What is meant by the 'responsibility to protect?' Humanitarian intervention in Iraq and Darfur.

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Failure to intervene quickly and effectively to prevent immense human rights abuses in Somalia, Rwanda and Bosnia cast doubt on the United Nation's ability to successfully mandate military intervention in cases of humanitarian necessity. In 2001, the International Commission on Intervention and State Sovereignty (ICISS) was convened to develop a political consensus on how humanitarian intervention should proceed in today's world. In their report *The Responsibility to Protect* (ICISS, 2001) the Commission adopted a new approach to humanitarian intervention. What was once a 'right to intervene' for humanitarian purposes was restated as a 'responsibility to protect' those at risk (ICISS, 2001).

Has this change in semantics created an ideological shift that has broadened the mandate of the international community to intervene in the affairs of a state that fails to protect its own citizens? In his 2002 State of the Union address, made in the wake of September 11 and following the deployment of American troops to Afghanistan, President Bush referred to America's 'responsibility to fight to fight freedom's fight.' (Bush, 2002, p.4) The war on terror which lead to the U.S invasion of Iraq in 2003 was strongly grounded in the notion that it was America's *responsibility* to liberate the Iraqi people from Saddam Hussein's oppressive regime and correspondingly to spread liberal ideals throughout the Middle East. In contrast, driven by self interest and concern for maintaining state sovereignty, the permanent members of the Security Council prohibited the United Nations from taking any responsibility for the protection of hundreds of thousands civilians facing genocide in the Sudan. The Darfur crisis illuminates the fact that despite the change in semantics the barriers to effective action and intervention remain in tact.

Intervention in a sovereign state, for the purposes of providing protection (from internal threats) to the citizens of that state, has traditionally been hampered by a realist interpretation of the powers and duties conferred on the UN by its Charter. Realist theory, employed to critique the political climate that lead to World War II, informed the realisation that an international body was required through which state sovereignty would be recognised and protected. Article 2.1 of the UN Charter

stipulates the 'sovereign equality of all its Members.' Realists maintain that the state is the main actor on the world stage and sovereignty is its paramount concern. (Dunne T & Schmidt C, 2001, p.150.) Thus intervention in a sovereign state is expressly prohibited by the UN Charter which states in 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.' Furthermore the power of veto vested in the permanent members of the Security Council, ultimately provides that each is able to protect its own interests against the rest, ensuring state survival above all else.

Following the Rwandan genocide, the former Secretary General, Koffi Annan expressed deep regret at the international community's unwillingness to take decisive action to stop the slaughter. He argued that with globalisation state sovereignty had necessarily been redefined and the global community had a *responsibility* to intervene in cases of mass human rights abuse. (Kofi Annan in Upcher, 2004, p.271) He argued for a liberalisation of the UN Charter, a reinterpretation of the UN's founding principles to highlight the norms of peace, justice and humanitarianism that underlie the association of sovereign states.

The UN charter was issued in the name of 'the peoples' he contested and 'it was never meant as a license for governments to trample on human rights and human dignity.' (Kofi Annan in Jentleson, 2007. p. 19) His appeal was taken up by ICISS, its prime objective being to employ international discussion and debate in order to assist the UN to move from polemics and often paralysis towards effective action in internal state conflicts (ICISS, 2001 p.6)

The Commission, working from the classic liberal perspective that the liberty of the individual needed to be prioritised in decisions to mandate humanitarian intervention, endorsed two basic principles to guide future intervention:

1. 'State sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself' (ICISS, 2001, p.xi)

2. However 'where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is

unwilling or unable to halt or avert it, the principle of non- intervention yields to the international responsibility to protect'. (ICISS, 2001, p.xi)

Whilst the 'right to intervene' effectively operated to 'trump sovereignty with intervention' (ICISS, 2001, p.16) the 'responsibility to protect' placed emphasis on the protection of others and demanded evaluation of the proposed intervention from the perspective of those requiring the help. (ICISS, 2001, p. 17) Furthermore, the phrase placed the primary responsibility of protection on the state concerned, transferring that responsibility to the international community only where the state was unable or unwilling to fulfil the responsibility. (ICISS, 2001, p.17) Thirdly the 'responsibility to protect' encompassed a range of proactive and reactive actions by the state concerned and the international community including the 'responsibility to prevent', the 'responsibility to react' and the 'responsibility to rebuild.' (ICISS, 2001, p.17)

The drafting of these guidelines for humanitarian intervention placed the onus on individual states and the international community to discharge their responsibilities to protect the human rights of their citizens. It is arguable there has been a significant shift from recognition of the collective rights of citizens of a state arising out of the maintenance of the state's sovereignty towards individual rights of citizens arising out of being subjects of an international community. Under the doctrine 'A responsibility to protect,' sovereignty is redefined to include accountability to two different constituencies, first and foremost the state is accountable to its own citizens and secondly to the international community. (Chandler, 2004, p.65)

In his address to the General Assembly in 2002 George W. Bush consistently demanded that the United Nations meet its 'responsibilities' regarding Iraq. (Chandler, 2004, p.74) There was little doubt Saddam Hussein was a ruthless leader who had suppressed the civil and political liberties of his people, murdered approximately 100 000 Kurds in 1988, killed 300 000 Shia after the 1991 war and tortured many hundreds of thousands of people between 1968 and 2003. (Teson, 2005, p.14) On the eve of America's 2003 invasion of Iraq, in a Security Council meeting on the 19th March, the representative for the United States again expressed concerns for 'meeting the humanitarian needs of the people of Iraq.' (SC meeting

4721, 2003) However, having failed to garnish the support of the United Nations, the United States acted unilaterally and proceeded with the planned intervention without a Security Council resolution on the matter.

The Commission's guidelines for military intervention for human protection purposes are heavily grounded in just war theory. Just war theory includes six factors that are used to determine the legitimacy of war. They include: Just cause, by a just authority, using just means, with right intention, as a last reasonable resort, with a reasonable hope of success. (Mednicoff, 2006, p.380) The Commission adopted these determinants as a guide for when intervention of a military kind is justifiable.

According to the commission 'Military intervention for human protection purposes must be regarded as an exceptional and extraordinary measure where 'serious or irreparable harm to human beings' is occurring or is likely to occur. (ICISS, 2001, p.31) The Commission specifically excluded human rights abuses falling short of outright killing or ethnic cleansing, from situations that could warrant humanitarian intervention stating that these situations may warrant political or economic sanctions but were not just cause for military intervention. (ICISS, 2001, p.34)

Additionally the Commission outlined that the only just authority for authorising intervention was the Security Council under Article 42 of the UN Charter (ICISS, 2001, p. 50) Further more in regards to just means it was stated that the scale, duration and intensity of the humanitarian intervention should reflect the situation and should be the 'minimum necessary to secure the humanitarian objective'. (ICISS, 2001, p. 37)

The Commission spoke of the 'primary purpose' of the intervention being to halt or avert human suffering but conceded that humanitarian objectives may not be the only motivating factor for a state or states to intervene. (ICISS, 2001, p. 36) Regime change was specifically mentioned and is not a legitimate objective whilst it was recognised that disabling a regime may be pivotal to discharging the responsibility to protect the citizens of that state (ICISS, 201, p.35). In regards to intervention being a last resort the Commission outlined a staged process that should at least be attempted where possible, including negotiation, ceasefires and then the deployment of

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international peace keepers (ICISS, 2001, p.36). Finally military action is not justifiable where there are no reasonable prospects of success, that is, where the atrocities or suffering that prompted the intervention can not reasonably be halted (ICIS, 2001, p.37).

With reference to just war theory it is not surprising that the charge most often levelled against the United States was that the 'intervention' in Iraq lacked just authority, just cause and right intention. Firstly the 2003 war lacked the explicit authorisation of the Security Council, an unequivocal requirement for humanitarian intervention established by the Commission. Secondly, it was argued that whilst Hussein's regime was notoriously cruel the scope of its killing in March 2003 was not of a magnitude that could justify humanitarian intervention. (Kenneth Roth in Teson, 2005, p.14) Finally, it was well documented that America's self interest was a determining factor in the decision to intervene.

Despite these clear breaches of the just war guidelines arguments in favour of the war in Iraq propose that operation 'Iraqi Freedom' was a manifestation of America's 'responsibility to protect' and was thus justified in the circumstances. Teson claims that the intervention can not be labelled illegitimate on the grounds that it was not sanctioned by the Security Council. He points to the NATO intervention in Kosovo as an example where intervention took place without the Security Council's approval and yet was on all accounts morally justifiable. Furthermore he refutes the argument that only the Security Council can legitimise intervention arguing that the undemocratic processes of the Council including the right to veto by any of the five permanent members creates inherent floors in the argument that the Security Council is the most reasonable body to sanction humanitarian intervention. Simply because the Security Council was unwilling to legitimise the invasion of Iraq does not mean that the intervention was not in the name of humanitarian pursuits.

It is uncontested that America's own interests played a significant role in the decision to 'intervene' in Iraq. The 'grand rationale' was to establish democratic regimes and spread liberal ideals throughout the Middle East. (Teson, 2005, p.11) Teson proposes that the liberation of Iraqi citizens *was* the intention of the United States in liberating Iraq. The fact that the Administration was also driven by the motive to enhance the

security of the United States by promoting democratic reforms in the Middle East may be reason to lower our 'moral estimation' of the United States' government, but does not support the conclusion that the entire intervention was illegitimate. (Teson, 2005, p.10) Even the Commission concedes that the decision to intervene for humanitarian interests will often be made by states with a self serving interest.

Disturbingly, the Washington Administration and its allies, were able to draw a link between the 'responsibility to protect' a civilian population experiencing humanitarian crisis and the 'responsibility to protect' the world from the risk of failed states or more importantly from the risk of terrorist organisations that find safe havens in failed states. This belief that America had a responsibility to ensure global security is heavily grounded in Liberal peace theory which stresses that 'international peace and individual rights are best advanced through cosmopolitan frameworks whereby democratic and peaceful states take a leading responsibility for ensuring the interests of common humanity.' (Chandler, 2004, p.60)

Drawing analogy between the Cold War threat of communism and the threat posed by failed states in today's world, British Foreign Secretary, Jack Straw argues that the domino theory may just as well be applied to the chaos of failed states (Straw, 2002, p. 103). Just as the United States could justify the Vietnam war on the grounds that communism posed a materialising threat to democracy and freedom, so too the Iraq war could be justified as a means of maintaining liberal peace for America and her allies.

British Diplomat, Robert Cooper also supports the notion that humanitarian intervention is a legitimate tool by which 'organised' states may respond to the chaos of failed states, before organised crime networks and terrorist syndicates take hold. (Cooper, 2002, p. 17) Cooper proposes a model for global security based on 'cooperative empire' whereby neighbouring states join forces to ensure the safety and security of each in the union. The result is the de emphasis of sovereignty in favour of 'mutual interference' in each others affairs and 'security through transparency.' This effectively means that each state takes responsibility for the welfare of each other state.

Perhaps a system where regional organisations respond to collapse of responsible government and act as watchdogs for human rights would be more efficient than the current United Nations system. Certainly in Darfur it was the African Union that first responded to the humanitarian crisis, whist the United Nations was locked in debate over what could or should be done.

In early 2004 the UN Human Rights Commission travelled to Chad to investigate reports of large numbers of refugee arrivals from Sudan's Darfur region. By April, 40 000 refugees had already crossed the border into Chad. Refugees told stories of militia attacks in which their homes were looted and burned. (Redmond, 2004)

In response the UN Human Rights Commission sent a fact finding team to Darfur in 2004. The team found,

> "a disturbing pattern of disregard for basic principles of human rights and humanitarian law, which is taking place in Darfur for which the armed forces of the Sudan and the Jangaweed are responsible" (Bellamy, 2005, p.41)

Non government organisations branded the civil conflict genocide yet the international community again demonstrated its incapacity to intervene quickly to stop the mass human rights abuses. The United Nations deferred to sovereignty as the *right* of states over the international community's 'responsibility to protect' and reaffirmed its "commitment to the sovereignty, independence and unity of Sudan." (SC, Resolution 1547, 2004)

A weak attempt to take action on the issue was made by declaring a readiness to consider establishing a UN peace support operation in the Sudan. No mention was made of the 'responsibility to protect' falling upon the international community in these circumstances. In the meeting following the vote to adopt the resolution the United States, the United Kingdom and Germany lent their support to the resolution but failed to go so far as to denounce the sovereignty of the Sudan. Pakistan indeed confirmed Sudanese sovereignty with its representative declaring, "as a United Nations Member State, the Sudan has all the rights incumbent under the United Nations Charter, including to sovereignty, political independence, unity and territorial

integrity" (SC meeting 4988, 2004) Of all the members of the Security Council that voted on the resolution only the representative for Algeria spoke pro actively about humanitarian intervention stating, "at this critical phase…my delegation would call for a mobilization of resources and a focusing of energy to accompany the peace process in the southern Sudan…my delegation should have liked the resolution to guarantee ongoing international mobilization to accompany the peace process in Sudan." (SC meeting 4988, 2004) Algeria, itself a northern African country, no doubt had concerns about the large flows of refuges that the conflict was creating.

A second Security Council meeting on the 30th July 2004 resulted in resolution 1556 being adopted against the wishes of China who argued that "the government of Sudan bears primary responsibility for resolving the Darfur situation and that the international community should make every effort in assisting the government of Sudan." China abstained from voting on the resolution on the grounds that it included "mandatory measures against the Sudanese government" which China was unwilling to support. (SC meeting 5015, 2004) Pakistan also abstained.

A look behind China's reluctance to encourage intervention in the Sudan revealed that Sudan is the supplier of six per cent of China's oil needs and China had $3 billion invested in Sudanese oil plants. Additionally a number of lucrative contracts for the construction of pipelines and port facilities in Sudan would have been at risk were China to sanction intervention. (Jentleson, 2007, p.22)

The resolution went little way to mandating any real action to take place in Darfur. Instead the Security Council 'expressed it's determination to do everything possible to halt a humanitarian catastrophe (in Darfur)' but fell short of actually authorizing a UN peacekeeping mission. Rather, it endorsed the deployment of an African Union protection force. (SC meeting 5015, 2004)

In summary, the international response to events in Darfur was characterised by a number of non western member states interpreting the 'responsibility to protect' as remaining with the Sudanese government, in line with protection of Sudanese sovereignty and secondly by the key western member states arguing that the

responsibility lay with regional organisations (Bellamy, 2005, p.43). The language of the 'responsibility to protect' was mobilised by the United States, U.K, Germany, Chile and Spain but that responsibility was seen as lying primarily with the Sudanese government and failing their ability to take responsibility, with the African Union, rather than any other states in the international community.

It is unlikely that the drafters of the *Responsibility to Protect* contemplated that the provisions of their report would be interpreted in such a way as to justify the war in Iraq. The ambiguity of the term 'responsibility to protect' and the failure of the commission to commit to stricter guidelines for humanitarian intervention has meant that powerful states like America continue to determine when humanitarian intervention will take place and on what terms. Furthermore, the 'responsibility to protect' has been interpreted as supporting liberal peace theory, and if employed in the future as it was in Iraq, risks being adopted as authority for humanitarian imperialism. Far from there being any ideological shift that has compelled the United Nations to take decisive action where humanitarian needs necessitate it, the self interest of the states who wield power on the Security Council still ultimately determines the matter of humanitarian intervention. As the International Commission on Intervention and State Sovereignty stated, "changing the language of the debate… does not of course change the substantive issues." (ICISS, 2001, p.12)

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