criticism of, the current state of international law in this area.

6. In light of the foregoing it is clear that the decision about whether or not to take military intervention against another state, or a non-state actor, is a very difficult and complex one which includes a multitude of legal, political, financial, logistical and moral considerations for a state to weigh in the balance when formulating policies and making decisions about military intervention. This paper will seek to assist Her Majesty’s Government in formulating its approach to military intervention by reviewing the legal landscape concerning the use of force by states, highlighting some of the pertinent legal issues which need to be considered and making recommendations.

7. In order to do this the paper will proceed through a number of sections. Section One will set out the international legal framework regulating the use of military force. Section Two will explain the concept of humanitarian intervention and highlight the associated legal issues. Section Three will consider the arguments for and against taking military action without the authorisation of the United Nations Security Council (“UNSC”). Section Four will look at the concept of pre-emptive self defence and its legal status. Section Five will consider the objectives and impacts of military intervention and Section Six will outline the purpose of exit strategies and the law of occupation.

SECTION 1—THE LAW OF THE USE OF FORCE

1.1—*The Legal Framework*

8. Article 2 (4) of the Charter of the United Nations (“the UN Charter”) expressly prohibits the threat or use of force against the territorial integrity or political independence of states and Article 2 (3) requires that all interstate disputes are settled by “peaceful means”. These are the foundations on which the post-war international system is constructed as the international community sought to create a world characterised by the peaceful coexistence of states in order to save succeeding generations from the scourges of war, as set out in the Preamble to the Charter.

9. The Charter however provides for two exceptions to this rule: individual or collective self defence in response to an armed attack, pursuant to Article 51 of the Charter, and uses of force authorised by the UNSC under Chapter VII of the Charter. These provisions reflect an acceptance that in some situations the resort to military force will be required and should thus be characterised as a lawful exception to the general prohibition on the use of force.

1.2—*The Law of Self Defence*

10. Article 51 of the Charter allows a state to use military force in self defence when it is subject to an armed attack or when acting in the defence of other state following a request by the victim state for such assistance. This provision enshrined the inherent customary law right of a sovereign state to defend a forcible interference in its internal affairs by another sovereign state which has been affirmed by the International Court of Justice (“ICJ”).⁸⁹ In order for action taken in self defence to be lawful the use of force must be 1) in response to an armed attack, 2) necessary to respond to that attack and 3) a proportional response. The parameters of these terms are however subject to academic debate.

1.3—*The Collective Security System*

11. The use of military force is also lawful when it has been authorised by the UNSC. The UNSC has the “primary responsibility for the maintenance of international peace and security” (Article 24) and can authorise the use of force (Article 42) where the existence of a threat to international peace and security has been determined. Threats to international peace and security can include, but are not limited to, the use or threat of military force by one state against another, regional or inter-state armed conflicts, humanitarian catastrophes which cause wider regional destabilisation, perhaps as a result of refugee flows, and gross human rights violations committed by a state against its peoples. In order for the use of force to be authorised by the UNSC nine affirmative votes are required and all of the permanent members must refrain from exercising their veto. Both permanent and non-permanent members may also abstain and this will not cause the vote to fail if there are a sufficient number of votes in favour of the resolution and no veto is exercised.

12. By centralising the use of force within the collective security system it was envisaged that the propensity for international armed conflict would be greatly reduced but at the same time provide for the use of military force when necessary. Furthermore, it was hoped that when such force was authorised it would have a high degree of legitimacy, having been approved by the international community via the UNSC, and therefore garner both moral and military support for the operation.

1.4—*The Protection of Human Rights and the United Nations Security Council*

13. Regrettably, the UNSC does not always authorise the use of military force when it is sought and necessary to maintain or restore international peace and security. This is either because there are an insufficient number of votes in favour of the resolution (a lack of political will) or, most commonly, a permanent member exercises or threatens to exercise its veto, as occurred recently when France’s draft resolution authorising limited military intervention in Syria was rejected by Russia. This situation is known as “Security Council deadlock”. The UNSC is an inherently political organ and unfortunately its members can vote with strategic allegiances in mind as well as other potentially irrelevant political considerations which can prevent lawful military intervention occurring in circumstances where it is a sensible, necessary and justifiable response to the threat posed to international peace and security.

14. This problem is brought most sharply into focus when such political impasse allows a state to continue perpetrating gross human rights violations against its peoples in contravention of all established international norms and in clear view of the international community. These situations can result in states taking unilateral military action outside of the collective security system which undermines the authority of international law and results in the international community questioning the purpose, necessity and efficacy of the collective security system in the modern world order.

15. The next section will consider in more detail the consequences of UNSC deadlock in the face of humanitarian catastrophes, the concept of humanitarian intervention and the relevant legal rules.

SECTION 2—HUMANITARIAN INTERVENTION

2.1—*What is Humanitarian Intervention?*

16. Intervention for humanitarian purposes has been defined as “forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing or halting an ongoing or impending grievous suffering or loss of life.”⁹⁰ It focuses around the notion of human security. This is the concept that the protection of individuals is more important than the national security of the state. The primary purpose of humanitarian intervention is to end human rights violations within the state in which it takes place and prevent the humanitarian crisis from escalating further.

17. Humanitarian intervention can furthermore be described as the use of force taken outwith the parameters of the Charter. As discussed above, Article 2(4) of the Charter enshrines the customary rule of international law that it is illegal for one state to use force against another. The issue of humanitarian intervention arises when there has not been an authorisation by the UNSC under Chapter VII to use force, but it is clear that there is a humanitarian catastrophe ongoing that has to be dealt with.

⁸⁹ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United State of America), Jurisdiction and Admissibility , 1984 ICJ REP 292, June 27 1986

⁹⁰ Pattison, J. *Humanitarian Intervention and the Responsibility to Protect* (Oxford, 2010) 28

18. The concept of humanitarian intervention was born out of predominantly three humanitarian catastrophes during the Nineties, namely Rwanda, Srebrenica and Kosovo. In each of these instances, the UN was notably absent from taking action, which led to either a humanitarian crisis occurring, or another body having to take action outwith the law to prevent it.

19. The first catastrophe that led to the call for humanitarian intervention was the genocide in Rwanda in 1994. In the space of approximately 100 days, over half a million Tutsis were killed by the Hutu government and a further two million sought refuge in neighbouring countries.⁹¹ This happened despite the presence of an UN peacekeeping mission, UNAMIR, on the ground. The problem with UNAMIR, however, was that it did not have a robust mandate and thus was not authorised to use force by the UNSC so it could do very little to prevent the attacks, especially when their numbers were actually reduced over this period.

20. Shortly after the genocide in Rwanda came a massacre of Bosnian Muslim males in Srebrenica in 1995. Amongst greater fighting in the former Yugoslavia, the UN created safe areas in Bosnia and Herzegovina in 1995 and UNPROFOR was given the task of defending them. However, when Serb forces launched an attack on the safe areas the peacekeeping force was unable to do anything to stop it, as again they had not been authorised to use force by the UNSC. This resulted in the killing of approximately 7,000 Muslim men.⁹² This situation, along with that of Rwanda, highlighted the real need for the international community to step up and help people in these situations, particularly if the UNSC is unable or refuses to act.

21. This is why in the case of Kosovo in 1999 we saw a very different outcome. When the UNSC refused to take any action to combat the persecution of Kosovar Albanians from the FRY due to continued opposition from Russia, NATO stepped in and began a series of aerial strikes in the name of humanitarian intervention. This action by NATO was illegal under international law as the organisation did not have UNSC authorisation to use force and it could not be classed as self-defence as a NATO member state had not been attacked. However, it was widely agreed that the intervention was “illegal but legitimate” due to the humanitarian purposes it was trying to achieve.⁹³

22. Despite the fact that very few states advocate a right of humanitarian intervention, the above situations demonstrate that in the right circumstances it can be necessary and legitimate. There is an argument that can be made that the sovereignty of a state is conditional on it protecting its citizens and when the government gravely violates the rights of their population then they should lose the protection of non-intervention from other states (a customary principle which is enshrined in Article 2(7) of the Charter). If we are to look at humanitarian intervention from the context of human security then it is difficult to argue that it is not legitimate. Proponents of human security believe that the individual should be the focus of security, not the state. This would mean that if individuals were threatened then humanitarian intervention would be helping them, not diminishing the security of the state.

23. There is a tension in the Charter between human rights and non-intervention. The preamble of the Charter states that one of the founding aims of the organisation is to “reaffirm faith in fundamental human rights.” Furthermore, Article 1(3) states that one of the purposes of the UN is “To achieve international cooperation in... encouraging respect for human rights” and Article 55 states that states should promote universal respect for human rights. This would appear to imply that not to act to protect human rights would be a violation of the Charter, but, conversely, if states are not allowed to act without the authorisation of the UNSC then how are they supposed to fulfil this obligation? Legitimising humanitarian intervention in certain circumstances could be the answer to this question.

24. Humanitarian intervention is clearly a very delicate matter and thus we argue that it should only be taken in appropriate circumstances. States should carefully consider their decision to intervene and the manner in which they do so in order that they don't do more harm than good. The ultimate objective of any humanitarian intervention should be to protect civilians and alleviate suffering, not an ill-founded attempt by a state to gain more power.

2.2—The Law on Humanitarian Intervention

25. The basic rule, as it stands, is that humanitarian intervention outwith the collective security framework is illegal under international law. Any intervention, even if on humanitarian grounds, must take place within the framework of the Charter. This means that the UNSC must authorise the use of force—or it be a legitimate action of self-defence—in order to be legal.

26. As previously established, the Charter prohibits the use of force unless there is legitimate self-defence under Article 51 or an authorisation from the UNSC to use force under Chapter VII. It is rare that humanitarian intervention will be taken under the auspices of self-defence as it would require an armed attack on a state and if that happens then the resultant use of force can be classed as a simple self-defence mission, not humanitarian intervention. If there has been no armed attack then there can be no use of force. However, there has been an

⁹¹ UN Rwanda Emergency Office *Humanitarian Situation Report*, 30 Sept 1994

⁹² Honig, J W *Avoiding War. Inviting Defeat: The Srebrenica Crisis, July 1995* (Journal of Contingencies and Crisis Management, vol 9 no 4 Dec 2001), pp. 200–210, 202

⁹³ Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned*, 186

argument put forward that self-defence can be used to defend “common interests and values”⁹⁴ and thus an armed attack against another state would not be needed, but this view is disputed.

27. Humanitarian intervention is more likely to come into play with an authorisation by the UNSC to use force under Chapter VII. If the UNSC determines there is a threat to, or has been a breach of, international peace and security, then it can authorise states to use force to counteract it. Without this authorisation to use force then any intervention will be illegal under international law. If a state chooses to go ahead and use force without authorisation from the UNSC then not only would that state violate the prohibition on the use of force, but they would also violate the customary principle of non-intervention in the sovereign affairs of another state.

2.3 —*The Responsibility to Protect*

28. There is thus a necessity to attempt to bridge the gap between UNSC authorisations—as they are rarely approved where intervention is sought in politically sensitive situations—and violating the use of force principle in times of need. Kofi Annan, in his role as Secretary General of the UN, made desperate pleas to the international community following the bombing of Kosovo in 1999 to resolve the conflicting of norms and find legitimate means to take forcible action where necessary to protect individuals from mass human rights violations.⁹⁵ This is how the Responsibility to Protect was formed.

29. The Responsibility to Protect—or R2P as it is otherwise known—came about from a report from the International Commission on Intervention and State Sovereignty (ICISS) in 2001. In that report, the panel of 11 independent experts advocate a shift away from focusing on humanitarian intervention on those terms and instead wanted to focus on the responsibility of states to protect their populations. This would focus efforts on the needs of the individuals rather than the state which reflected the growing acceptance and application of the human security paradigm. The report brought forward the idea that sovereignty is limited by the responsibility to protect populations from mass atrocities—essentially sovereignty is not a right, it is a responsibility.

30. If the state fails to protect their citizens then they lose the protection from non-intervention in the Charter and thus the international community has the duty to step up and do something to help. The report envisaged that when there have been grave violations of human rights or other widespread abuses and if the UNSC failed to take action then other states could collectively take action legitimately to combat it. Whilst the panel felt that the UNSC is the most legitimate gatekeeper to intervention, the international community could turn to the General Assembly under the Uniting for Peace procedure if the UNSC is deadlocked, and if there is still no consensus then unilateral or collective action could be taken under the auspices of R2P. The report broadened R2P to go beyond pure humanitarian intervention and encompass the responsibility to prevent, the responsibility to react and the responsibility to rebuild.

31. The ICISS wanted to create a right of humanitarian intervention outwith the auspices of the UN Charter, but the international community ultimately rejected this. The High-Level Panel on Threats, Challenges and Change in their 2004 report⁹⁶ agreed that the international community has a responsibility to protect populations when their government doesn't, but limited this to saying that the UNSC is the gatekeeper to intervention. At the World Summit in 2005 the international community debated R2P and adopted it in paragraphs 138 and 139 of the World Summit Outcome Document. The R2P they adopted, however, was much narrower than that envisioned by the ICISS. The World Summit Outcome document limited application of R2P to situations of war crimes, crimes against humanity, genocide and ethnic cleansing. The document furthermore stated that any action must be taken within the framework of the Charter and thus limited interventions to those authorised by the UNSC.

32. Ultimately the Responsibility to Protect has not changed the legal position on intervention. Despite widespread hope for the concept following the ICISS report, it has not emerged as a developing legal norm, although it has the potential to be. Future interventions still have to be authorised by the Security Council and thus all R2P has done is add more legitimacy to these authorisations to use force. To date, R2P has only been employed in Libya and the Côte d'Ivoire and its advancement has been seriously compromised by lack of application in Syria.

33. The Humanitarian Intervention Centre believes that the UK could become the leading nation in championing the Responsibility to Protect doctrine. If the UK is firm in emphasising the fact that sovereignty is conditional on protecting your population and that they will take action if the state fails to protect, then they can use R2P to legitimise interventions in the future. The application of the responsibility to protect in the Libya conflict is a prime example of when the principle should be used in practice

2.4—*The Situation in Syria*

34. Since fighting began in 2011, there have been repeated calls to intervene in Syria akin to the intervention in Libya. However, the UNSC has repeatedly failed to reach consensus on this issue due to continued opposition from Russia, and to a lesser extent, China. This has led to calls for humanitarian intervention instead,

⁹⁴ NATO Doc. AR 295 SA (1998), quoted in Simma *NATO, The UN and the Use of Force: Legal Aspects* EJIL 10 (1999), 1–22, 16

⁹⁵ Kofi A Annan, “Two Concepts of Sovereignty”, *The Economist*, 18th September, 1999

⁹⁶ A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Change, 2nd December 2004, UN. Doc. A/59/565

particularly in light of the revelations that the Assad regime used chemical weapons against the civilian population. Any use of force without the authorisation of the UNSC would per se be an illegal violation of Article 2(4), but there are some convincing arguments in favour of intervention nonetheless.

35. As President Obama said in an address to the UN, “sovereignty cannot be a shield for tyrants to commit wanton murder, or an excuse for the international community to turn a blind eye to slaughter... should we really accept the notion that the world is powerless in the face of a Rwanda or Srebrenica?”⁹⁷ This is perhaps the most convincing argument in favour of intervention—if the international community stands by and does nothing then we could see mass slaughter that potentially supersedes any internal conflict we have seen before.

36. The Washington Post argued that five of the best reasons for striking Syria are as follows: punish Assad for using chemical weapons, deter future dictators from using chemical weapons, deter Iran from obtaining nuclear weapons, force Assad to the negotiating table and stop the bloodshed.⁹⁸ Whilst each of these aims is legitimate to an extent, the ultimate focus of any humanitarian intervention has to be to halt the ongoing suffering in the country. To use the concept of humanitarian intervention or the Responsibility to Protect as a means through which to deploy a military offensive to do nothing more than punish the Assad regime or bring about regime change would be to seriously damage the credibility and legitimacy of the doctrine and make other states wary about sanctioning such intervention in the future. For this reason it is vital that when considering whether or not to intervene militarily on humanitarian grounds the basis for such intervention must be thoroughly considered, reasoned and justified with the use of evidence.

37. Former legal advisor to the US Department of State, Harold Koh, has argued that Article 2(4) of the UN Charter potentially permits a use of force outwith the scope of the Charter if the UNSC “obstructs the UN’s capacity to achieve its stated humanitarian, anti-war purposes.”⁹⁹ This is a legal grey area, but is where the scope for argument in favour of humanitarian intervention is founded. The US was one of the main proponents for intervention in Syria and Koh has set out the American position on interventions outwith the scope of the Charter. In the view of the US, intervention within the context of Syria would be legitimate if:

1. The humanitarian crisis creates consequences significantly disruptive of international order creates an imminent threat to the acting nations, giving rise to an urgent need to act in individual and collective self-defence under Article 51. This would apply in Syria as a result of the use of chemical weapons, the high number of refugees and the destabilization of the region.
2. A Security Council resolution was not available due to persistent veto and all other remedies had been exhausted. In this case, Russia continue to block any proposed action and diplomatic negotiations have thus far failed to reach peace in the country.
3. Force used is limited to genuine humanitarian purposes necessary and proportionate to address the imminent threat.
4. The action is collective and not one state acting unilaterally. Utilizing the General Assembly’s Uniting for Peace Procedure or regional arrangements under Chapter VIII would demonstrate this.
5. Force used would prevent the use of per se illegal means by the state, in this case chemical weapons.
6. Force would be used to prevent a per se illegal end, such as war crimes or crimes against humanity and avert a humanitarian disaster. Whilst essentially each of these have already occurred in Syria, humanitarian intervention would prevent them from getting worse.

38. Furthermore, respected judge Antonio Cassese has advocated a right of humanitarian intervention where 6 conditions are fulfilled:¹⁰⁰

1. There have been gross and egregious human rights breaches leading to the loss of hundreds or thousands lives and amounting to crimes against humanity. These atrocities are carried out by the central government or because the government has collapsed and cannot prevent them
2. The crimes against humanity result from anarchy in the state. The government consistently refuses to comply with the UN.
3. The Security Council is unable to take any action due to disagreement or the use of the veto.
4. All peaceful avenues have been explored
5. A collective group of states take action with the support (or at least non-objection) of a majority of UN member states
6. Force is used for the sole purpose of ending the atrocities and restoring human rights.

⁹⁷ <http://www.nytimes.com/2013/09/25/us/politics/text-of-obamas-speech-at-the-un.html> (Last Accessed 11 November 2013)

⁹⁸ <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/10/the-five-best-arguments-for-striking-syria-and-the-best-rebuttals/> (Last Accessed 11 November 2013)

⁹⁹ <http://www.ejiltalk.org/syria-and-the-law-of-humanitarian-intervention-part-ii-international-law-and-the-way-forward/> (Last Accessed 11 November 2013)

¹⁰⁰ Cassese, A “*Ex iniuria ius oritur: we are moving towards international legitimization of forcible humanitarian countermeasures in the world community?*” European Journal of International Law 10 (1), 23, discussed in Anderson, *Kosovo and the Legality of NATO’s Actions*, 37

39. Whilst we would not advocate such a tick box exercise for legitimising humanitarian intervention outwith the scope of the Charter, it is clear that the case of Syria is a prime example of when humanitarian intervention should have been employed. Most commentators are of the view that any intervention in Syria on humanitarian grounds without the authorisation of the UNSC would be unlawful under current international law. It could however be considered a “legitimate” intervention, such as in Kosovo, given the scale of the humanitarian catastrophe brought about by the actions of the Assad regime.

40. Any proposed interventions, either within the context of Syria or any other future conflict, which do not have UNSC authorisation, should thus be treated with caution and given thorough consideration given that no sound lawful basis for intervention currently exists, even if the human rights justifications are overwhelming. This Centre is however of the opinion that military intervention in Syria to stem the ongoing gross human rights violations could be justified due to the ongoing devastation in the country. Furthermore, this Centre is of the opinion that a change in the law should take place to create a lawful basis for humanitarian intervention outside of the collective security framework and this may require states to act in breach of current international law and intervene militarily to prevent or stop gross human rights violations being perpetrated where the UNSC has failed to authorise intervention for such a purpose.

2.5—The United Kingdom’s Position on Syria

41. The UK government supported the possibility of taking humanitarian intervention in response to the atrocities taking place in Syria. Following the use of chemical weapons of the Assad regime, the UK government issued a note on the 29th of August 2013 setting out their legal position on humanitarian intervention in Syria.¹⁰¹ The government determined that intervention in Syria would be legal provided three criteria were met:

- “(i) There is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
- (ii) It must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
- (iii) The proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (ie the minimum necessary to achieve that end and for no other purpose).”

42. The government went on further to establish that these conditions had been met as over 100,000 people have been killed and there are over two million refugees; the use of chemical weapons in a heavily populated area is a war crime; all means to resolve the conflict thus far have failed and if they UNSC remains blocked then there will be no other option; and the use of military force to target the government in order to deter future attacks would be necessary and proportionate. Despite this firm stance on the part of the government, it was unfortunate that they did not receive the backing from Parliament to go ahead with intervention in Syria. This is particularly disappointing in light of the fact that the UK pushed for intervention in Libya in 2011.

43. Despite attempts to advance arguments in favour of humanitarian intervention, it still remains illegal under international law. Unless the Charter is amended to allow for it or customary international law advances quickly through state practice and *opinio juris*, then it is unlikely that we will see a right of humanitarian intervention develop anytime soon. However, the Responsibility to Protect could provide the platform to do this on. The UK could lead the charge for developing R2P outwith the constraints of the Charter. As it stands, R2P has been far diluted from what it was originally envisaged, but the UK could help to strengthen its position in international law as a basis for legitimising intervention. We would encourage using the term R2P within the context of Syria because, as it stands, both the Syrian government and the international community have failed to protect the Syrian people.

44. The next section will go on to consider in more detail whether military intervention should be taken outside of the UN collective security system when the use of military force has not been authorised by the UNSC and will highlight the relevant considerations for states considering taking such action.

SECTION 3—THE USE OF MILITARY FORCE: LEGALITY VS LEGITIMACY

45. One of the most pressing problems faced by the international community is what to do when military force is required to be taken in response to a threat to international peace and security, including where gross human rights violations are being perpetrated by a state, but the UNSC is unable to authorise military intervention under Chapter VII because of the exercise of a veto by a permanent member. In such circumstances the use of military force is legally impermissible and would be unlawful if taken. States are faced with a stark choice between doing nothing and complying with international law or taking action in contravention of well established norms to avert or stop human suffering and restore international peace and security.

¹⁰¹ <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version> (Last Accessed 11 November 2013)

3.1—*Military Intervention without United Nations Security Council Authorisation*

46. It is open to states to take military action without UNSC authorisation and outside of the UN collective security system. This may occur where a state considers that military intervention is absolutely necessary to prevent an imminent threat to international peace and security materialising, to stem an ongoing breach of international peace and security or where it cannot stand idly by in the face of an unfolding humanitarian catastrophe. This was the case when NATO bombed Kosovo in 1999 in order to prevent the ongoing ethnic cleansing of Kosovo's Albanian population, after the coalition of states failed to gain UNSC backing for the intervention.

3.2—*NATO's Intervention in Kosovo*

47. It is widely accepted that the action taken by NATO was unlawful given that the UNSC had not authorised the intervention and it could not be considered to be action taken in self defence. It was however considered to be a legitimate use of force given the need to prevent ongoing gross human rights violations. The late Antonio Cassese, a prominent legal scholar, said of the matter that "from an ethical viewpoint resort to armed force was justified. Nevertheless...I cannot avoid in the same breath that this moral action is contrary to current international law".¹⁰² The Independent International Commission on Kosovo also concluded that the intervention was illegal but legitimate based on an emerging international moral consensus.¹⁰³ It is also important to note that NATO's intervention was never formally criticised which can be considered tantamount to widespread acceptance that it was the correct course of action in the circumstances, despite it amounting to a breach of international law at the time.

3.3—*The Impact of Unlawful Interventions on International Law*

48. Justifying intervention on moral grounds alone is however far from ideal and we must carefully consider the potential impact of such breaches on a fundamental principle of international law prohibiting the unilateral use of force against sovereign states.

49. International law is to some extent based on a mutual reciprocity of recognition and adherence and therefore if a fundamental principle international law, such as the non-use of force, is regularly breached, the credibility and authority of that principle is undermined and states may choose not to adhere to it in the future. This is less of a concern if a rogue states acts in contravention of international law as any such breach is likely to be perceived by the international community as unlawful and unjustifiable. However, if the United Kingdom for example, which has a moral, legal and political authority on the international stage, was to regularly act in contravention of, and with disregard for, international law, whatever the stated objective of military intervention, there is a concern that other states may choose to follow suit. This is a concern as it could eventually result in the gradual disintegration of the international system and a return to a world order regulated solely by politics.

50. However, unlike domestic law, existing international law can be created or amended as a result of state practice. In order for a new customary rule of international law to be established there must be "evidence of general practice accepted as law".¹⁰⁴ Therefore, somewhat confusingly, breaches of international law are one method of bringing about a change in the law. It can therefore be said that if states intervene on humanitarian grounds outside of the UN framework and under the auspices of R2P, a lawful basis for intervention could be created in the future, if there is sufficient state practice coupled with sufficient expression of the view that humanitarian intervention is a lawful exception to the prohibition on the use of force, which is known as *opinio juris*.

3.4—*A New Legal Basis for Humanitarian Intervention*

51. Therefore in order to bring about a change in international law and create a right of humanitarian intervention outside of the collective security framework states need to explicitly adopt and advocate the concept of humanitarian intervention and R2P. It is critically important that a state makes clear that its military action is being taken under the auspices of R2P in order that it can be distinguished from a standard breach of international law with no productive purpose—what can be considered to be a "breach only breach". It appears from the legal advice published by the Conservative government, as set out above, in respect of proposed military intervention in Syria that it was advocating a right of intervention on humanitarian grounds outside of the UN framework and this is to be commended.

52. It is this Centre's position that forcibly military intervention should be taken against those states that perpetrate gross human rights violations against their peoples in order to prevent or stop such atrocities occurring and that such intervention should take place without UNSC authorisation—if this cannot be secured after all reasonable efforts have been made—and provided a thorough consideration of whether intervention is appropriate and capable of achieving the proposed objectives. Attempting to secure UNSC authorisation should

¹⁰² A. Cassese, "Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" (1999) 10 *European Journal of International Law* 23 at 25

¹⁰³ Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (2000), 164

¹⁰⁴ Article 38 (1) (b) Statute of the International Court of Justice

not however be an overly drawn-out process and should not cause a delay in intervention occurring such that the objective of intervention can no longer be substantially achieved.

53. The value of acting cooperatively and with the backing of the international community cannot be overstated and it is this Centre's view that states should always seek UNSC authorisation for military intervention in the first instance, but where this cannot be secured as a result of UNSC deadlock this should not preclude unilateral or multilateral humanitarian intervention under R2P.

54. The protection of human rights is a fundamental objective of our civilised society and we should not allow the perpetual achievement of this objective to be compromised by irresponsible politics and political impasse. Although it is important to observe and comply with international law, this cannot occur where to do so would be morally objectionable and in stark contradiction to our other obligations as responsible members of the international community, such as protecting the most vulnerable people in the world from the gross and heinous excesses of state power. Thomas Franck, a great legal scholar, rightly argues that "international justice is better served by sometimes breaking the law rather than respecting it" and he cites NATO's intervention in Kosovo in support of this proposition.¹⁰⁵

55. The next section will go on to consider whether it is lawful for defensive military action to be taken against a state in anticipation of an imminent breach to international peace and security occurring, but which has not yet materialised.

SECTION 4—PRE-EMPTIVE SELF DEFENCE

4.1—*The Legal Position*

56. As discussed above, it is a well-established rule of international law that self-defence is an exception to the prohibition of the use of force. In order for a state to be allowed to use self-defence they must have been subject to an armed attack within the context of Article 51 of the Charter. A state that has been subject to an armed attack can then intervene to deter the ongoing attack until the UNSC chooses to get involved. A less clear-cut case is when the armed attack has not yet happened but is imminent.

57. Since the Caroline incident in the 19th century, it has been an accepted principle of customary international law that states can defend themselves against an imminent armed attack and thus they don't have to wait until force has been used against them before they can launch a defensive attack. Correspondence between Great Britain and the United States over the incident discussed the position of self-defence in international law and the US Secretary of State set out that self-defence could be employed before an armed attack when "*necessity of self-defence was instant, overwhelming, leaving no choice of means, and no moment of deliberation.*"¹⁰⁶

58. This customary rule has been accepted by the international community within its interpretation of Article 51 of the Charter. The UN High-Level Panel on Threats Challenges and Change has stated that, "*a threatened State... can take military action as long as the threat is imminent, no other means would deflect it and the action is proportionate.*"¹⁰⁷ Furthermore, the former UN Secretary General Kofi Annan stated, in a discussion of self-defence, "*lawyers have long recognized that this covers an imminent attack as well as one that has already happened.*"¹⁰⁸ It is therefore accepted that a state can intervene in another state for the purposes of preventing an imminent attack, provided the action is necessary and proportionate.

59. It is not entirely clear how imminent an imminent attack has to be in order for force to be used. This has led to a debate as to whether pre-emptive self-defence is also acceptable. The legality of pre-emptive self-defence is an important matter, as states face the challenge of how to deal with protecting their territorial integrity from serious spontaneous threats, such as the use of WMD, and thus pre-emptive self-defence may become a basis for intervention that states begin to rely on in the future.

60. Pre-emptive self-defence is the idea that a state can take action to defend their territory and interests even before an attack becomes imminent. Proponents of pre-emptive self-defence (mainly the United States) have argued that imminence is too restrictive a concept, as sometimes it can be too late to deter an imminent attack and action has to be taken sooner. This is particularly true when looking at cases of terrorism or nuclear attacks, as these types of attacks can be so spontaneous that they are impossible to deter effectively. The US has been the main champion of pre-emptive self-defence and attempted to rely on it as a justification for the war in Iraq, as discussed below.

61. It is difficult to find any legal justification for pre-emptive self-defence in international law. Furthermore, most states, including the UK, have rejected the notion put forward by the Bush Doctrine, which is discussed

¹⁰⁵ Thomas M Franck, "Who Killed Article 2 (4)? Or: Changing Norms Governing the Use of Force by States", *American Journal of International Law* 64 (1970) 810 in Ian Hurd, "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World", *Ethics and International Affairs*, 25 no. 3 (2011) pp 293–313

¹⁰⁶ <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e401?rkey=AY2d8N&result=268&q=&prd=EPIL> (Last Accessed 11 November 2013)

¹⁰⁷ *A More Secure World: Our Shared Responsibility*, Report of the High-Level Panel on Threats, Challenges and Change, 2nd December 2004, UN. Doc. A/59/565, para 198

¹⁰⁸ *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, 21st March, 2005, UN. Doc. A/59/2005, para 124

in more detail below. However, that is not to say that pre-emptive self-defence may not be justified in certain appropriate circumstances. If a serious threat to a state can be reliably proven beyond reasonable doubt, then it would seem unfair to require a state to wait until the threat is more imminent before it takes action, as by that point it may be too late.

4.2—*The War in Iraq (2003)*

62. There are two legal bases upon which the UK and the US attempted to justify their intervention in Iraq as lawful under international law. The first of these was that it was an act of pre-emptive self-defence and was necessary to protect their states from a future armed attack. The second argument was a reliance on Resolution 678 (of 1990) of the UNSC.

63. It was argued by the US in particular that the weapons of mass destruction (“WMD”) it believed Saddam Hussein’s government to hold constituted a threat to America and the wider world and thus they could employ self-defence to counteract this. As was established by the *Caroline* case, a state can take action to deter an attack if it is imminent. The Bush administration stretched this anticipatory self-defence concept much further to extend to what is now known as pre-emptive self-defence. The alleged justification for this was that pre-emptive self-defence is necessary as in modern methods of warfare it could be too late to deter an attack once it becomes obviously imminent. This is particularly clear in the cases of terrorism or weapons of mass destruction, as there is no longer a “*visible mobilization of armies, navies, and air forces preparing to attack.*”¹⁰⁹ This notion of pre-emptive self-defence is what has become known as the “Bush Doctrine.”

64. The Bush Doctrine is essentially immortalised within the US’s 2002 National Security Strategy. It stated “We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends.” It furthermore highlighted the agreed fact that states do not have to suffer an attack before they can lawfully take action to defend themselves against an imminent attack. The issue of imminence within the Bush doctrine is what pushes pre-emptive self-defence beyond what is lawful—it would allow states to lawfully use force to defend against what appears to be a remote, unproven threat. This is the main argument against the Bush Doctrine.

65. The second—and more plausible—attempted justification for the invasion relied upon UNSC resolutions from the first Gulf war. This was the position supported by Blair and the UK, as opposed to the above reliance from the US on pre-emptive self-defence. UNSC Resolution 678 authorised the international community to use force to uphold Resolution 660, which requested that Iraq withdraw immediately from Kuwait. At the end of the conflict the UNSC issued Resolution 687 which rescinded the authorisation for the use of force through implementing a ceasefire, including requiring Iraq to destroy all of their biological and chemical weapons and weapons of mass destruction. In 2002, the UNSC in Resolution 1441 held that Iraq had been breaching its obligations under Resolution 687, in particular through not allowing UN weapons inspectors into the country.

66. It was argued by the US and UK that if you read Resolutions 687 and 1441 as one, then the latter was enough to implicitly re-authorise force under 678 without any further UNSC action being needed. The UNSC rejected this interpretation, as it was not clear whether Iraq had sufficiently breached its resolution 687 obligations to justify a revival of Resolution 678. There are strong arguments that can be made on either side of the debate as to whether this intervention in 2003 was lawful, but the general consensus amongst the international community and of academic scholars is that it was not lawful under international law. It must however be recognised that this is a complex legal situation and there are strong arguments that can, and have been made, that the intervention was both legal and justified.

4.3—*The Blair Doctrine*

67. On the 22nd of April 1999 Prime Minister Tony Blair (as he then was) made a speech to the Chicago Economic Club in which he described a “Doctrine of the International Community.” By this he meant that states are now more than ever mutually dependant on one another and their interests are to a certain extent intertwined. The Blair Doctrine is not a doctrine for self-defence for the intervening state or the wider world, but rather a doctrine for defending a domestic population under threat.

68. Within his speech¹¹⁰ Blair outlined the circumstances in which the international community should be intervening in states. He set out five considerations that should be fulfilled before intervention should go ahead:

1. Intervening states must be sure of the reasons for the intervention
2. All diplomatic/peaceful options must be fulfilled first
3. There must be sensible and prudent military operations that can be undertaken
4. Intervening states must be prepared to remain in the country for a long term
5. Are there national interests involved?

¹⁰⁹ US National Security Strategy 2002, available at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/> (Last Accessed 11 November 2013)

¹¹⁰ Full transcript of the speech is available at http://www.pbs.org/newshour/bb/international/jan-june99/blair_doctrine4-23.html (Last Accessed 11 November 2013)

69. Blair did not envisage that these would become absolute tests for when intervention should take place, but he advocated that these are the things that should be considered when contemplating intervention. Legally, it does not matter whether or not these things have been considered—if a unilateral or multilateral intervention takes place outwith the scope of the Charter then it will always be illegal under current international law. However, these considerations do help to legitimise when intervention should take place. More recently Tony Blair has stated, “*I think you intervene when the consequences of non-intervention are worse.*”¹¹¹ He said this when discussing the decision not to intervene in Syria.¹¹²

70. It is the opinion of Mr Blair that the decision not to intervene in Syria has come about because the situation appears more difficult than that in Libya, rather anything to do with the severity of the situation, as it is much worse, and that this is not the correct approach to an intervention policy. He warns that intervention would be hazardous due to the religious tension in the country, but that is also what makes it most important. “*Intervention can be uncertain, expensive and bloody,*” espoused Blair, but he is still a firm supporter of it and so is this Centre. The Blair doctrine has at its heart the protection of humanity and a decision not to intervene when human rights violations are grave is not a noble act, but rather could be devastating for those involved.

4.4—Use of Force Against Non-State Actors in Self Defence

71. There has been increasing discussion in international law since the September 11th terrorist attacks regarding the use of force against non-state actors. In the wake of 9/11 the UNSC, for the first time, passed a resolution stating that force could be used against terrorist organisations. This cemented the growing notion that self-defence can be used against non-state actors. Whilst there may be growing consensus within the international community over the use of force against non-state actors, there is little to no agreement on how this should be implemented.

72. On the face of it, using force against non-governmental groups or individuals is not legal as the rules on force only allow it to be used against another state. However, if a state is subject to an armed attack from a non-state actor then how do they defend themselves against it? This is a complicated matter, as even if the right of self-defence were triggered, the state wishing to exercise that right would have to violate the territorial integrity of another state in order to do so. However, this issue could be circumvented if the intervening state has the permission of the other state to do so.

73. It is also important to bear in mind when attacking non-state actors, that whilst it might necessarily violate the *jus ad bellum* (the law governs when states can resort to warfare), it will not automatically breach the *jus in bello* (the law that governs how warfare is conducted) provided there is a nexus between the attack and an armed conflict. This is an important issue to consider within the context of drone strikes against terrorists.

74. In some instances, the use of force by a non-state actor can be attributed to a state and thus the exercise of self-defence against that state is perfectly justified. In order for an action of a non-state actor to be attributed to a state, that state must have effective control over the actions of that actor. The meaning of effective control was discussed in the ICJ *Nicaragua* judgment. The court established that the US had carried out an indirect use of force against Nicaragua due to their support of the rebels. Effective control thus meant that the state in question must do more than merely finance the non-state actor. This is the issue that comes into play when terrorism is concerned—it has been proven in the past that certain states have financed certain terrorist organisations, but without further evidence of effective control, the actions of those terrorist organisations cannot be attributed to that state.

75. The more pressing issue is whether a non-state actor is capable of carrying out an armed attack within the scope of Article 51. In the *Nicaragua* case, the ICJ set out that only the gravest forms of armed attack would be enough to trigger the right to self-defence. However, since *Nicaragua*, the possibility of an accumulation of events doctrine has opened up. In the *Oil Platforms* case, the ICJ affirmed the high threshold for an armed attack in *Nicaragua* and stated that “*even taken cumulatively*” the events in this case would not have reached it. This has inferred that there is a possibility that the Court would accept that a series of small-scale attacks—like terrorist attacks—could amount to enough to justify triggering self-defence. There is one important counterargument to this viewpoint—the whole purpose of the self-defence doctrine is to allow states to defend themselves from an ongoing attack, but in the case of a series of terrorist attacks, the attacks are normally over before the state can do anything in defence. If the international community was to accept an accumulation of events doctrine then that would place the world in a permanent state of armed attack as a state could claim self-defence any time another terrorist attack takes place.

76. As it stands, the use of force against non-state actors is a legal grey area. Formally it appears to be illegal under international law as states can only traditionally use force against other states. However, there is growing acceptance of the practice in the fight against terrorists, provided a state does not intervene illegally in another state in order to carry out such attacks.

¹¹¹ <http://www.independent.co.uk/news/uk/home-news/tony-blair-how-i-became-prime-minister-of-the-world-8909464.html> (Last Accessed 11 November 2013)

¹¹² <http://www.tonyblairoffice.org/news/entry/tony-blair-intervention-is-bloody-standing-aside-is-worse/> (Last Accessed 11 November 2013)

SECTION 5—THE OBJECTIVES AND CONSEQUENCES OF MILITARY INTERVENTION

77. In the past military intervention taken by the international community to stop or prevent gross human rights violations has often been inconsistent resulting in a lack of credibility. This section will discuss the situations that may warrant intervention, the protection of civilians in conflict situations, possible implications for the intervening states, and lastly the role of the International Criminal Court (“ICC”) in holding perpetrators of war crimes and crimes against humanity to account.

5.1—*Protecting Human Rights*

78. Defining exactly when the protection of fundamental human rights warrants military intervention is an extremely difficult task. Humanitarian interventions generally take place to prevent the pervasive and widespread suffering of the civilian population. A proportionate approach requires that the harm inflicted by military intervention should not outweigh the harm prevented by it. This is known as the “do no harm” principle.

79. This being the case, the prevention of genocide—the deliberate extermination of a large group of people, especially those of a particular religious or ethnic group—is seen as one of the leading examples of when intervention is justified. After all, genocide is often described as the most fundamental of all crimes against humanity. However, if genocide were the only trigger for military intervention, this would clearly set the bar too high. Intervention could also be justified where an assault on the right to life takes place more generally including, but not restricted to, massacres, large-scale attacks on civilians and extra-judicial executions of political prisoners. Similarly, violations of the right to freedom from torture may provide grounds for humanitarian intervention.

5.2—*The Prevention of Genocide*

80. A quick response is vital to prevent genocide, since genocide and ethnic cleansing often occur in the early phases of intra-state conflict.¹¹³ Even where it is not successful in stopping war straight away, external intervention can often mitigate violence against civilians, since it forces potential perpetrators to divert time and resources away from the slaughter of civilians and towards defending themselves. Syria serves as a good example of where a devastating loss of life could have been prevented by earlier intervention instead of international inaction.

81. Genocide Watch issued its first Genocide Alert for Syria in June 2011, pointing out the regime’s widespread attacks on civilians, the detention and execution of its political opponents, as well as the genocidal massacres of whole villages of Sunni Muslims.¹¹⁴ As of August 2013 the total number of overall casualties in the conflict was estimated to be at least 106,000, and a further 1.9 million people have been displaced. Since the rate of killing is accelerating, with the quadrupling of death tolls in a single year, the number is set to rise significantly further still.¹¹⁵ What is more, with the use of chemical weapons by the Assad regime, there is a grave potential for these acts to escalate further into full-scale acts of ethnic cleansing.

5.3—*The Role of Deterrence*

82. The example of Syria also serves to illustrate a further point, namely the importance of the deterrence aspect of humanitarian intervention. In order for humanitarian intervention to have a successful deterrent effect, it is necessary for the international community to adopt a principled and consistent stance on when it will intervene. Failure to intervene in circumstances where it is required, such as where large-scale gross human rights violations are being perpetrated or where a state uses chemical or biological weapons against its people, leads to a loss of credibility and undermines the effectiveness of military intervention as a deterrent to the state against which it is threatened as well as other similar regimes.

83. This is amply demonstrated by the failure of the US and the international community at large to intervene in Syria after the use of chemical weapons by the Assad regime against Syria’s population became known. President Obama had repeatedly declared that the use of such weapons would be crossing a red line, almost inevitably leading to military intervention, but yet no intervention came. In these circumstances collective failure to act almost certainly encouraged the Syrian regime to continue perpetrating human rights violations, unimpeded by foreign interference. The damage inflicted on the credibility of the US and the collective security system in general, by effectively granting Assad impunity, means that similar regimes around the world are likely to take similar threats of intervention less seriously in the future. This drastically weakens the deterrent effect of humanitarian intervention which is disappointing and regrettable.

5.4—*Protecting Civilians During Military Intervention*

84. While one of the principal aims of humanitarian interventions is to protect civilians, conversely it may also serve to exacerbate the suffering of the local population, especially where it is carried out improperly. For

¹¹³ John Western and Joshua S Goldstein, “Humanitarian Intervention Comes of Age: Lessons from Somalia to Libya”, *Foreign Affairs* Volume 90, Number 6, November/December 2011: 48–59.

¹¹⁴ “Genocide Watch Syria”, accessed on October 29 2013 http://www.genocidewatch.org/images/Syria_11_July_7_Genocide_Watch_alert.pdf (Last Accessed 12 November 2013)

¹¹⁵ Julie Lenarz and Simon Schofield, HIC Briefing on Parliamentary Vote on Syria, August 28 2013.

instance civilians may get caught between the warring factions, or alternatively they may be left unprotected in the vacuum that ensues after the toppling of their country's government.

85. For instance, these issues arose during the joint military intervention in Iraq, where US and UK forces ultimately found themselves unable to ensure the security of the country they had invaded. Shortly after the taking of the cities of Basra and Baghdad, foreign forces failed to prevent widespread looting and civil disobedience. Later on they remained powerless to protect the local population from sectarian violence and the rising insurgency.

86. One reason for this is that the military is a blunt instrument, inherently ill-suited to handle the problems likely to arise in the aftermath of military interventions, since it essentially lacks the capabilities to appropriately deal with crowds and lower levels of organised violence. In these circumstances constabulary forces are needed to provide security in an environment which is not yet fully stabilised. Trained in military skills but with a focus on non-lethal use of force, constabulary forces are essentially a hybrid of police and military, whose role is to efficiently defuse potentially violent situations.¹¹⁶

87. In 2004, a study by the U.S. Defense Science Board concluded that US constabulary capabilities were grossly inadequate.¹¹⁷ The same year, several European states founded the European Gendarmerie Force ("EGF"), which had its first deployment in 2007. However, the force which currently consists of constabulary forces from France, Portugal, Spain, the Netherlands, Italy, Romania and Poland¹¹⁸ is too small and too divided to be truly effective. It is suggested here that the UK should strive to significantly enhance its constabulary capabilities and that it would be desirable for the UK to play a leading part in further developing and strengthening the role of the EGF.

5.5—*The Consequences of Military Intervention*

88. Involvement in military intervention may have a number of negative impacts on the intervening state. Firstly, and maybe most obviously there is the financial burden which intervention places on the intervening state. This cost will not be discussed in great detail here, but it can vary immensely depending on duration, extent, and type of the mission. Operations with an unlimited mandate are especially susceptible to uncurbed costs and expenses. Secondly, there are also security costs, which are essentially two-fold: an intervening power may have to fear reprisal attacks on its citizens on foreign soil, who may become a preferred target for kidnappings and executions; and intervention may also increase the risk of domestic terrorist attacks by national terror networks. Both of these were feared by the French after their military intervention in Mali in early 2013, and these fears seem to be at least partially well-founded, since attacks against French citizens in western Africa have markedly increased, with at least 15 French being taken hostage by Islamist extremists.¹¹⁹

89. Furthermore, military intervention may also come at a political cost which can manifest itself both at national and international level. The way an intervention is perceived by the international community in terms of its legitimacy and implementation may impact on a country's standing and reputation within the community. On a national level perceived risk of mission creep and the death of soldiers on foreign soil may lead to "body-bag syndrome" and negative domestic political reactions. Such opposing national pressures may ultimately lead to early withdrawal and a mission's premature termination. A further point worth noting is that military intervention is always associated with a risk that conflict might spill out across the country subject to intervention and into neighbouring states. In this regard international intervention may have potentially destabilising effects on a region. But on the other hand, non-intervention may similarly lead to regional destabilisation, especially where terror networks spread out across porous borders and into neighbouring countries that are often powerless to prevent this.

90. Finally, a risk which may be of more minor concern but should nonetheless be noted here is the potential for incurring civil liability for state action during an intervention. Two recent cases make this possibility more likely. In a historic ruling earlier this year, the Dutch Supreme Court held the state liable for the deaths of three Muslim men during the Srebrenica genocide. While an English court may not necessarily come to the same result, the significance of this judgement should not be underestimated as it marks the first time that a national government has been held to account for the conduct of its peacekeeping troops under a UN mandate.¹²⁰

91. In the UK the Supreme Court recently held that the families of British soldiers killed in Iraq could bring a claim in common law negligence, as well as under human rights legislation against the Ministry of Defence, since the situation fell outside the scope of combat immunity.¹²¹ While it remains to be seen whether the

¹¹⁶ Philip Bobbitt, *Terror and Consent: The Wars For The Twenty-First Century* (Penguin, 2008), 153–169.

¹¹⁷ Defense Science Board, "Transition to and from Hostilities", 2004.

¹¹⁸ What is EUROGENDFOR, accessed on October 29, 2013, <http://www.eurogendfor.org/organization/what-is-eurogendfor> (Last Accessed 12 November 2013)

¹¹⁹ David J Francis, "The regional impact of the armed conflict and French Intervention in Mali", NOREF Norwegian Resource Peacebuilding Centre Report, April 2013

¹²⁰ Netherlands Supreme Court hands down historic judgment over Srebrenica genocide, accessed on October 29 2013, <http://www.amnesty.org/en/news/netherlands-supreme-court-hands-down-historic-judgment-over-srebrenica-genocide-2013-09-06> (Last Accessed 12 November 2013)

¹²¹ Smith and others (FC) (Appellants) v The Ministry of Defence (Respondent), Ellis (FC) (Respondent) v The Ministry of Defence (Appellant), Allbutt and others (FC) (Respondents) v The Ministry of Defence (Appellant) [2013] UKSC 41

families' claims will ultimately succeed before a court, the Secretary of State for Defence has already expressed concern that the ruling could make it more difficult for troops to carry out operations.

92. It must be noted that when conducting military operations UK soldiers are bound by the rules of warfare set down in the Geneva Conventions. The four Conventions and their two Additional Protocols provide rights to the sick and wounded on land and at sea, prisoners of war and civilians during international and non-international armed conflicts. One of the most fundamental principles contained within the Conventions is the distinction between combatants and civilians. Individual or collective breaches of these conventions are war crimes and can result in both civil and criminal liability. It cannot be stressed strongly enough that when considering any intervention that soldiers know these rules and abide by them so as to prevent any unnecessary suffering to civilians.

5.6—*The Role of the International Criminal Court*

93. The need for a world criminal court capable of prosecuting and punishing persons responsible for crimes of international concern, such as genocide, crimes against humanity and war crimes, has long been recognised. The International Criminal Tribunals for Yugoslavia (“ICTY”) and Rwanda (“ICTR”), which were set up ad hoc in 1993 and 1994 to deal with the atrocities committed in these countries, further highlighted the need for a permanent international criminal court to deal with violations of this kind quickly and effectively. Finally the ICC became the first independent and permanent treaty based international criminal court. It was established to help end impunity for perpetrators of the most serious crimes of concern to the international community. The ICC only tries those accused of the gravest crimes—war crimes, crimes against humanity, genocide and, now as a result of the Kampala amendments, aggression—and as a court of last resort it will not act if a case is under investigation by a national judicial system, unless the national proceedings are not genuine.¹²²

94. Unfortunately not all states recognise the jurisdiction of the ICC. 122 countries are currently State Parties to the Rome Statute, which established the ICC. However, some key players in the international system, most notably the US, have so far refused to ratify the Rome Statute. Other states which have not signed up to the ICC include India, China, Israel, and Russia. The absence of such major actors from the community of the ICC weakens the Court’s legitimacy to some extent as well as its operational effectiveness. Moreover, the Court has in the past also been accused of not providing sufficient checks and balances and failing to adequately safeguard the rights of accused persons. Probably the most damaging criticism so far has been the allegation of selective and biased enforcement, labelling the ICC a tool of Western imperialism.

95. Despite the criticism, the existence of an independent international organisation, which can hold perpetrators of the gravest crimes accountable, is of vital importance. Securing justice at an international level becomes especially crucial in the absence of a state government who is willing to hold culprits to account. There can be no impunity for the perpetrators of war crimes and crimes against humanity, and where the individual state is unable or unwilling to bring an investigation, the international community has to step in to fill the void. Since the ICC performs such an important function, steps should be taken to strengthen its legitimacy and operational effectiveness as well as to address the other criticisms labelled against it.

SECTION 6—EXIT STRATEGIES AND THE LAW OF OCCUPATION

96. Some of the most serious political and institutional issues concerning humanitarian intervention arise after military combat operations have been completed. Yet, while peace and state building operations have received considerable attention over the past decades, the subject of exit strategies, which conclude the final stages of such operations, has often largely been ignored. However, the importance of attempting to formulate a sound exit strategy prior to engaging in humanitarian intervention cannot be overstated. The paragraphs below will give a brief outline of the law on military occupation, followed by a discussion of what exit strategies are, and the challenges in formulating precise transitional strategies at the outset of an intervention.

6.1—*Military Occupation*

97. Article 42 of the 1907 Hague Regulations on Land Warfare¹²³ gives a definition of “occupation”, which provides that a territory becomes occupied if, in the conflict between two or more states, it is “actually placed under the authority of the hostile army”. This definition has three notable aspects: Firstly, it is strictly limited to interstate conflicts. Secondly, foreign forces must actually be present on the state territory; coercion outside the state territory, no matter how effective, is not enough to constitute an occupation. And lastly, the presence of foreign troops in itself does not constitute occupation—the territory must be “under the authority of the foreign power”. As the ICJ has held, foreign forces must have “substituted their own authority” for that of the occupied regime.¹²⁴

98. In addition, the duties of the occupying power are spelled out primarily in Articles 42 to 56 of the Hague Regulations together with the Fourth Geneva Convention on the protection of civilians (GC IV, Articles 27–34

¹²² International Criminal Court, accessed on October 29 2013, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx (Last Accessed 12 November 2013)

¹²³ Convention Respecting the Laws and Customs of War on Land, October 18, 1907, *Regulations Respecting the Laws and Customs of War on Land*, Annex, 36 Stat. 2277, 1 Bev. 631.

¹²⁴ *Case Concerning Armed Activities on the Territory of the Congo*, 325.

and 47–78),¹²⁵ certain provisions of Additional Protocol I to the Geneva Conventions,¹²⁶ and customary international humanitarian law. Amongst other things, agreements between the occupying power and the local authorities cannot deprive the population of the protection afforded by international humanitarian law (GC IV, Art. 47) and protected persons themselves can in no circumstances renounce their rights (GC IV, Art. 8).¹²⁷

6.2—*What Are Exit Strategies?*

99. An exit strategy is a transitional plan for disengagement and ultimate withdrawal of external parties from a state's territory, ideally after having attained their principal objectives. Nevertheless, an exit does not necessarily mark the end of all international involvement.¹²⁸ So far there has been little explicit discussion of exit strategies in US military doctrines. Similarly, the UN has not issued any guidance on appropriate exit strategies for humanitarian intervention. The term did not find common application in foreign policy until the US engagement in Somalia in 1993, which is often hailed as the prime example of an ill thought-out and rushed exit. In thinking about exit strategies, it is important to emphasise the fact that an exit is a process, not an event; they may therefore more appropriately be described as transitional strategies.

6.3—*Elements of a Sound Exit Strategy*

100. Prior to a more detailed discussion on the elements of exit strategies, it is worth noting that the grounds for exit generally lie in the accomplishment of key elements of a mission's mandate. As a result, the content and suitability of a mission's mandate are of particular relevance. Because the success of an exit strategy depends to a great extent on an appropriate entrance and intermediate strategy, even a sound transition cannot make up for serious shortcomings in the earlier two.

101. Above all, a successful exit strategy will take account of local circumstances, and any factors that may impede or further exit. For example the existence of a functioning state prior to intervention will speed up the transitional process, while failed or weak states which lacked an effective administration and advanced economy prior to the outbreak of conflict will be much harder to stabilise.

102. In terms of grounds for exit, consolidated peace should be the minimal objective of post-conflict state building operations. Consolidated peace is self-sustaining and characterised by the absence of major threats to public security, and while its ultimate attainment can only be assessed after the exit of the intervening forces, it is generally said to require the establishment and maintenance of basic security, the development of effective and legitimate government institutions, together with the creation of basic conditions for social and economic wellbeing.

103. When it comes to measuring and evaluating the progress of transition, benchmarking can be a useful tool. Benchmarks are pre-established standards of achievements, the attainment of which is expected to contribute to the achievement of an operation's overall objective. Nevertheless, to be of value benchmarking needs to be concrete and precise with the use of meaningful indicators. For example it is unhelpful and misleading to measure inputs rather than outcomes. At the same time performance indicators need to be applied consistently across the board by the different actors so as to achieve comparable outcomes.¹²⁹ In the end, the division of deadlines and timetables for a phased exit can have both positive and negative effects. On the one hand, rigidly fixed timetables make it difficult for actors to respond to unanticipated events, on the other hand their predictability may be desirable because it ensures local and international participants that the operation will not continue indefinitely.

6.4—*Challenges in Developing a Sound Exit Strategy*

104. There can be a number of obstacles to the creation of a successful exit or transitional strategy. Most importantly, exit strategies are delusive; the question of departure can never be fully planned in advance. Instead exit strategies are dependent on a large number of contingent factors and the actions of autonomous parties which are often impossible to foresee in advance. This necessitates flexibility and the continuous re-evaluation of goals, objectives, and timeframes during the course of an intervention. As mentioned earlier, exit strategies are to a large degree dependent on sound entrance and intermediate strategies and even a sound transitional strategy may not be able to make up for serious short-comings in these other areas. Finally, exit strategies can only be properly evaluated retrospectively, as their consequences often only become apparent years later when the relevant territory either remains stable or descends back into conflict.

105. In conclusion, while a clear road map to an exit at the outset of an intervention is unrealistic, the importance of planning for exit even prior to an operation cannot be overstated. Transitional strategies are fundamentally influenced by the mandate of an operation, hence it is important to continually review them in light of the mission's progress. Above all, greater flexibility and patience is required. Building institutional

¹²⁵ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

¹²⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

¹²⁷ Occupation and International Humanitarian Law, last modified April 27, 2012, <http://www.icrc.org/eng/resources/documents/misc/634kfc.htm> (Last Accessed 12 November 2013)

¹²⁸ Richard Caplan, *Exit Strategies and State Building* (Oxford University Press 2012): 3–16.

¹²⁹ Richard Caplan, "Devising Exit Strategies", *Survival: Global Politics and Strategy*, 54:3, 111–126.

capacities often requires a lot more time than originally anticipated. Thus it is important to resist the temptation for a quick fix. Otherwise, a rushed exit may serve to unravel all the hard-fought for goals of an intervention.

SECTION 7—CONCLUSION

106. As can be seen from our extensive consideration and analysis of the legal framework pertaining to military intervention, it should not be taken lightly and without a thorough consideration of the legal position, the benefits and drawbacks of intervention, operational capacity and planning issues. However, in pressing cases of humanitarian catastrophe, states need to be willing to intervene quickly and without undue hesitation. It is important when considering intervention that the intervening state gives due regard to the impact that this could have on the ground, versus the impact that not intervening would have.

107. The United Kingdom is bound by both the UN Charter and customary international law. Any use of force taken outwith the scope of these legal rules are prima facie illegal under international law. Due to these rigorous rules in international law on the use of force, there is little scope for application of humanitarian intervention legally at the present time. However, it is still seen as legitimate in several circumstances, such as egregious and systematic human rights violations, as was demonstrated in Kosovo.

108. We believe that humanitarian intervention should occur without UNSC authorisation when the UNSC is deadlocked and there are ongoing atrocities that need to be halted. It is this Centre's opinion that the Responsibility to Protect doctrine could provide a foundation on which a legal right to intervene in states for humanitarian purposes could be developed and established in international law. Whilst, as has been discussed, the current conception of R2P does not provide scope for intervention outwith the Charter, we believe that it should do and that the UK could take the lead in advancing a legal basis for intervention within the R2P framework.

109. As well as intervening in the name of humanitarian intervention, states can also intervene in the pursuit of self-defence. The right of self-defence is not disputed in international law. As has been explored, pre-emptive self-defence is a more disputed right, but in appropriate circumstances—namely, serious security threats—it could be seen to be a legitimate form of intervention. Intervening in pursuit of non-state actors following terrorist activity is becoming more and more accepted in international law, particularly following the accumulation of events doctrine.

110. It is important that when deciding to intervene states also give considerable thought to the consequences that intervention could have, as well as exit strategies. Part of the Blair Doctrine encapsulated the fact that states have to be prepared to go the long haul when intervening and shouldn't just consider the short-term implications. States suffer serious problems in the aftermath of any type of intervention and it is the responsibility of the intervening state to help rebuild. This is important for ensuring that the conflict does not reignite at a later date.

111. This concludes a comprehensive overview of the legal issues that the Defence Committee should consider when determining the future of the UK's intervention strategy.

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1. This is a submission of written evidence in response to the call published by the House of Commons Defence Select Committee ("the Committee") concerning its inquiry on "Intervention: Why, When and How?" The main questions of the inquiry are: 1) what is the strategic thinking behind UK intervention strategy; and 2) What should intervention be used for? This submission made in my personal capacity as an academic lawyer specialising in public international law.

2. I have submitted this evidence in order to assist the inquiry in its examination of the role played by legality in the strategy of the Government in armed interventions. It consequently focuses upon the following sub-themes of the inquiry: 1) The legitimacy of intervention (legality and political and public support (including communication strategies)); 2) The implications of Treaty and international obligations; and 3) How are decisions to intervene taken? Although this submission is intended to outline the legal issues arising from armed intervention, it focuses upon the abortive humanitarian intervention in Syria as its principal case study.

In particular, it illustrates the important role played by the House of Commons in its defeat of the Government motion of 29 August 2013¹³⁰ not only in the decision by the Government not to intervene but also for the future development of the law of humanitarian intervention.

3. Whilst based upon a draft paper concerning the legal consequences of the abortive humanitarian intervention in Syria by the United States of America and its allies—in particular, the implications for the legal position of the UK on the lawfulness of humanitarian intervention—the submission has been tailored to address the terms of reference for this inquiry. It addresses: 1) the use of force in international law; 2) the legality of the abortive Syrian intervention; and 3) assessing the United Kingdom legal position on humanitarian intervention. A summary of conclusions and recommendations is provided at the end of the submission.

THE LAWFULNESS OF THE DOCTRINE OF HUMANITARIAN INTERVENTION

The use of force in international law

4. The principal source of international law on the use of force is the Charter of the United Nations 1945. This provides for a general prohibition on the use of force in international relations¹³¹ and a corresponding duty to resolve international disputes through peaceful means (eg—negotiation, mediation, arbitration or adjudication).¹³² The general ban is subject to two express exceptions: 1) authorisation of “forcible measures” by the UN Security Council under Article 42 of the Charter; and 2) individual or collective self-defence under Article 51 of the Charter.

5. The UN collective security system charges the Security Council with “primary responsibility for the maintenance of international peace and security”, for which purpose the Member States “agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”¹³³ Whilst the Security Council is the primary actor in international peace and security, it is not the exclusive actor. The UN General Assembly has claimed the power to act to restore international peace and security where, due to a permanent member veto in the Security Council (as opposed to a collective decision not to act in which the veto is not exercised), the Security Council is incapable of doing so.¹³⁴ The “Uniting for Peace” procedure has been invoked on ten occasions, most recently in relation to the occupied Palestinian territories in 2003. Despite initial objections in the 1950s (especially by the Soviet Union) its lawfulness has subsequently been accepted in practice¹³⁵ and affirmed by the International Court of Justice as the primary judicial organ of the United Nations.¹³⁶

Humanitarian intervention as customary international law

6. Although the doctrine of humanitarian intervention has a long lineage in international law scholarship,¹³⁷ it was only in the 1990s that States began to consider it as an alternative legal basis for the use of force.¹³⁸ In a gradual shift from initial scepticism to strong support in the early 1990s, the United Kingdom has asserted that in the event of a veto in the Security Council individual States may unilaterally use force, subject to certain conditions, to alleviate a compelling and urgent situation of extreme humanitarian distress demanding immediate relief. Whilst the United Kingdom invoked this doctrine in relation to Operation Haven concerning the protection of Iraqi Kurds in the 1990s, the United States of America did not do so, relying instead upon implied authorisation by Security Council Resolution 1996.

7. Even if the Article 103 problem is disregarded, as the Charter itself provides no basis the doctrine of humanitarian intervention must still gain acceptance as a norm of customary international law¹³⁹ by the international community of States. To render a purported application of humanitarian intervention lawful, it must have gained general acceptance prior to the occasion in which it is invoked. Consequently, it is necessary to analyse the development of the doctrine in the years preceding the Syrian case in 2013 to determine whether it had been accepted as law.

¹³⁰ Although the vote of the House on the Opposition amendment is also relevant, this submission focuses upon the vote of the Government motion as it directly pertains to its central issue of divergent Government and House of Commons positions on legality.

¹³¹ Charter, Art. 2(4). See further *Corfu Channel Case (United Kingdom v. Albania)* ICJ Rep. (1949) 4, 34; *Military and Paramilitary Activities in and around Nicaragua (Nicaragua v. United States of America)* ICJ Rep. (1986) 14, para. 202. For detailed commentary of each Charter provision cited in this submission, see Simma *et al.* (Eds), *The Charter of the United Nations: a Commentary* (2012).

¹³² Charter, Arts 2(3), 33(1).

¹³³ Charter, Art. 24(2).

¹³⁴ UN General Assembly Resn 377A ('Uniting for Peace'), 3 November 1950.

¹³⁵ Binder, 'Uniting for Peace Resolution (1950)', *Max Planck Encyclopaedia of Public International Law* (August 2006), para.23.

¹³⁶ *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory (Advisory Opinion)* ICJ Rep. (2004), 136, paras 26–32.

¹³⁷ Brownlie, *International Law and the Use of Force by States* (1963), 338–347.

¹³⁸ Gray, *International Law and the Use of Force* (2008), 35–37.

¹³⁹ In addition to treaties, custom is the second main source of international law—Art.38(1) Statute of the International Court of Justice 1945. The two well-known criteria for the formation of customary law are: 1) the practice of States; and 2) the legal opinions or positions of States (*opinio iuris sive necessitatis*). Crudely put, the former criterion entails ‘what States have done’ whereas the latter concerns ‘why (legally) States have done it’. The formation of a customary rule is necessarily a retrospective exercise: to determine whether a customary rule exists, international courts, scholars and others examine the precedents of State practice to distil whether the rule commands sufficient support amongst States.

8. The aerial bombardment undertaken by NATO Member States in Kosovo in 1999 tested the legality of humanitarian intervention. Amongst NATO Member States, only the United Kingdom and Belgium invoked the doctrine to justify their uses of force.¹⁴⁰ Other NATO Member States not only did not invoke it in the *Legality on the Use of Force Cases* before the International Court of Justice but some (eg—Germany and the United States of America) argued that the operation was not to be seen as a precedent for future action.¹⁴¹ The reaction amongst Russia, China and the Non-Aligned Movement Member States to intervention without Security Council authorisation was overwhelmingly hostile.¹⁴²

9. In the United Kingdom, the question of legality was central. Although the Government asserted that the doctrine of humanitarian intervention provided a legal basis for the operation by having gained prior acceptance by the international community of States as a norm of customary international law, in its inquiry into the legality of the operation the Foreign Affairs Select Committee of the House of Commons concluded: 1) at the very least, the doctrine of humanitarian intervention has a tenuous basis in current international customary law, and that this renders NATO action legally questionable; and 2) NATO's military action, if of dubious legality in the current state of international law, was justified on moral grounds.¹⁴³ These conclusions were reached with the benefit of evidence from highly distinguished international lawyers.¹⁴⁴

10. In the 2000s, the emergence of the Canadian-inspired “responsibility to protect” political doctrine saw a renewed emphasis placed upon the UN collective security system and the doctrine of humanitarian intervention dropped from the international agenda.¹⁴⁵ In the practice of the past six years the Security Council was the forum for deciding whether to undertake collective security action, most notably in the case of Libya (2011).¹⁴⁶ Until the Syrian example of 2013, there was no attempt after Kosovo to invoke the doctrine of humanitarian intervention to justify an armed intervention.

The problem of Article 103

11. In assessing the lawfulness of the doctrine, an important point is that Article 103 of the Charter provides: “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” This priority clause provides for the resolution of conflicts of obligations for States.¹⁴⁷ Its significance is to legally entrench the primacy of the collective security system of the United Nations, including the general prohibition of the use of force.

12. The legal problem that this presents for proponents of unilateral humanitarian intervention is that, even if the doctrine were to be accepted by the international community, Article 103 obliges States to prioritise the Charter rules on the use of force outlined above. To remove this impediment, amendment to the UN Charter would be required. The United Kingdom has invoked Article 103 on several occasions to excuse breaches of human rights obligations due to the need were to implement overriding obligations deriving from UN Security Council decisions.¹⁴⁸

ASSESSING THE LEGAL POSITION OF THE UNITED KINGDOM

13. As indicated above, since the early 1990s the United Kingdom has been the leading proponent of the doctrine of humanitarian intervention. However, its efforts to persuade the international community of States to accept the legality of the doctrine have proved to be unsuccessful. Although the state of international law at the time of the proposed Syria operation rejected the doctrine, the abortive operation nevertheless presents a fresh opportunity to assess the legal position of the United Kingdom and other States with reference to the two criteria for customary international law: 1) State practice; and 2) opinion as to law (*opinio iuris*).

14. Unlike in national legal systems, public international law lacks for most legislative purposes a centralised authority. In its centrifugal system, the primary legislators are States which make law by two principal means:

¹⁴⁰ *Ibidem*, 42, 45.

¹⁴¹ *Ibidem*, 47.

¹⁴² *Ibidem*, 52.

¹⁴³ House of Commons Foreign Affairs Select Committee Fourth Report (23 May 2000), 132, 138.

¹⁴⁴ Professor Christopher Greenwood QC of the London School of Economics, Mr Mark Littman QC, Professor Vaughan Lowe of Oxford University, Professor Ian Brownlie QC (Oxford University), Professor Christine Chinkin (University of Michigan), Professor Peter Rowe (Lancaster University) and Professor Bruno Simma (Ludwig-Maximilians-Universität, Munich). The Attorney General declined to submit evidence on 'a matter as sensitive as this', citing the confidentiality of Law Officers' advice to Government. The submissions were published in volume 49, issue 4 (2000) of the *International and Comparative Law Quarterly*. See also, e.g.—Wheatley, 'The Foreign Affairs Select Committee Report on Kosovo: NATO Action and Humanitarian Intervention', 5(1) *Journal of Conflict and Security Law* (2000), 261–273; La primarité des droits de l'homme: licéité ou illicéité de l'intervention humanitaire' and Flauss, la primarité des droits de la personne: licéité ou illicéité de l'intervention humanitaire' in Tomuschat (Ed.), *Kosovo and the International Community: A Legal Assessment* (2002), 65–102.

¹⁴⁵ Simma, *supra* note 2, 1207–1210, 1225, 1230.

¹⁴⁶ *Ibidem*, 1216–1218.

¹⁴⁷ See further 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission (April 2006), UN Doc. A/CN.4/L.682 168–173.

¹⁴⁸ E.g.—App.No.27021/08 al-Jedda v. United Kingdom (2011) 53 E.H.R.R. 23, paras 87–92; Case C-402/05 Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities [2008] European Court Reports I-06351, para. 276.

1) treaties; and 2) custom. Whereas treaties are concluded through relatively clear forms,¹⁴⁹ custom remains a crude instrument. In 2012, the International Law Commission¹⁵⁰ decided to include the topic “Formation and evidence of customary international law” in its programme of work. In light of the importance of the work of the Commission,¹⁵¹ this indicates both the importance of the topic and its underdeveloped state.

15. Practice can be generated by any organ of a State, in particular by those with competence in the subject-matter of the rule concerned.¹⁵² For example, a resolution by the London Borough of Islington regarding the doctrine of humanitarian intervention would not manifest the practice of the UK in light of that State organ’s lack of competence in foreign affairs. By contrast, the note published by the Office of the Prime Minister¹⁵³ on 29 August 2013 (entitled “Chemical weapon use by the Syrian regime: UK government legal position”) and incorporated into the statement by the Prime Minister in the House of Commons on 29 August 2013.¹⁵⁴ However questionable in quality, that summary constitutes relevant practice for the purpose of defining the legal position of the UK—as does the vote of the House of Commons.

16. The criterion of *opinio iuris* entails a subjective expression by a State of its legal position. This can either entail a view as to the State of the law today or an opinion as to what the law ought to be tomorrow. Leaving to one side the paradoxes well-known to international lawyers in this field, the prominence of the question of the legality of humanitarian intervention in the Government motion, Opposition amendment and debate in the House, in my view, renders the votes of the House an expression of *opinio iuris* for the purpose articulating the legal position of the United Kingdom. The problem created thereby is that the decision of the House rejecting the Government motion necessarily creates an inconsistency between the long-held Government legal position on humanitarian intervention and the newly-expressed view of the House.

17. The note published by the Office of the Prime Minister (“the Note”) does not constitute legal advice in the true sense of the term, namely, as an independent opinion produced by a lawyer who accepts professional responsibility for it. It is not signed by the Attorney General and is not attributed to him. It is consequently best-treated as the collective view of the Cabinet, or alternatively as the individual view of the Prime Minister. Although it is not clear to what degree the Note is based upon legal advice provided by the Attorney, its value as a definitive statement of the legal position of the United Kingdom is diminished by the fact that the Attorney (unlike in the case of Lord Goldsmith concerning Iraq) did not undertake personal responsibility for it through a ministerial statement to the House of Commons.¹⁵⁵

18. In the Note, the Government expressly based the legality of its proposed armed intervention in Syria upon humanitarian intervention.¹⁵⁶ The Note asserts: “If action in the Security Council is blocked, the UK would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime.”¹⁵⁷

19. The Note contains neither analysis of international law nor underpinning for its bald assertion that “under international law” the doctrine of humanitarian intervention is lawful. This lack of substantiation further devalues the Note as an authoritative statement of the legal position of the country. Whilst additional problems arise concerning the assertion that the criteria set out for humanitarian intervention applied to the facts of the Syrian scenario, this is not the focus of this evidence.

20. The Note was cited by the Prime Minister in proposing his motion to the House of Commons on 29 August 2013. The motion to the House, *inter alia*: “Notes that the use of chemical weapons is a war crime under customary law and a crime against humanity, and that the principle of humanitarian intervention provides a sound legal basis for taking action”.¹⁵⁸ In his statement, the Prime Minister asserted: “We have a summary of the Government’s legal position, which makes it explicit that military action would have a clear legal basis.”¹⁵⁹ A number of interventions and responses in the debate addressed the question of legality.¹⁶⁰ It is clear that legality was not secondary or peripheral to the vote but, to the contrary, was a core issue at the

¹⁴⁹ See the Vienna Convention on the Law of Treaties 1969, Part II.

¹⁵⁰ The International Law Commission is a committee of experts created in 1947 by the UN General Assembly to work for ‘the promotion of the progressive development of international law and its codification’.

¹⁵¹ It has been instrumental in the inspiration of a number of important treaties and other works of international law, such as the Vienna Convention on the Law of Treaties 1969, the United Nations Convention on the Law of the Sea 1982, the Statute of the International Criminal Court 1998 and the Articles on the Responsibility of States for Internationally Wrongful Acts 2002.

¹⁵² Examples of practice include: diplomatic correspondence, policy statements, press releases, opinions of government legal advisers, official manuals on legal questions, comments by government on ILC drafts, national legislation and international and national judicial decisions. See, e.g.—Crawford, *Brownlie’s Principles of Public International Law* (2012), 24.

¹⁵³ <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position>.

¹⁵⁴ HC Deb, 29 August 2013, col. 1426.

¹⁵⁵ The first question in the House of Commons debate was ‘why [the Prime Minister] has refused to publish the Attorney-General’s full advice’—HC Deb, 29 August 2013, col. 1426. The Prime Minister replied: ‘There had been a long-standing convention, backed by Attorney-Generals of all parties and all Governments, not to publish any legal advice at all. This Government changed that. With the Libya conflict, we published a summary of the legal advice. On this issue, we have published a very clear summary of the legal advice and I urge all right hon. and hon. Members to read it.’

¹⁵⁶ *Supra* note 25, para. 2.

¹⁵⁷ *Ibidem*, para. 4.

¹⁵⁸ HC Deb, 29 August 2013, col. 1426.

¹⁵⁹ *Ibidem*.

¹⁶⁰ *Ibidem*, cols 1426–1427, 1429, 1434–1435, 1438–1439, 1441, 1443–1444, 1447, 1453–1455, 1458, 1460, 1462.

forefront of the debate. Concordantly, this enhances the legal value of the decision of the House to reject the lawfulness of the principle of humanitarian intervention.

21. The constitutional position suggests that the House of Commons vote does not have the effect of defining the legal position of the United Kingdom on humanitarian intervention. As the Royal Prerogative on uses of force remains intact, it was open to the Government to proceed with its own view concerning the lawfulness of humanitarian intervention in its exercise of the Prerogative. On this approach, notwithstanding the political import of the vote of the House, it is *per se* valueless for the purpose of stating the legal position of the country.

22. However, the constitutional position appears to be qualified by an emerging convention that the House of Commons be consulted prior to taking military action. Moreover, on this specific occasion, the significance of the vote is enhanced by the decision of the Government to not exercise the prerogative in response:

“Let me say that the House has not voted for either motion tonight. I strongly believe in the need for a tough response to the use of chemical weapons, but I also believe in respecting the will of this House of Commons. It is very clear tonight that, while the House has not passed a motion, the British Parliament, reflecting the views of the British people, does not want to see British military action. I get that, and the Government will act accordingly.”¹⁶¹

This suggests that, in practice, the vote does carry normative weight in the exercise of the Royal Prerogative. This weight was linked to the electoral mandate of the House of Commons, which imbues its collective will with magnified importance.

23. At present, it is too soon to reach a definitive conclusion concerning whether the legal position of the United Kingdom has in fact changed. Although the constitutional position is that the Royal Prerogative may be exercised regardless of the view of the House of Commons, the particular circumstances of this vote vested it with such persuasive weight such that the Government *chose* to respect the will of the House concerning the lawfulness of humanitarian intervention. Consequently, it appears the legal position of the United Kingdom on humanitarian intervention is changing: whereas the country has supported the doctrine since Kosovo, it will no longer do so.

24. The implication of this conclusion is that the Government will cease to support the principle of humanitarian intervention in its conduct of foreign affairs in the United Nations and elsewhere. Although it is formally open to the Government to pursue its own legal position, its undertaking to “respect the will of [the] House of Commons” and the invidious inconsistency of ignoring the vote in its future position on humanitarian intervention render such a course inadvisable. At the least, the credibility of its legal position in relation to other States would be undermined by the fact that the House of Commons is on record as adopting a contrary position.

EXECUTIVE SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

25. In assessing the legality of the abortive armed intervention in Syria, this analysis offers the following conclusions. First, evaluation of State practice in the two decades preceding 29 August 2013 shows that humanitarian intervention had clearly been rejected by the international community. In particular, fallout from the principal precedent of Kosovo shows that not only were NATO Member States disunited on the question but the wider international community rejected the legal case put forward by the United Kingdom. In addition, the majority of international lawyers in the United Kingdom considered the intervention to have been unlawful.

26. Second, even if humanitarian intervention had been customary international law, the Article 103 would have displaced it by giving priority to the collective security system provided by the UN Charter, including the general prohibition on the use of force in international relations.

27. Third, based upon the first two conclusions, the lack of a legal basis for the proposed armed intervention in Syria would have rendered such an operation an unlawful use of force.

28. Fourth, though it is too early to make a definitive assessment, the Government’s acceptance of the will of the House of Commons appears to be changing the legal position of the United Kingdom with respect to the lawfulness of humanitarian intervention.

29. In addition, I propose the following recommendations for adoption in the Committee’s report. First, the renunciation of the doctrine of humanitarian intervention by the Government in its conduct of foreign affairs. Pragmatically, the continued promotion of the doctrine is arguably not tenable in light of its rejection by the House of Commons. Furthermore, the circumvention of the UN system entailed in humanitarian intervention is inconsistent with the United Kingdom’s invocation of Article 103 in order to assert the primacy of Security Council decisions.

30. Second, the adoption of a policy to utilise the General Assembly “Uniting for Peace” procedure where a veto in the Security Council frustrates an attempt to intervene on humanitarian grounds. Not only is this procedure recognised as lawful but it provides an invaluable basis of multilateral consent and cooperation for the conduct of humanitarian intervention. By persuading a majority of the international community of States

¹⁶¹ HC Deb, 29 August 2013, col 1556.

to endorse the proposed intervention, a clear foundation can be provided not only for the lawfulness of the operation but also for its support by the House of Commons and the country.

7 February 2014

Written evidence from the Foreign Affairs Committee

As you may know, the Foreign Affairs Committee has been conducting an inquiry into “Government foreign policy towards the United States”. We will publish our Report shortly. Post-2001 military interventions by the UK and US in third countries were one of our areas of interest. In the event, in our Report we discussed the implications of the two countries’ August 2013 decisions over possible military action in Syria but we did not discuss the general issue in any depth. This was partly because we were aware of your Committee’s current inquiry into intervention.

We understand that your Report on intervention is currently in preparation. In that light, we wanted to make sure that your Committee was aware of a letter that we received from the Rt Hon Hugh Robertson MP, FCO Minister of State, dated 14 January 2014, in response to a letter of ours posing questions about the Government’s understanding of humanitarian intervention and the Responsibility to Protect. We have published Mr Robertson’s letter on our website as evidence to our US inquiry (as USA 19, at www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries/parliament-2010/united-states). We felt that it was an important statement of the Government’s position. The letter was picked up, for example, in the US international law blog www.justsecurity.org (on 30 January 2014).

With respect to the US, two points arose in our inquiry that you may wish to be aware of as you consider your Report:

- i. Our sense is that, when considering possible discretionary military interventions overseas, the UK tends to give greater weight to international legal considerations than does the US. This applies both to the executive’s internal deliberations and to the public presentation of the case for any proposed military action. This tallies with our wider understanding that legal advisers and considerations of international law play a greater role in FCO policy-making than in some other foreign ministries.
- ii. Mr Simmonds’ letter confirmed that the UK Government is of the view that the use of force may be lawful even without an authorising UN Security Council Resolution, if action in the Security Council is blocked and the use of force is necessary to avert a humanitarian catastrophe. Our understanding is that the UK is almost alone among UN Member States in holding this view, and, in particular, that its position is not necessarily shared by the US. UN Member States apart from the UK may be more inclined to take the view that the use of force under these circumstances would not be lawful but might be legitimate (on the precedent of the NATO action in Kosovo in 1999).

The UK is still most likely to undertake discretionary military interventions overseas together with the US. It therefore seems to us that these differences in the two states’ approaches to relevant international law are also relevant to any general consideration of possible future discretionary military intervention by the UK.

We are happy for you to publish this letter as part of the evidence for your inquiry into intervention.

Rt Hon Sir Richard Ottaway MP
Chair

March 2014
