

# UN High Level Panel Report on Threats, Challenges and Change: A Doctrine of Limited Liability towards Humanity?

*Matthew N. Hulbert\**

“The principle of protection of human rights cannot be invoked in a particular situation and disregarded in a similar one. To apply selectivity is to debase the concept of human rights” Former UN Secretary-General Pervez de Cuéllar, (1992)

Whilst the global human rights regime makes it abundantly clear that someone *ought* to provide protection to those in peril, at the same time, no human rights document explicitly approves military intervention as an enforcement mechanism for rights.<sup>1</sup> This sizeable gap in the global governance architecture was recently underlined by the *UN High Level Report on Threats, Challenges and Change*, which further places a demanding threshold on the use of violence in international society, whether in acts of self-defence under Article 51 or under Chapter VI or VII deployments for human protection purposes. This suggests that the constitutional strictures of international society are developing along the lines of a Doctrine of Limited Liability, *whereby powerful states deliberately place the cart in front of the horse in allowing for legitimate intervention through the use of conservative Just War principles in relation to threshold and precautionary criteria*<sup>2</sup>.

Such a doctrine shares an awkward relationship with the eminent person’s identification of ‘six clusters of threats posed to the international community’ - not least because such threats are tied into first, second or third generation rights, (chronologically addressing political, economic and social concerns). Although this underlying preoccupation with rights shifts the focus of international relations to the level of the individual, the UN reveals a further conceptual inconsistency by pushing towards cosmopolitan ends via internationalist means, particularly through the institution of the sovereign state and its capacity of delivering public goods to offset “*internal conflict, including civil war, genocide and other large-scale atrocities*”.

Given that the UN still operates on the basis of a world of *states*, not *peoples*, it naturally reverted to points made in two previous reports:

- The Brahimi Report, addressing peacekeeping capacities, institutions and innovations for the twenty-first century;
- The Report of the International Commission on Intervention and State Sovereignty, the *Responsibility to Protect* (ICISS) on the issue of ‘intervention for human protection purposes’ – raising the political significance of universal human community sharing ideals, values, rights and duties through a *responsibility continuum* - to prevent; react; and rebuild.

Thus, the crux of the High-Level Report applies the ICISS terminology of a *Responsibility to React* in complex political crises or supreme humanitarian emergencies. As it states, “There is a growing recognition that the issue is not the ‘right to intervene’ of any State, but the ‘responsibility to protect’ of every state when it comes to people from suffering from avoidable catastrophe”.

---

<sup>1</sup> The Convention on the Prevention and Punishment of the Crime of Genocide comes closest to an international obligation on the basis they should prevent and punish such acts.

<sup>2</sup> The Doctrine of Limited Liability was first coined in a different context by Professor James Mayall, whereby the West looked to establish exit strategies from intervention at the outset of intervention - as Rwanda, Somalia, and Sierra Leone attest. This paper recasts the framework of limited liability into a Just War framework.

However, the panel shares the ICISS logic that this should not on the basis of whether ‘force *can* legally be used, but whether, as a matter of good conscience and good sense, it *should* be’. Such normative guidelines include “a threshold of *seriousness of threat*, which has to be grave to justify *prima facie* the use of force of inter-state violence, or genocidal as an intra-state threat with other ‘large-scale’ killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended”. It also adjoins precautionary criteria of *proper purpose, last resort, proportional means, balance of consequences* (namely, that a consequential analysis of intervention would be beneficial) and the *proper authority* of UN blessing. This makes it extremely difficult to gain normative legitimacy from ethical, political or legal perspectives when breaching the non-intervention norm, (despite the *erga omnes* principle of international human rights law and humanitarian law).

The employment of what amounts to amended Just War criteria clearly places a high threshold for permitting the use of force in international relations to ‘extreme and exceptional’ circumstances “exercisable by the Security Council authorising military intervention as a last resort”. But as Wight & Butterfield once wrote, “It is principles of prudence and moral obligations which have held together the international society of states throughout history and still hold it together”. The High-Level Report is clearly still wrestling with this *English School* proposition of 1966; such ‘moral obligations’ arise from the default obligation of a *Responsibility to Protect*, whilst ‘prudential’ qualifications against the use of force serve as a constant backdrop of *limited liability*.

Although the Panel was quick to defend itself by claiming, “The point of adopting the guidelines...is to maximise the possibility of achieving Security Council consensus around when it is appropriate or not to use coercive action”- this defence fundamentally fails to heed the words of the *International Independent Commission on Kosovo* (2001), which was clear in stating, “The proposals for a new framework for humanitarian intervention should not detract from the need to prevent humanitarian catastrophes in the future”.

In this light, humanitarian intervention must be seen as a ‘*limited liability*’. There is no ‘*Responsibility to Protect*’ unless the criteria can be fulfilled. By setting the bar so high in allowing for legitimate intervention we run the risk of impeding the possibility of preventing acts that ‘shock the moral conscience of mankind’. This points to a desire to maintain significant elements of the established conceptualisations of military action and of sovereignty in a Westphalian sense, placing great emphasis on the notion of order within international society. Such pluralist overtones within the *English School* recognise the ‘*limited liability*’ of international society to protect order through the safe guarding of the rules of order, and maintaining as strict as possible rules on the use of force in particular, reaffirming the ‘cornerstone’ of international society of state sovereignty and non-intervention - fully laid out in Article 2 (4) and 2 (7) of the UN Charter.

It also states of Article 51, “in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral prevention action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all”. Such a statement taps into the added complexity of twenty-first century international politics, where the empirical line between humanitarian intervention and self defence has begun to blur: it is increasingly clear that failed states such as Afghanistan or Somalia provide safe havens for networks of terrorists, bringing normative principles and hard headed security concerns full circle, which was reflected in the all encompassing *seriousness of threat* principle.

If it is indeed the case that the ‘solidarist moment’ has expired, (and we are reverting back to a more Hobbesian world order), then the Panel was quick to note that “it is also possible to take the view that the current environment will be more favourable to the development of guidelines and rule with respect to the use of force”. This rings particularly true if we accept James Gow’s claim that expanding definitions of international peace and security and self defence are becoming interchangeable to meet the requirements of international order.

Clearly the ‘coincidence’ thesis of counter-terrorism measures coinciding with “latent or actual gross violations of human rights of the kind that have in the recent past fuelled calls for humanitarian

intervention,” is a compelling argument. As Simon Chesterman claims, “It is worth remembering that in Afghanistan, misrule by the Taliban and the harbouring of terrorist organisations long coincided with a humanitarian crisis”.

This very same default claim was made for intervention in Iraq; yet the stumbling bloc for international society, is not only that such interventions have had perverse effects, but they have also been conducted without any “internationally agreed normative template”<sup>3</sup>. The template the High-Panel employs on the use of force would be sufficiently strict to serve as a reaffirmation of the non-intervention norm, making intervention the firm exception, not the rule.

Although the intellectual logic of the Just War attempts to bring morality and actuality onto the same plane (whilst providing a useful protection foil for the “omnipotent problem of power in international relations”), the obvious criticism is that the High Level Report threshold does not cover human rights violations falling short of outright killing or ethnic cleansing, such as systematic racial discrimination or political oppression, the overthrow of democratically elected governments, and the rescue by a state of its own nationals on foreign territory.

Thus, if it was the UN desire to act as a ‘*norm entrepreneur*’ for human justice, this report merely serves to reaffirm the non-intervention norm of a hypocritical international order, not least in failing to identify what it terms a ‘large scale loss of life’ to meet the intervention threshold<sup>4</sup>.

On this basis, sovereignty rules until the abuses of states rise to a genocidal standard. It is only then that military action can be justified; non-intervention thus remains the default setting of international society, irrespective of systematic, yet non-genocidal abuses of human rights. Thus, the Report fails to answer Annan’s troubling question “...*if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond... to gross and systematic violations of human rights that affect every precept to our common humanity?*”

Nor does it sit well with the High-Level Reports own damning self-criticism that “the biggest failures of the United Nations in civil violence have been in halting ethnic cleansing and genocide. In Rwanda... peacekeepers withdrew and the Secretary Council failed to respond. In Bosnia...United Nations peacekeeping and the protection of humanitarian aid became a substitute for political and military action to stop ethnic cleansing and genocide. In Kosovo, paralysis in the Security Council led NATO to bypass the United Nations”.

Indeed, the only ‘success’ the report is willing to endorse was in East Timor, where the international community applied concerted pressure swiftly to halt large-scale killing. Thus, the major contention with making humanitarian intervention the new Just War is they come from incompatible normative traditions. Just War is largely an internationalist precept, whereas humanitarianism is cosmopolitan. To try and incorporate them within a framework dominated by the Just War criteria, is to compromise the very thing that makes humanitarian intervention more ethically profound than a mere act of war, whilst preventing urgent intervention on a ‘*prudential*’ basis.

Whilst this makes humanitarian intervention under Just War criteria a *second best ethic for a second best world*<sup>5</sup>, it may still be the only salvation of both, as a form of moral reasoning to discern the ethical limits of action in an inherently political world. As the 2001 Sino-Russian Treaty of Friendship & Cooperation states, “Russia and China will be making joint efforts...for countering any attempts to subvert the fundamental norm of international law with the help of such concepts as humanitarian intervention and limited sovereignty”.<sup>6</sup>

---

<sup>3</sup> S. Walt, “Beyond bin Laden: reshaping US foreign Policy,” *International Security*, Vol. 26.3 (2001/2002), pp. 56-78

<sup>4</sup> This is naturally a complex issue. One interpretation could read that the UN does not wish to go down a utilitarian path in defining a large scale loss of life, as this may entail an ascriptive valuing of human life. However, we could also charge that if the threshold had been *visibly* met, (in this crude utilitarian sense) then a clear political responsibility to act would have been created.

<sup>5</sup> It should be noted that the second best ethic was first coined by Chris Brown.

<sup>6</sup> *Moscow Joint Statement of the Head of States of Russia and China* (18<sup>th</sup> July, 2001, Section 7)

If this presents a political stumbling bloc, we also have the conceptual difficulty that such criteria do not manage to stand up in the ‘tough cases’ for intervention – we will always face the generic problem of imperfect data to apply objectively to such prudential considerations. As Michael Walzer has recently stated of the last resort principle, “it can only ever be a metaphysical concept”. Such inherent difficulties reveal themselves across the spectrum of prudential considerations, which suggests the only way the Just War can hang on a cosmopolitan peg, is to strip it of its conservative elements and allow it to stand as a ***doctrine for humanity*** by addressing ***human need***, and ***not political pragmatism***<sup>7</sup>.

The more subtle and intrinsic difficulty of using a Just War framework is that it assumes that a disruption of normality has recently occurred (given that just cause should revolve around the restoration of conditions under which violence does not take place). But as Chris Brown asks: what happens if the injustice is longstanding? It no longer constitutes a disruption of normality, but may well become part of the regional politics, thus intervention would not constitute the re-establishment of peace and justice, but their establishment for the first time. As the *International Rescue Committee* reported, in the past four-and-a-half years in the Democratic Republic of Congo, some 3.3m people have died despite the belated ‘*triage effect*’ of Operation *Artremis*. Similarly, in Darfur no one heeded the words of Kofi Annan in April 2004, when speaking of a ‘*pending humanitarian crisis*’. Even now, with a peace accord sign in Nairobi, this may prove to be as illusory as the Peace Agreements of Bicesse in Angola, Arusha in Rwanda and Lomé in Sierra Leone, all of which allowed for genocidal abuses in the name of international peace and security.

This is not only bad for appearances, but it is assuredly bad for human rights. It leaves odious regimes essentially immune from reprisals, provided they keep their repression just below the type of genocidal standard, which poses the intrinsic question that the genocidal standard might raise as many problems as it solves.

Perhaps the best that can be said about this report is it *might* prevent the very worst from happening if all the political pieces fall into place. At its worst, it compromises and betrays the very values it purports to defend. ***It allows semantics to decide when state repression crosses the line to barbarism; and lest we forget ‘nobody mention the G word’ was only ten years ago.***

By using a Just War framework for intervention for human protection purposes, we will continue to see the phenomena of a UN presence that is ‘too-little’ and ‘too-late’ for pressing emergencies. Institutional amendments, whilst significant, are not the real political issue at stake. It is only by reordering the ethical principles informing the intervention debate, that we will ensure that catastrophes such as Darfur do not become the immediate epithet of the 21<sup>st</sup> century.

January 2005

**Enjoyed the article?**

[Reply to the author](#)

[Write to Vision](#)

*\*Matthew Hulbert is a researcher at The Foreign Policy Centre, focusing primarily on European and Global Affairs in London. He would like to thank Richard Gowan, Richard Jordan and Dr. Greg Austin from the FPC for their helpful comments on this paper, and Dr. John Williams (Dunelm) and Professor James Mayall (Cantab) for stimulating much of its intellectual basis.*

---

<sup>7</sup> See I. Holliday, “When is a Cause Just?” *Review of International Studies*, Vol. 28 (2002)