

UN Peacekeeping, Humanitarian Intervention and Just War theory.

The Charter of the United Nations (UN)ⁱ says that member nations are to refrain, in their international relations, from the ‘threat or use of force against the territorial integrity or political independence of any state’.ⁱⁱ It allows for only two exceptions. The first is self-defence, ‘if an armed attack occurs against a member, until the Security Council has taken measures to maintain international peace and security’.ⁱⁱⁱ The other is when the Security Council has ‘determined the existence of any threat to the peace, breach of the peace or act of aggression’ and considers that lesser measures would be inadequate or have already proved to be so. The Council may then take ‘such action by air, sea or land forces as may be necessary to maintain or restore international peace and security’.^{iv} Action of this kind is known as Chapter VII action and is always referred to in the relevant Security Council Resolution (SCR)^v as the use of ‘all necessary means’.

UN Peacekeeping

Odd as it may seem, much the most frequent use of armed force under the aegis of the UN - known as UN Peacekeeping - falls into neither of these categories. There is no explicit warrant for such action in the Charter and it has had to be improvised on the hoof. But since 1948 a clear body of precedent has built up around it. The key features are:

- a. the more or less voluntary consent of all parties to the presence and activities of the mission
- b. the peacekeepers’ impartiality in relation to the parties
- c. the minimum use of force, only in the last resort and only in self defence. They have no enemies and are not there to win.^{vi}

There have been 59 such operations all told, costing the lives of some 1900 peacekeepers and around \$30 billion. Sixteen such operations are now current, involving nearly 65,000 military troops and civilian police drawn from 102 countries. Since the ‘Blue Helmets’ won the Nobel Peace Prize in 1988 they have brought peace and democracy to Namibia, Cambodia, El Salvador, Mozambique and East Timor and continue to serve as a key stabilizing factor in such diverse conflicts as the Golan Heights, Sierra Leone, Cyprus, Georgia, Western Sahara and Kosovo^{vii}. But in the mid-1990s peacekeeping on this model was discredited by two notorious disasters. In Rwanda, between April and June 1994, Hutu

militias systematically slaughtered many hundreds of thousands of their Tutsi compatriots. In Srebreniça, during a few days in July 1995, Serb forces massacred in cold blood some 5000 Muslims. In both cases the victims were supposedly under the protection of UN forces. Reports commissioned by the Secretariat of the UN left in no doubt the faulty concept that lay at the root of these disasters. In the words of the report on Srebreniça published in December 1999: ^{viii}

'We (the UN) tried to create - or imagine - an environment in which the tenets of peacekeeping - agreement between the parties, deployment by consent and impartiality - could be upheld... An arms embargo with humanitarian aid and the deployment of a peacekeeping force ... were poor substitutes for more decisive and forceful action. ...The cardinal lesson ... is that a deliberate and systematic attempt to terrorise, expel or murder an entire people must be met decisively with all necessary means. ... In Bosnia ... the international community tried to reach a negotiated settlement with an unscrupulous regime. [But] it required the use of force to bring a halt to the planned and systematic killing and expulsion of civilians.'

In March 2000, the Secretary-General convened a Panel under the chairmanship of Lakhdar Brahimi, a former foreign minister of Algeria, to carry out a review of the United Nations peace and security activities and to make recommendations. This panel reported in August 2000^{ix} and their principal recommendation was clear:

'Once deployed, United Nations peacekeepers must be able to carry out their mandates professionally and successfully and be capable of defending themselves, other mission components and the mission's mandate, with robust rules of engagement, against those who renege on their commitments to a peace accord or otherwise seek to undermine it by violence'. (My underlining)

It is therefore no surprise to find that, as Nancy Soderberg has pointed out: 'There has been a fundamental shift in peacekeeping that very few people have noticed, where UN peacekeepers are actually taking proactive, offensive, pre-emptive action against threats'.^x In current operations in the Congo for example, some robust methods are indeed

being employed, including the use of tanks, armoured personnel carriers, MI-25 attack helicopters, mortars and rocket-propelled grenade launchers along with 'cordon and search' operations.^{xi} And similar forceful action was taken in July 2005 by UN Peacekeepers in Haiti.^{xii}

Humanitarian Intervention

That said, as a concept of operations Peacekeeping has been widely accepted and remains relatively uncontroversial. The same is not true of Chapter VII action where this involves the use of military force in any country, without the consent of the government of that country (assuming that it has one), to prevent gross and continuing violations of the basic human rights of whole populations. In the past dozen years this has been held to justify at least ten interventions under the general rubric of 'Humanitarian Intervention'. In five of them there was some degree of consent and a Security Council mandate: Rwanda (French-led, 1994), Albania (Italian-led, 1997), East Timor (Australian-led, 1999), Sierra Leone (UNAMSIL, 1999, 2000) and Bunia (Operation Artemis, French-led, 2003). These barely count as interventions in the strict sense at all. The other five, all led by the US, were true interventions in the sense that there was no consent by the government of the country against which action was taken: Iraq (1991), Somalia (1992), Haiti (1994), Bosnia (1995) and Kosovo (1999). These deserve further discussion.

The question of armed intervention, on behalf of the international community, in the internal affairs of a state, against the wishes of the government of that state, in order to prevent widespread death or suffering amongst the population is not a new one. Imperial Rome grappled with the same problems in Dalmatia and Judaea as the international community does in those same regions today. Article 2.7 of the UN Charter says bluntly that nothing contained in it shall authorise the UN to intervene in matters that are essentially within the domestic jurisdiction of any state. But it half-contradicts itself by saying that this principle shall not prejudice the application of enforcement measures under Chapter VII of the Charter. That Chapter, as we have seen, relates not only to acts of aggression but also to threats to the peace and breaches of the peace. It was generally assumed that this meant international threats. Thus UN Security Council Resolution 688 of 5 April 1991 described Iraqi repression of the Kurds and Shias as a threat to international peace and security. It was on the strength of this resolution that France, followed by the US, Britain and a number of other countries,

took action with ground and air forces to compel the Iraqis to desist. But the supposed threat to international security was largely a pretext.

On 3 December 1992 the Security Council, in Resolution 794, broke new ground by deciding to intervene in Somalia for strictly humanitarian purposes. There was not even any pretence of consent by the government of Somalia because no such government existed. There was negligible spill-over to other countries in the form of refugees. The plight of the Somali people was the sole reason given for invoking Chapter VII of the Charter, authorising the use of 'all necessary means' to establish a 'secure environment for humanitarian relief'. This meant in practice taking sides and acting with far from minimal force. Sadly the mission was unsuccessful. A ferocious and chaotic battle in Mogadishu on 3 October 1993 led to the American forces being ignominiously withdrawn in April 1994 and the UN force UNOSOM II in the following year.

In July 1994, following some thuggish activity in Port-au-Prince, the Security Council authorised the despatch of a multinational force to Haiti, led by the USA and supported by a small number of Caribbean troops. SCR 940 authorised the use of 'all necessary means' (citing Chapter VII of the Charter) in order to 'facilitate the departure from Haiti' of the regime. In the end the threat of a US-led invasion proved enough to secure regime change and no serious resistance was encountered.

The task of the UN forces in Bosnia was to secure the delivery of humanitarian goods and services and to protect civilians in declared 'safe havens'. The deployment of UNPROFOR was carried out, initially at least, with the consent of the host states (Croatia, Bosnia, Macedonia). But its mandate was subsequently extended to include, for example, deterrence of attacks on safe havens and the use of air power to that end, with the clear invocation of Chapter VII. The NATO air campaign from 30th August to 14th September 1995 was justified (if somewhat tenuously) under SCR 836 and 844 of June 1993. It played a large part in securing Serb agreement to peace talks that culminated at Dayton, Ohio in the agreement that brought the war in Bosnia to an end.

A de facto Right of Humanitarian Intervention was thus beginning to emerge. During the decade of the 1990s the view had been strengthening that where a state is inflicting upon its own people gross,

flagrant and continuing infringements of their common humanity the international community had a right - some even argued an obligation - to try and restrain it.

The NATO action in Kosovo in 1999 brought all this to a head and provided the catalyst for doctrinal change. The previous autumn the Security Council, by Resolution 1198, had affirmed that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region, had explicitly invoked Chapter VII of the Charter, and demanded that all parties, groups and individuals immediately cease hostilities and maintain a ceasefire in Kosovo. The parties concerned, most notably the Serbs, conspicuously failed to do so. But the Security Council at no point explicitly endorsed the use of 'all necessary means' to secure compliance.

The resulting ambiguity was clearly set out in the report by the Swedish-sponsored Kosovo Commission in 2000.^{xiii}

'If the question of whether the intervention has been successful cannot be answered until Kosovo is securely at peace, the question of whether the intervention was legitimate has to be answered, especially since Kosovo may provide a precedent for further interventions elsewhere in the future. The Commission's answer has been that the intervention was legitimate, but not legal, given existing international law. It was legitimate because it was unavoidable: diplomatic options had been exhausted, and two sides were bent on a conflict which threatened to wreak humanitarian catastrophe and generate instability through the Balkan peninsula'. (My underlining)

This conclusion led the commission to a clear recommendation:

'Experience from the NATO intervention in Kosovo suggests the need to close the gap between legality and legitimacy. The Commission believes that the time is now ripe for the presentation of a principled framework for humanitarian intervention which could be used to guide future responses to imminent humanitarian catastrophes and which could be used to assess claims for humanitarian intervention. It is our hope that the UN General Assembly could adopt such a framework in some modified form as a Declaration and that the UN Charter be adapted to this Declaration'.

The next step was taken by a Commission set up by the Canadian government under the chairmanship of Gareth Evans, who had been foreign minister of Australia from 1988 to 1996, and Mohamed Sahnoun, a senior Algerian diplomat. In their Report, aptly entitled ‘The Responsibility to Protect’,^{xiv} the Commission emphasised that prevention is the single most important dimension of this responsibility and that lesser intrusive and coercive measures should always be considered first. They then went on to propose a set of ‘Principles for Military Intervention’. In the words of Gareth Evans: ‘The ultimate intellectual origins (of these principles) lie in the whole tradition, and vast literature, of ‘just war’ theory’^{xv}. Even more remarkably these principles were taken up, albeit with some variation in the wording, by the so-called High Level Panel on the Reform of the UN, set up by Secretary-General Kofi Annan in late 2003^{xvi}. This panel reported at the end of 2004,^{xvii} and the same recommendations were then transmitted, in summary form, by the Secretary-General himself for decision by Heads of State and Government when they meet at a Summit in New York in September 2005.^{xviii} In this report he asks the security Council to adopt a resolution reaffirming its right ‘to use military force, including preventively, to preserve international peace and security, including in cases of genocide, ethnic cleansing and other such crimes against humanity; and the need to consider - when contemplating whether to authorise or endorse the use of force - the seriousness of the threat, the proper purpose of the proposed military action’^{xix}, whether means short of the use of force might reasonably succeed in stopping the threat, whether the military option is proportional to the threat at hand and whether there is a reasonable chance of success’. A better short summary of Just War principles would be hard to find.

- The success of this project can by no means be assured. It is easy to denigrate The Responsibility to Protect as neo-colonialist, driven by selfish motives on the part of the developed nations and riddled with inconsistencies. Small nations dislike it, seeing themselves as possible targets. Russia and China are suspicious of the emphasis laid on abuses of Human Rights, with its implied criticism of their own record in Chechnya or Tibet. It is to be hoped that these short-sighted and self-serving views do not prevail^{xx}. And even if all goes well there will be other hurdles to overcome. For example putting into force the Responsibility to Protect at the UN will rely on reforming fundamental components of the UN architecture, including enhancing the efficiency

and legitimacy of the Security Council. Problems in reaching agreement in the Security Council over how to respond to Darfur shows that the language of the Responsibility to Protect is still open to subversion. Developing an interlocking system of UN and regional peacekeeping capacities must remain a long-term objective, particularly in Africa. Above all, political will must remain a crucial element of any effective response.^{xxi}

The two reform projects described in this note, for peacekeeping with ‘robust rules of engagement’, and for a ‘principled framework for humanitarian intervention’ fit together well: the one at the tactical and the other at the strategic level. Together they are well designed to re-define the use of force in UN operations in ways that match the needs of the 21st century.^{xxii}

ⁱ For UN Charter see <http://www.un.org/aboutun/charter/>

ⁱⁱ Charter of the UN, Chapter I, Article 2.4.

ⁱⁱⁱ Charter of the UN, Chapter VII, Article 51. Iraq’s invasion of Kuwait on 2nd August 1990 provided a classic instance. After the Kuwaitis had attempted, unsuccessfully, to defend themselves the Security Council, on the same day by Resolution 660, called upon Iraq to withdraw. When Iraq failed to do so the Council, by Resolution 678 of 29th November, authorised force against Iraq to eject it from Kuwait and to restore peace and security in the area. An American-led coalition accordingly took action to evict Iraq, beginning on 17th January 1991 and finishing when Iraq capitulated on 28th February 1991.

^{iv} Charter of the UN, Chapter VII, Articles 39, 42.

^v For all SCR see; http://www.un.org/Docs/sc/unsc_resolutions.html

^{vi} Trevor Findlay, *The Use of Force in UN Peace Operations*. SIPRI/OUP, 2002, p. 4.

^{vii} Ramesh Thakur quoted in *Year in review 2004: United Nations Peace Operations*, UN Department of Public Information, January 2005, p.1.

^{viii} The Srebrenica Report. See www.un.org/srebrenica.pdf

^{ix} The Brahimi Report. See: http://www.un.org/peace/reports/peace_operations/

^x Quoted in Colum Lynch, ‘U.N.Grows Combative in Peacekeeping’, *The Wall Street Journal Europe*, 16 August 2005. Nancy Soderberg is a former US Ambassador at the UN who is now a Vice-President of the International Crisis group.

^{xi} Marc Lacey, ‘UN Troops don’t turn the other cheek in Congo’, *International Herald Tribune*, 23 May 2005, pp 1,6.

^{xii} Colum Lynch, ‘U.N.Grows Combative in Peacekeeping’, *The Wall Street Journal Europe*, 16 August 2005.

^{xiii} *Kosovo Report*, Independent International Commission on Kosovo, Richard Goldstone and Carl Tham (co-chairs), Oxford, 2000, See <http://www.reliefweb.int/library/documents/thekosovoreport.htm>

^{xiv} Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Gareth Evans and Mohamed Sahnoun (co-chairs), 2001. pp. xii and xiii. See www.iciss-ciise.gc.ca

^{xv} Gareth Evans, ‘When is it Right to Fight’, *Survival* Volume 46 Number 3 Autumn 2004, p.75

^{xvi} I have set out at the Annex a summary of the Just war principles in parallel with the recommendations of the Secretary-General’s High-Level Panel. See note xiv below.

^{xvii} *A more secure world: Our shared responsibility*. Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change. United Nations. December 2004.

See www.un.org/secureworld/report2.pdf

^{xviii} *in larger freedom: Towards Development, Security and Human Rights for All*. Report of the Secretary-General. New York. April 2005. See; www.un.org/largerfreedom/contents.htm p. 83

^{xix} It is interesting that the British Attorney General, in his advice to the Prime Minister on the legality of invading Iraq dated 7th March 2003, discounted any reliance on the doctrine of humanitarian intervention. Commenting that the doctrine remains controversial, he added: 'I know of no reason why it would be an appropriate basis for action in present circumstances'. He relied instead on the supposed 'revival' of SCR 678, referred to in endnote iii above.

See www.number-10.gov.uk/files/pdf/Iraq%Resolution%201441.pdf

^{xx} It is encouraging that a Commission set up by the US Congress, under the Chairmanship of Newt Gingrich and George Mitchell, to make recommendations for the reform of the UN, have come up with very similar recommendations to those of the Secretary General on this point. The operative paragraph reads as follows: '3. If the above measures fail to lead to an expeditious change in behavior, the Security Council should consider authorizing military intervention.... The Security Council should ensure that the intervention possesses the authority and capability to achieve its objective of preventing or halting genocide, mass killing, and massive and sustained human rights violations in the face of opposition by the criminal regime or its proxies. In the event that the Security Council is derelict or untimely in its response states—individually or collectively—would retain the ability to act'. See www.usip.org/un/report/

^{xxi} For these final points I am grateful for the advice of Alexander Ramsbotham of UNA-UK'.

^{xxii} I should declare an interest here, having for nearly ten years been advocating both a more robust use of force in peacekeeping, and the application of Just War criteria to humanitarian intervention.

See: Hugh Beach: 'Second Thoughts on First Principles', and 'Causes, Aims and Means of Intervention' in Roger Williamson (ed.) *Some Corner of a Foreign Field: Intervention and World Order*, Macmillan Press, London, 1998, pp. 73-83 and 191-204. Also 'Secessions, Interventions and Just War Theory', in Pugwash Occasional Paper Volume 1, Number 1, February 2000, Pugwash Study Group on Intervention, Sovereignty and International Security, The Venice Workshop, December 1999. pp. 11-36. See: <http://www.pugwash.org/reports/rc/beach.htm>