

## Freedom from Fear: Effective, Efficient, and Equitable Security

Ramesh Thakur  
United Nations University

According to the High-Level Panel on Threats, Challenges and Change (HLP), ‘The maintenance of world peace and security depends importantly on there being a common global understanding, and acceptance, of when the application of force is both legal and legitimate’.<sup>1</sup> The provision of security imposes two requirements: those not authorized to use force should renounce its use and threat in their social relations, while the authorized agents of any community with the monopoly on the legitimate use of violence must have the capacity and the will to use force when required. For any international enforcement action to be *efficient*, it must be legitimate; for it to be legitimate, it must be in conformity with international law; for it to conform to international law, it must be consistent with the Charter of the United Nations. For it to be *effective*, it must match resources to mandates and be based on a unity of purpose and action in the international community and avoid fracturing the existing consensus. For it to be *equitable*, it must reconcile, or at the very least balance, the competing interests among the many constituencies that make up the international community and avoid privileging the interests and viewpoints of one over the others.<sup>2</sup> To achieve *freedom from fear*, citizens must be assured that national authorities with the legal monopoly of the means of violence will not unleash the agents and instruments of violence on the people, and states must be assured that the most powerful will aim to settle differences of opinion around the negotiating table and not at the point of tank turrets, helicopter gunships and missiles.

Among the worst acts of domestic criminal behaviour by a government is large-scale killings of its own people; among the worst acts of international criminal behaviour, to attack and invade another country. The history of the twentieth century was in part a story of a twin-track approach to tame, through a series of normative, legislative and institutional fetters, both impulses to armed criminality by states, internal and external. Cumulatively and in combination, these attempted to translate an increasingly internationalized human conscience and a growing sense of an international community into a new normative architecture of world order.

In other words, the use of force both domestically and internationally must be tamed and brought under the restraining discipline of the rule of law. But law must also keep pace with the fast-changing security environment. The reality of contemporary

---

<sup>1</sup> *A more secure world: our shared responsibility*. Report of the High-level Panel on Threats, Challenges and Change. (New York: United Nations, document A/59/565, 2 December 2004), para. 184.

<sup>2</sup> Some commentators, while agreeing with the need ‘to combine power with principle’, nonetheless believe that the HLP report ‘ends up bowing more to the raw distribution of power than to international principles’; Satish Kumar, ‘Global threats and U.N. reforms’, *The Hindu* (Chennai), 24 March 2005.

threats – for example, a virtual nuclear-weapons capability that can exist inside nonproliferation regimes and be crossed at too short a notice for international organizations to be able to react defensively in time, and nonstate actors who are outside the jurisdiction and control of multilateral agreements whose signatories are states – means that significant gaps exist in the legal and institutional framework to combat them. If international institutions cannot cope with today's real threats, states will try to do so themselves, either unilaterally or in company with like-minded allies. Unilateral preemption is not permitted under the UN Charter as it is not considered within the acknowledged right of self-defence. But if preemption is strategically necessary and morally justified (why should an American president or an Australian prime minister wait for another mass murder, and be prohibited from taking prophylactic action?) but not legally permitted, then the existing framework of laws and rules – not the anticipatory military action – is defective.

The central thrust of this paper will be the growing risks of a separation between lawfulness and legitimacy in the use of force both domestically and internationally and the urgent need to realign them through the concept of the responsibility to protect. In turn this cannot be separated from questions of the agency and procedures for authorizing the use of force, the growing gap between law and legitimacy being a function of deficiencies in the structure and workings of such agency and procedures, and thus the need for reforming the structure and operations of the UN Security Council (UNSC) as the core of the international law enforcement system.

For it has signally failed to function so. It was not able to stop either Saddam Hussein's brutalities on his own people or the US war on Iraq. It has been unable to guarantee either Israel's security or the Palestinians' human rights and dignity. In far too many cases, the Security Council has shown itself to be proof against occasions of the larger kind, from Srebrenica to Rwanda and elsewhere. Ineffectual performance has inevitably called into question the credibility of the international organization as the guarantor of world peace and security. But if the Security Council did become more assertive, forceful and effective, its authority would be open to serious question on representational and accountability grounds.

This is why the section of the HLP report dealing with the Security Council is critical for present purposes. As others are taking up the question of Security Council reform, I do not wish to dwell on that in my paper. But I do want to touch on the problem of the veto. The panel acknowledges the veto as being 'anachronistic' but sees 'no practical way of changing the existing members' veto powers'. Accordingly it recommends neither the expansion of the veto to new permanent members under Model A, nor its elimination for the existing five permanent members (P-5), although it does recommend a curtailment of the veto's use (para. 256). If the veto is a genuine contribution to correlating power to responsibility and facilitating the search for great power consensus necessary to international action, it should be held by all permanent members. If it is an obstacle to the effective functioning of the Security Council, it should be abandoned. It seems illogical in any case to have a further differentiation within permanent members under Model A, those with and without veto.

Of course, the aspiring new members may well in the end agree to this as the price of

gaining permanent membership. In that case, we may witness yet another twist in the legality vs. legitimacy debate. During the intense, tense but ultimately futile negotiations over a second Security Council resolution that would have explicitly authorized war against Saddam Hussein, Washington toyed with the idea of claiming legitimacy if it could get 9 affirmative votes (and Japan at least publicly voiced support for such an interpretation), even if the resolution failed due to one or more vetoes. The equation, and therefore the politics, of legality vs. legitimacy is bound to be profoundly affected if there are six more permanent but veto-less members. For the very fact of permanence will enhance their stature and give them continuity, experience, expertise and institutional memory. If the vote on a resolution is 23-1 or 22-2 in a 24-member Council with 11 permanent members, but the resolution is defeated because one of the veto-wielding P5 (V5?) votes negatively, then the gap between legality and legitimacy could become a chasm. If China and Russia were the only two negative votes on a Kosovo or Darfur type crisis, and a coalition of the willing went into military action after such an abortive resolution in the Security Council, then it is hard to believe that the coalition would not claim international legitimacy, and would not be conceded that by the international community.

## **Human Security**

Another major explanation for the widening gap between law and legitimacy is the resistance to the emerging new concept of human security and the persistent privileging of national security. Security is an essentially contested concept because it is essentially an intellectual and cognitive construct, not an objective given. In the traditional framework, security is viewed in relation to wars between countries. In order to defend the nation, to pursue national security, many governments have called on citizens to make the ultimate sacrifice. This puts the individual at the service of the state, including killing others and being killed oneself, as and when called for duty by the government of the day. By contrast, human security puts the individual at the centre of the debate, analysis and policy. He or she is paramount, and the state is a collective instrument to protect human life and enhance human welfare. The fundamental components of human security – the security of *people* against threats to personal safety and life – can be put at risk by external aggression, but also by factors within a country, including ‘security’ forces. The notion of the state as a threat to security is conceptually nonsensical within the traditional paradigm of national security, yet this is in reality the dominant threat to the lives of people from organized violence. Nor can we conceptualize such risks as the earthquake and tsunami of 26 December 2004 within the national security paradigm, even though clearly they should be part of the policy agenda for achieving freedom from fear for large numbers of people. Thus the reformulation of national security into the concept of human security is simple, yet has profound consequences for how we see the world, how we organize our political affairs, how we make choices in public and foreign policy, and how we relate to fellow-human beings from many different countries and civilizations.

One ‘leg’ of human security is in the human rights tradition which sees the state as the problem and the source of threats to individual security. The other is in the development agenda that sees the state as the necessary agent for promoting human security. Both are reflected in the UN policy discourse, and indeed may well explain

why the human security discourse first arose within the United Nations with the 1994 *Human Development Report* published by the UN Development Programme.

In general, and despite some overlaps as in the Ottawa Treaty banning antipersonnel landmines,<sup>3</sup> Canada and Japan have emphasized a different leg each of human security. Canadians have given priority to protecting citizens at risk of atrocities arising from failed or perpetrator states, and set up an international commission to try to reconcile the imperative to render effective protection to at-risk populations with the persisting reality of state sovereignty. Japan has prioritized the developmental leg of human security, and set up its own World Commission on Human Security to advance this agenda. The Canadian-sponsored commission defined human security as ‘the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms’.<sup>4</sup> The Japanese-sponsored commission defined it as protecting ‘the vital core of all human lives in ways that enhance human freedoms and human fulfilment... It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity’.<sup>5</sup>

The link between the two – the emotional rod that connects both the protection and wellbeing agendas – is solidarity across borders, the sense of shared affinity with fellow human beings qua human beings regardless of differences in nationality, race, religion or gender. The reality of human insecurity cannot simply be wished away. To many poor people in the world’s poorest countries today, the risk of being attacked by terrorists or with weapons of mass destruction is far removed from the pervasive reality of the so-called soft threats that exact a deadly toll every year: hunger, lack of safe drinking water and sanitation, and endemic diseases. These soft threats kill millions every year – far more than the so-called ‘hard’ or ‘real’ threats to security. They are neither unconnected to peace and security, nor can they be ignored until the hard threats have been taken care of. This is why human security can be regarded as a foundational value, from which flow other individual and social values.<sup>6</sup>

This helps too to explain why the African Union has adopted the expansive definition of human security.<sup>7</sup> Africans’ security is threatened more by state weakness, incapacity and absence of effective control over territory, people and resources than by conventional threats of armed attack by other countries. It is also the case that far too many postcolonial African leaderships have ill-served their people and appropriated the resources and power of the state, so that the threat to people’s lives has come more from internal repression by one’s own state than from

<sup>3</sup> See Ramesh Thakur and William Maley, ‘The Ottawa Convention on Landmines: A Landmark Humanitarian Treaty in Arms Control?’, *Global Governance* 5:3 (July–September 1999), pp. 273–302.

<sup>4</sup> *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre for ICISS, 2001), p. 15. I was one of the ICISS Commissioners and indeed one of the principal authors of its report.

<sup>5</sup> *Human Security Now* (New York: Commission on Human Security, 2003), p. 4.

<sup>6</sup> Hans van Ginkel and Edward Newman, ‘In Quest of “Human Security”’, *Japan Review of International Affairs* 14:1 (Spring 2000), pp. 59–82.

<sup>7</sup> See Jakkie Cilliers, *Human Security in Africa: A Conceptual Framework for Review* (Pretoria: African Human Security Initiative, 2004), p. 8.

external aggression by a foreign state.

At the same time, and recalling the origins of the state in European theory and practice, it is also true that individuals cannot be secure in conditions of anarchy at the state level. The state must be efficient in the provision of law and order and other public goods like basic health and literacy. The best guarantee of human security is a strong, efficient, effective, but also democratically legitimate state that is respectful of citizens' rights and responsive to their needs and concerns, mindful of its obligations and responsibilities to protect their lives and promote their welfare, and tolerant of diversity and dissenting voices.<sup>8</sup> States that are too strong or, at the other end of the spectrum, too weak and failing, cannot provide human security to their citizens. At the same time, states by themselves cannot provide the full measure of human security, but instead must act in partnership with robust market forces and resilient civil society.

Thus secure and stable countries and a body of law that mediates the exercise of power between citizens and the state are prerequisites of human security. But so too is human development, *which is not synonymous with but contributes to human security*, by tackling the long-term structural causes of conflict and by converting the choices available to people from merely theoretical to effective (as in effective demand in economics). Only so can people exercise effective choice to pursue a safe life and livelihood on equal terms with others.

The linkage between the two great agendas of security and development became clearer and more widely accepted after the end of the Cold War. 'Peacebuilding' is the bridge that connects the two agendas. It fits far more comfortably under the conceptual umbrella of human than national security. The same is true of conflict prevention: while operational prevention measures aim to mute the prospects of imminent outbreak of violent conflict, structural prevention measures seek to build and consolidate peace through classical development programs promoting state-building, nation-building, economic growth and reduction of income inequality.

In sum, just as no place on earth resembles the North Pole so much as the South Pole, so freedom from want is the mirror to freedom from fear: the two are not polar opposites.

## **R2P**

At the heart of the international divisions on Iraq in 2003 was not the abhorrent nature of the Saddam Hussein regime, but rather the nature and exercise of American power. Saddam Hussein's record of brutality was a taunting reminder of the distance yet to be traversed before we reach the goal of eradicating domestic state criminality; his ouster and capture by unilateral force of arms was a daunting setback to the effort to outlaw and criminalize war as an instrument of state policy in international affairs.<sup>9</sup>

---

<sup>8</sup> See Simon Chesterman, Michael Ignatieff and Ramesh Thakur, eds., *Making States Work: State Failure and the Crisis of Governance* (Tokyo: United Nations University Press, 2005).

<sup>9</sup> Elizabeth Wilmschurst, the former deputy legal adviser to the British Foreign Office, resigned from her post on the eve of the Iraq war because, she wrote in her letter of resignation, military action

But what if the second failure is a response to the first, if one country is attacked and invaded in order to halt or prevent atrocities inside its sovereign territory by the 'legitimate' government (which already indicates a troubling appropriation and corruption of the word 'legitimate')? Who bears the responsibility to protect innocent victims of humanitarian atrocities?

As genocide unfolded in Rwanda in 1994 and 800,000 people were butchered in a mere three months, the world bore silent and distant – very distant – witness to its own apathy. That indifference and inaction by the international community remains one of the most shameful episodes since the Holocaust. This was not a matter of lack of knowledge and awareness, or even of lack of capacity. Rather, it was a failure of collective conscience, of civic courage at the highest and most solemn levels of responsibility.

What if a 'coalition of the willing' had been prepared to move in with military force, but the Security Council was deadlocked?

The community-sanctioning authority to settle issues of international peace and security was transferred from the great powers in concert in the nineteenth century to the United Nations in the twentieth century. While Rwanda in 1994 stands as the symbol of international inaction in the face of genocide, Kosovo in 1999 raised many questions about the consequences of action when the international community is divided in the face of a humanitarian tragedy. The NATO intervention in Kosovo in 1999 highlighted a triple policy dilemma of complicity, policy paralysis, or illegality:

- To respect sovereignty all the time is to risk being complicit in humanitarian tragedies sometimes;
- To argue that the UNSC must give its consent to international intervention for humanitarian purposes is to risk policy paralysis by handing over the agenda either to the passivity and apathy of the Council as a whole, or to the most obstructionist member of the Council, including any one of the five permanent members determined to use the veto clause;
- To use force without UN authorization is to violate international law and undermine world order based on the centrality of the UN as the custodian of world conscience and the Security Council as the guardian of world peace.

R2P is an important effort to resolve these painful dilemmas. It provides a fresh conceptual template for reconciling both the tension in principle between sovereignty and intervention, and the divergent interests and perspectives in political practice. The topic brings together many of the global trends and evolving norms and state practice with respect to peace and security – the relationship between force and diplomacy, human rights and international security, national security and human security, the United Nations and the United States – and also foreshadows and reflects many of the papers at this conference that focus more directly on UN reforms.

---

in Iraq was 'an unlawful use of force' which 'amounts to the crime of aggression'; *BBC News*, 24 March 2005, downloaded from [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4377469.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4377469.stm).

Behind the headlines on the deeply divisive Iraq war was the larger question of the changing nature of threats in the modern world, the inadequacy of existing norms and laws in being able to address such threats, and thus the need for new 'rules of the game' to replace them. The United Nations is the arena for collective action, not a forum where nations who are unable to do anything individually should get together to decide that nothing can be done collectively. The urgent task is to devise an institutional framework that can marry prudent anticipatory self-defence against imminent threats to the centuries-old dream of a world where force is put to the service of law that protects the innocent without shielding the criminals.

R2P seeks to do three principal things: change the conceptual language from 'humanitarian intervention' to 'responsibility to protect', pin the responsibility on state authorities at the national and the UNSC at the international level, and ensure that interventions, when they do take place, are done properly. Because R2P is not an interveners' charter (any more than the Charter of the United Nations is a shield behind which tyrants may torture and kill their own people with total impunity), it does not provide a checklist against which decisions can be made with precision. Political contingencies cannot be fully anticipated in all their glorious complexity and, in the real world, policy choices will always be made on a case-by-case basis. With that in mind, we set out to identify those conscience-shocking situations where the case for international intervention was compelling, and to enhance the prospects of such interventions. In turn this meant that the circumstances had to be narrow, the bar for intervention high, and the procedural and operational safeguards tight because the probability of international consensus is higher under conditions of due process, due authority and due diligence.

Given the changing nature and victims of armed conflict, the need for clarity, consistency and reliability in the use of armed force for civilian protection now lies at the heart of the UN's credibility in the maintenance of peace and security. Absent a new consensus and clarity, the UN's performance will be measured against contradictory standards, exposing it to charges of ineffectiveness from some and irrelevance from others, increasing the probability of unauthorized interventions, and further eroding the Security Council's primacy in the realm of peace and security.

Intervention for human protection purposes occurs so that those condemned to die in fear may live in hope instead. It is based in the double belief that the sovereignty of a state has an accompanying responsibility on the part of that state; but that if the state defaults on the responsibility to protect its citizens, then the fallback responsibility to do so must be assumed and discharged by the international community. Thus R2P is more of a linking concept that bridges the divide between the international community and the sovereign state, whereas the language of the right or duty to intervene is inherently more confrontational between the two levels of analysis and policy.

The goal of intervention for human protection purposes is not to wage war on a state in order to destroy it and eliminate its statehood, but to protect victims of atrocities inside the state, to embed the protection in reconstituted institutions after the intervention, and then to withdraw all foreign troops. Thus military intervention for human protection purposes takes away the rights flowing from the status of

sovereignty, but does not in itself challenge the status as such. It does supplant the rights of the state to exercise protective functions if the state has proven incapable or unwilling to do so with respect to genocidal killings, humanitarian atrocities and ethnic cleansing; or to suspend the right of the state to conduct itself free of external interference if such conduct is the cause of the above atrocities. The prevention of the exercise of sovereign rights under intervention for human protection purposes is always limited in time to a temporary period, until the capacity of the state itself to resume its protective functions can be restored and institutionalized.

Intervention for human protection purposes may also be limited in two further respects. It may be confined to a particular portion of the target state's territory rather than all of it, for example Kosovo and not all of Yugoslavia, where the abuses are actually occurring; or it may be limited with respect to a particular group that is the target of abuse, for example Kurds, rather than to all citizens.

The main conclusions of R2P find their way in the HLP report in the form of the five legitimacy criteria: seriousness of threat, proper purpose, last resort, proportional means and balance of consequences (para. 207).

### **Who Decides?**

Military intervention, even for humanitarian purposes, is just a nicer way of referring to the use of deadly force on a massive scale. Given the enormous normative presumption against the use of deadly force to settle international quarrels, who has the right to authorize such force? On what basis, for what purpose, and subject to what safeguards and limitations? In other words, even if we agree that military intervention may sometimes be necessary and unavoidable in order to protect innocent people from life-threatening danger by interposing an outside force between actual and apprehended victims and perpetrators, key questions remain about agency, lawfulness and legitimacy: that is, about international authority that can override national authority.

R2P came down firmly on the side of the central role of the UN as the indispensable font of international authority and the irreplaceable forum for authorizing international military enforcement. What distinguishes rule enforcement by criminal thugs from that by police officers is precisely the principle of legitimacy. The chief contemporary institution for building, consolidating and using the authority of the international community is the United Nations. It was set up after the Second World War as the framework within which members of the international system could negotiate agreements on the rules of behaviour and the legal norms of proper conduct in order to preserve the society of states. The task therefore is not to find alternatives to the Security Council as a source of authority, but to make it work better than it has.

The legal debate on a clear, consistent and workable set of codified criteria for intervention is largely sterile. The political debate quickly degenerates from rational discussion to highly charged polemics. Many fear that any codification of the rules of intervention would relegitimize the use of force in international relations. This would be a major step backward, in that over the course of the twentieth century the

international community placed increasing legislative and normative fetters on the recourse to military force as a means of settling international disputes.

The response from those with little patience for claims of UN primacy (let alone monopoly) on the legitimate use of international force is that the UN system of collective security was fatally flawed from the start. Peace was preserved and justice advanced by the operation of institutions and the pursuit of values by coalitions of the right minded, able and willing to defend the international order against all challenges.

The real debate is between those who support the development of guidelines for use by the Security Council in authorizing international intervention but remain firmly opposed to criteria for circumventing the UN, and those who wish to retain the right to unilateral intervention. The first group, comprising mainly (but neither exclusively nor all) developing countries, is fearful that the norm of nonintervention could become a roadkill on the highway of international power politics.

Among those who wish to retain the flexibility to launch military intervention, if necessary without UN authorization, there is a further division of opinion between those who would like a ‘doctrine’ approach and others who want merely an ‘exception’ approach<sup>10</sup> – a signposted emergency exit from the existing norms as embedded in the UN Charter.

Yet another variation would be to distinguish a ‘red light’ from the entrenched ‘green light’ approach. Under the latter, intervention may not proceed until and unless it has been duly authorized by the Security Council. Under the former, interventions can take place unless and until specifically prohibited by the Council.<sup>11</sup> The difficulty with this is that when the vital interests of major powers are engaged, interventionary forces may go crashing through an entire forest of flashing red lights without paying any heed to them.

Alternatively, it may be argued that the intersection of international law and ethics creates a space where the precautionary principle can be borrowed from environmental ethics and law. Developed especially in Germany and France with regard to environmental law and the legal protection of health, it seeks to provide policy guidance in situations of inherent uncertainty. The precautionary principle states that the absence of certainty must not delay the adoption of measures aimed at

---

<sup>10</sup> For a review of this debate, see in particular Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, (Oxford: Oxford University Press, 2001), pp. 226–32, and Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford: Oxford University Press, 2000), pp. 33–51. For updated discussions on the subject more generally, see also J. L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (New York: Cambridge University Press, 2003); and Jennifer M. Welsh, ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004).

<sup>11</sup> This is reminiscent of the secret to the professor of comparative jurisprudence during the Cold War. There are only four root systems, he said; once you have grasped that, you can master all the different variations. In Britain, everything is permitted unless specifically prohibited in law; in Germany, all is proscribed unless specifically permitted in law; in the Soviet Union all is permitted in law but banned in practice; and in France everything is prohibited in law but permitted in practice.

preventing the risk of serious and irreversible damage.<sup>12</sup> For if we wait until certainty, irreversible damage may already have occurred. Humanitarian atrocities, genocidal killings and ethnic cleansing occur against the backdrop of chaos, confusion and lack of real time reliable information. If we wait until clarity and certainty obtains, our task may become restitution and retribution, not protection. It should be protection and therefore, in the face of uncertainty, the default bias should be to avoid risk. This is why it is important for the Security Council to deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing.

## **Conclusion**

During the ICISS consultations and study, I was struck by four facts. First, there is a strong consensus among states and in civil society that sovereignty is not an absolute barrier to intervention by the international community in extreme circumstances in order to exercise the responsibility to protect. Second, there is an equally strong consensus that the domestic jurisdiction clause in the UN Charter notwithstanding, Security Council authorization for any intervention is preferable to all other alternatives. Third, in practice, very few states are prepared to insist on and in all cases abide by the principle that Security Council authorization is a necessary precondition for intervention of any type to occur – though there are considerable differences in views about the level of deference that should be shown to the Council. Fourth, despite the clear reluctance to recognize the Security Council as the sole and unique arbiter on all intervention questions, there is nonetheless considerable concern to avoid an outcome that would discredit the Security Council or diminish its authority still further, or that would undermine respect for the principle of an international order based on rules and law rather than simply on power. Thus during the Commission hearings, much of the discussion assumed that calls for intervention would continue to arise and focused on agency, process and validation issues.

During our worldwide outreach and consultations, nowhere did we find an outright and absolute rejection of intervention in favour of sovereignty. On balance, the desire to avoid another Rwanda (where the world stood by passively during genocide) was more powerful than the desire to avoid another Kosovo (where NATO intervened without UN authorization). The president of the Security Council in the fateful month of April 1994 when the Rwanda genocide took place, Ambassador Colin Keating of New Zealand, has added his voice thus: ‘If the international community is ever to be able to act effectively for human protection purposes, then it must pay attention to the recommendations’ of ICISS.<sup>13</sup> Too often in the past UN peace operations have fallen victim to coalitions of the unwilling, unable and unlike-minded. It is time to put collective might to the service of individual and

---

<sup>12</sup> See David Freestone and Ellen Hey, eds., *The Precautionary Principle and International Law: The Challenge of Implementation*, (London: Kluwer Law International, 1996); James Cameron, ‘The Precautionary Principle,’ in Gary P. Sampson and W. Bradnee Chambers, eds., *Trade, Environment, and the Millennium*, 2<sup>nd</sup> ed, (Tokyo: United Nations University Press, 2002), pp. 287–319.

<sup>13</sup> Colin Keating, ‘Rwanda: An Insider’s Account,’ in David M. Malone, ed, *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004), p. 510.

international right.

How might this be done? What are the next steps? The threefold need is to consolidate evolving norms and practices so that the international community can respond effectively, efficiently and equitably without undermining the legal order of sovereign states; to establish principles to guide United Nations action; and to establish operational guidelines that hold interventions true to their humanitarian goals. The General Assembly, by means of a resolution or declaration, could revise its interpretation of sovereignty to realign it with accumulated UN practice in the context of humanitarian crises, affirm the civilian protection responsibility of sovereign states and the fallback international responsibility to protect in the extreme cases of state incapacity, unwillingness or perpetration; and endorse the cautionary principles/legitimacy criteria of grave threat, proper purpose, last resort, proportional means, and balance of consequences. In his recently published report, Kofi Annan makes explicit references to ICISS, R2P and the HLP, endorses the legitimacy criteria, and urges the Security Council to adopt a resolution 'setting out these principles and expressing its intention to be guided by them' when authorizing the use of force. This would 'add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion'.<sup>14</sup>

Our ability and tools to do something beyond our borders, even in some of the most distant spots in the world, have increased tremendously. This has produced a corresponding increase in demands and expectations to do something. An analogy with medicine is appropriate. Rapid advances in medical technology have greatly expanded the range, accuracy and number of medical interventions. With enhanced capacity and increased tools have come more choices that have to be made, often with accompanying philosophical, ethical, political and legal dilemmas: the Terri Schiavo case is but the latest tragic example. The idea of simply standing by and letting nature take its course has become less and less acceptable, to the point where in many countries today parents can be held criminally culpable for failure to exercise due diligence in refusing all available treatment for their children.

Similarly, calls for military intervention happen. R2P takes away the last remaining excuses for the international community to sit back and do nothing when confronted with atrocities again. The gap between the need for human protection, sometimes against people's own government, sometimes over the government's objections, and at other times in situations where no functioning government exists, on the one hand; and the ability of outsiders to render effective and timely assistance by lawful means, on the other, has not gone away. Living in a fantasy world is a luxury we cannot afford. In the real world today, the brutal truth is that our choice is not between intervention and nonintervention. Rather, our choice is between ad hoc or rules-based, unilateral or multilateral, and consensual or deeply divisive intervention. If we are going to get any sort of consensus in advance of crises requiring urgent responses, including military intervention, the R2P/HLP principles and legitimacy criteria point the way forward. To interveners, they offer the prospect of more effective results. To potential targets of intervention, they offer the option and

---

<sup>14</sup> Kofi Annan, *In larger freedom: towards development, security and human rights for all*. Report of the Secretary-General (New York: United Nations, document A/59/2005, 21 March 2005), paras. 122–35.

comfort of a rules-based system, instead of one based solely on might. To all sides, they offer the possibility of efficient, effective and equitable security.

Instead of the position of being the nattering nawabs of international negativism, therefore, those developing countries who wish to resist undue encroachments on sovereignty and major powers who wish to retain the maximum freedom of action in the unilateral use of force should engage constructively in the shaping of the new norms. Establishing agreed principles to guide the use of force to protect civilians under threat will make it more difficult, not less, to appropriate the humanitarian label to self-serving interventions while simultaneously making the Security Council more responsive to the security needs of civilians. The challenge is neither to deny the reality of intervention nor to denounce it, but to manage it for the better, so that human security is enhanced, the international system is strengthened and all of us come out of it better, with our common humanity not diminished but enhanced.