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# Is military action ever justified? A physician defends the ‘Responsibility to Protect’

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## Abstract

This article initially examines the moral dilemmas of war from personal and family experience, from the perspective of a family doctor trained to preserve life and a member of the peace movement. It then explores Just War from religious viewpoints and the challenges to pacifism from those living in war zones, and from human rights and human security perspectives. It concludes that the Responsibility to Protect reflects sound medical principles balancing the need to make war an extreme last resort with the responsibility of the international community to assist those unable to defend themselves.

**Keywords:** *Human security, Just war, Medical ethics, Non-violence, Responsibility to Protect*

## Introduction

Preserving life has been a major mission for me, with my faith, life experience and chosen profession. I have never been able to see war as divinely sanctioned or ‘holy’. All my grandparents and both my parents were refugees from Pakistan, victims of senseless inter-communal and religious violence during the partition of India, which ultimately killed one million and displaced ten million people.

When I was travelling to London and India in June 1985 a series of circumstances (among them safety) led me to choose a Kuwait Airlines flight from Canada to India, as opposed to Air India, which happened to have its plane blown out of the sky in the greatest act of air terrorism prior to 9/11. During the first Gulf War I was doing my residency at the Jewish General Hospital in Montreal as we braced for an attack on Israel and perhaps even our hospital from Saddam Hussein’s chemical or biological weapons. Each of these experiences made me acutely aware of the dangers of terrorism, but also of the futility of war as a solution to terrorism.

War has never held the allure that Chris Hedges describes in a book ironically titled *War Is a Force that Gives Us Meaning*:

The enduring attraction of war is this: Even with its destruction and carnage it gives us what we all long for in life. It gives us purpose, meaning, a reason for living. Only when we are in the midst of conflict does the shallowness and vapidness of our lives become apparent. . . . It gives us resolve, a cause. It allows us to be noble [1].

Despite its simplicity, with black and white allegorical stories, myths and heroes, war cannot hide its culture of murder and hypocrisy.

### **Life and death**

As a family doctor I frequently tussle with complex moral choices involving life and death, balancing the preservation of life against continued suffering, or the life and well-being of a mother against the life of a foetus, or acting to detain a person with mental illness because of risk to themselves or others. Though one cannot bring relief to all suffering, sometimes it is necessary to act decisively against rights or life to save a patient or to protect the public.

As a member of the peace movement I believe that governments should accept the responsibility to be the true protectors and promoters of the health and well-being of all of their people [2], and on several occasions I have written that a military response to deal with human rights abuses, ethnic or religious conflict, weapons of mass destruction or terrorism is not the optimal or first choice [3,4,5].

However, I find it difficult to say that threats to use weapons of mass destruction should never be met with force or to categorically rule out the use of military force in response to acts of wanton terrorism against civilians. When I have shared my uncertainties about the use of force in some situations with friends and colleagues within the peace movement I have occasionally detected some hostility, and an absolute belief that military intervention can never be justified.

### **Peaceful perspectives**

Pacifism is the opposition to war or direct violence as a means of settling disputes. Johan Galtung, a founder of Peace Studies, declares that we can no more talk of 'Just War' than 'Just Patriarchy', 'Just Slavery' or 'Just Colonialism' [6]. Even the most disciplined and virtuous army will engage in acts, from torture to murder and sexual assault, which most people would consider heinous. The violence perpetrated on non-combatants, women and children and the effects it has on the environment and on infectious disease, each impacts on health.

World military expenditure is now running at \$1,083 billion annually, and the United States accounts for half of this figure with a budget eight times larger than the runner-up, China. The side effects of preparing for war include a lack of spending on health care and education.

As Dwight Eisenhower said:

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Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed. The world in arms is not spending money alone. It is spending the sweat of its laborers, the genius of its scientists, the hopes of its children [7].

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Noam Chomsky says:

We cannot say much about human affairs with any confidence, but sometimes it is possible. We can, for example, be fairly confident that either there will be a world without war or there won't be a world – at least, a world inhabited by creatures other than bacteria and beetles, with some scattering of others [8].

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For the human species to survive the increasing lethality of war, we need to work for a world without war. However, until we achieve such a world, can military action sometimes be justifiable as truly the least of evils in society as we know it today?

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'Humanitarian intervention', simply defined by noted Filipino intellectual Walden Bello, is military action taken to prevent or terminate violations of human rights that is directed at and is carried out without the consent of a sovereign government [9]. Though engaging in violence for humanitarian reasons seems paradoxical, my thesis is that when governments fail, in some circumstances after exploring all possible alternatives, war, with rigorously defined limitations, may be the lesser form of evil. By advocating rules of engagement for collective military response by a properly constituted and legitimate international community, I would hope that we would minimise its utilisation.

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### **Should we always oppose violence by peaceful means?**

Not giving viable options to those suffering oppression would condemn such people to certain death. Opponents of direct violence must explain what type of responses they would allow those facing major direct and structural violence employed by scores of Latin American governments, the *apartheid* regime in South Africa and the occupation of Palestine.

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My Palestinian friend Rita cannot see peace without thinking of justice first. As she says, 'when you are so violated, sometimes you can

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understand why the response of violence, if nothing else seems to work'. A Yugoslav friend, Vuk, supported NATO military intervention in his country. When I visited a year after the war, Vuk introduced me to his friends, all leaders of the non-violent civil society movement, from students from the pro-democracy OTPOR movement to human rights campaigners, to political opposition leaders. Though Slobodan Milosevic was deposed six months later, seemingly in response to non-violent opposition, Vuk remains convinced that without outside military intervention Milosevic would still be in power.

Both Rita and Vuk, though generally advocates of non-violence from a utilitarian as well as a moral point of view, see westerners forbidding direct violence against extremes of structural, cultural and sometimes direct violence as paternalistic.

Says Vuk:

In a global village, with societies and communities living closer than any time before, there are some, including the Milosevic regime, which do not share cultural attitudes and values promoted in international treaties and declarations. These societies are applying their violent model both to other communities/countries, and to their fellow citizens. That means that the world has to have international institutions: laws, courts, sentences, police and jails for those not obeying the law. With resistance, the police have the right to apply force. Yes, innocent people died, but the people of Serbia were hostages of the specific ruling mafia: It is tragic that in the action of freeing hostages some of them sometimes get wounded and some of them sometimes die. However, there is no other way if we want the majority to survive, and if we want to stop that way of treating human beings. The violent can understand only stronger force.

I may differ with my friends about the utility of direct violence, both internal and external, in the cases of NATO bombing or Palestinian resistance. I certainly had a strong preference for outside support for stronger non-violent action inside Yugoslavia and Palestine. But from my armchair in the West I also have a certain guilt categorically denying such means to those suffering when I am powerless to change the actions even of my own government, which permits, and sometimes enables, violence against my friends. Sometimes I may even be complicit, an indirect 'beneficiary' of structural and direct violence practised by the 'friends' of my government.

### **Gandhi, Indian independence and the ambiguities of pacifism**

The Indian struggle for independence is considered in the West to have been led by the epitome of non-violence, Mahatma Gandhi. Gandhi

certainly felt that violence generally bred more violence and morally reduced those who employed it, but even Gandhi has been shown to acquiesce in violence in some cases.

Historian and biographer Raj Mohan Gandhi explains:

We should also recognise that for Gandhi (and most Hindus) *ahimsa* could co-exist with some carefully understood acquiescence in the use of force. (To give only one example, Gandhi's Quit India resolution of 1942 stated that Allied troops fighting Nazi Germany and Militarist Japan could use India's soil if the country was freed) [10].

Interestingly Gandhi's favourite text was the *Bhagavad Gita*. Gandhi declared that, 'The Gita is the universal mother. She turns away nobody. Her door is wide open to anyone who knocks. A true votary of Gita does not know what disappointment is. He ever dwells in perennial joy and peace that passeth understanding' [11].

In the Gita, Krishna, the God figure come to earth, urges Arjuna to do his duty, to fight against his cousins to whom his brother had gambled away the Kingdom, despite Arjuna's ethical reservations about the carnage to be unleashed by fighting evil. Though Gandhi viewed the tale as allegorical as the 'Gospel of Selfless Action', representing the conflict between knowledge and ignorance, rather than good and evil [12], most historians and Indian intellectuals [13] take the message that we sometimes need to take up arms, quite literally. Many also assert that without Subash Chandra Bose acting violently against the British Empire, Gandhi's efforts would have been in vain.

There seems to be some ambiguity in the pacifism of many of us. Many friends in the peace movement, people who say that they are against war, allow for some military action in some circumstances. Some say that it is acceptable to use the military as long as it engages in 'police action'; some are just concerned that we do not spend enough time talking about Peace and defining Just Peace instead of Just War. Some say that it is only state-to-state war or intervention by people from outside the region, or the US as global policeman, that they oppose; for others, it is indiscriminate violence or the military as means or agent. If, as most seem to agree, organised military response is acceptable under some circumstances, how do we decide when, upon whom and how we should act in a way that minimises damage?

### **Defining Just War from a faith perspective**

Cicero suggested three simple rules for war: a Just Cause (for example, to stop an invasion); a formal declaration of war by the king or emperor (to give the other side a chance to put things right); and just conduct of the war (for example, that unarmed civilians not be attacked). Christians in the first

three centuries AD, following the teaching and example of Jesus, were pacifists, loving their enemies even if this meant persecution (some would say borne of relative weakness), but after Constantine made Christianity legal in 311 things changed.

Ambrose, Bishop of Milan (died 397) made Just War a part of Christian thinking, and Augustine (died 430) added some rules including respecting conscientious objectors such as religious professionals. In an about-face, by 416 AD, only Christians could be soldiers in the Roman Empire. In *Decretum*, twelfth-century monk and jurist Gratian introduced Just War into modern law; most Christians considered fighting infidels in the Crusades to be just, and after the Reformation both Lutherans and Anglicans made Just War part of their creeds, as opposed to Anabaptists and Quakers who were pacifist [14].

Commonly accepted current Christian Just War criteria would include:

- selectivity (choosing one's battles);
- a last resort after all peaceful means have failed;
- a just cause;
- by a lawful authority;
- by right intention (for example, to establish justice, not take revenge);
- have a reasonable chance for success;
- more likely to result in good than evil;
- use methods which are moral and which respect international agreements (this includes not targeting unarmed civilians and others declared as 'innocent');
- use proportionate means [14].

Other religions also limit war from a moral perspective. Muslim *Jihad* by the sword [*jihad bis saif*] refers to *qital fi sabilillah* [armed fighting in the way of God, or holy war]. This must be just cause against injustice and oppression or against the rejecters of truth after it has become evident to them; there must be observance of treaties, pacts and respect for neutral parties. No one should be wronged; women, children, the elderly, religious people and institutions should all be spared; and though there is a right to retaliate no torture should be employed. Fighting should not occur during Ramadan; no plundering or looting or mutilation of bodies is allowed; there is to be no display of pomp before battle; and the environment (fruit-trees, fertile lands and livestock) must all be spared [15].

For Hindus, the *Rig Veda* originating about 1,000 BCE might be seen as laying down the right conduct of war: that it be conducted in a fair manner and that it is heinous to attack non-combatants, the sick, the old, children and women. There is a general prohibition on the use of weapons that cause unnecessary pain or more suffering than is indispensable to overcoming the enemy. It is cowardly to poison the tip of the arrow, an equality of fighting

instruments and open means is necessary, and it is unjust to strike someone from behind.

### The rules of war today

Currently international law allows war or threat of military force in self-defence only in response to a direct, armed attack of one nation on another, under Article 51 of the United Nations Charter, or with a Security Council mandate.

*Jus ad bellum* are laws related to the right to wage war including the 'Nuremberg Principles' [16], a set of guidelines for determining what constitutes a war crime, also including crimes against peace and crimes against humanity [17]. The document was created by the International Law Commission charged under UN General Assembly Resolution 177 (II), paragraph (a), to 'formulate the principles of international law recognised in the Charter' during the Nuremberg Trials of Nazi party members following the Second World War. Supreme Court Justice Robert Jackson, chief prosecutor for the US at Nuremberg, proposed to the tribunal that an aggressor is a state that is the first to commit such actions as 'invasion by its armed forces, with or without a declaration of war, of the territory of another State'.

In the judgment of the Tribunal: 'To initiate a war of aggression . . . is not only an international crime, it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.'

The conduct of warfare is also regulated by what is known as *jus in bello*. With the St. Petersburg Declaration in 1868, 'Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight', followed by the Hague Conventions in 1899 and 1907 which recognised proportionality, the inhumanity of some weapons systems, and the need to protect non-combatants. The four Geneva Conventions, now ratified by 194 countries, represent the main laws restricting the conduct of war, beginning with the first, after the foundation of the International Committee of the Red Cross (ICRC) in 1863, 'for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.' Others came later and have been refined in 1949 and subsequently, 'for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea' and those 'relative to the Treatment of Prisoners of War' and 'relative to the Protection of Civilian Persons in Time of War'. Grave violations of the Geneva Conventions are punishable criminal offences in ratifying countries.

The traditional definition of war as nation states opposing each other does not often apply to military action today, with internal or global conflicts, often involving non-state actors. How can we minimise violence in this post-Westphalian world? Are we willing to rule out a properly



sanctioned military under right authority, perhaps even a transnational army with the ability to launch police action against state and non-state actors?

### **Human Rights and human security perspectives**

The Universal Declaration of Human Rights declares: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood' [18]. While we have rights, socio-economic, cultural, political and civil, what happens when people do not act in a spirit of brotherhood and these fundamental rights are violated?

The Canadian government defines 'human security' as 'freedom from pervasive threats to people's rights, safety and lives'. Human security includes economic security, food security, health security, environmental security, personal (physical) security, community security, and political security [19]. The Japanese government includes threats to lives, livelihood, and dignity in its definition. If governments cannot provide this minimum than surely we have to say that violence is being perpetrated on a people; how then can we ensure or enforce adherence to the objectives with governments unwilling or unable to provide people with such fundamental rights or security?

War is certainly not the first option of resort in defence of human rights. War itself violates rights, and we cannot argue that war is the only or best way of ridding the world of evil. Opponents of military action, including myself, have cited the examples of Suharto, Milosevic, Marcos and a host of European and Latin American dictators overthrown by non-violent, often popular, revolutions defending fundamental rights [4,20].

Many in the peace movement, me included, oppose nation states taking up arms against other nation states to solve problems. Allowing individual nations or their leaders to define persecution leads to selective justice; for example, the Nazis declared themselves guarantors of human rights and protectors of German minorities in Europe. The alternative is a collective decision based on a rule of law.

War may yet be a last resort in defence of human rights. Those absolutely opposed to outside military intervention must explain alternatives to victims of genocide in Rwanda or ethnic cleansing in Darfur. The Canadian General Romeo Dallaire, in charge of UN forces in Rwanda, felt that the 1994 genocide, in which one million people were killed in four months, could have been averted with only 5,000 troops [21]. Actions by the international community in Timor, Sierra Leone and Liberia may have prevented genocide.

Even over a period of years, economic, political and military sanctions have often proved ineffective in coercing changes in determined and resource rich regimes that violate human rights. They are not a perfect

'humane' alternative, as Cubans and Iraqis will attest. Joy Gordon, who teaches philosophy at Fairfield University, argues that because of their human consequences economic sanctions must be considered a form of siege warfare subject to the same rules of international law.

If we only talk about how the international community could have responded earlier and do not provide practical alternatives when genocide is occurring or imminent, might we not allow it to happen by default? While peaceful, early response to emerging violence is desirable, is it possible that we may only be able to limit damage in some circumstances by meeting violence with violence? If we permit violence to take place (whether direct, structural or cultural), without resisting it in the most effective way, are we not complicit in it?

Of course the type of military action permissible must be police action. Though the use of violence is present in each, how does police action differ from military action? We recognise the right, even duty, of police officers to threaten or even to use violence, but there are major ethical and legal constraints on the use of violence. The structure backing it up has generally recognised legitimacy. There is an attempt to use violence as an extreme last resort, even accepting that a criminal will escape if the dangers to the life of bystanders, the criminal, or the police, are too great.

**The Responsibility to Protect**

The International Commission on Intervention and State Sovereignty [22] was sponsored by the government of Canada, succeeding such commissions as Brandt, Palme, Brundtland and Canberra, comprising former heads of states, international legal experts, NATO generals and UN officials from around the world. The report, entitled *The Responsibility to Protect* (R2P) begins:

State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.

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 (p xi).

The Security Council, under Article 24 and Chapters VI and VII of the UN Charter [23], is charged with maintenance of international peace and security. There are also specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law. The international community is charged with the responsibility to prevent, the responsibility to react and the responsibility to rebuild. Prevention is the first priority.

After looking at prevention and early reaction, R2P places a heavy emphasis on non-military means of response. These include positive economic incentives (political and diplomatic measures, human rights observers, trade missions, cultural exchanges, and education), all to promote compliance and integration of the offending party, and negative sanctions, military (arms embargoes and ending military co-operation), economic (financial sanctions, restrictions on income generation, access to resources), transportation, political and diplomatic (representation, travel, suspension from regional and international bodies). R2P considers these non-military means far preferable, but here I concentrate on the threshold criteria for military intervention.

The Just Cause Threshold for military response includes only:

Serious and irreparable harm occurring to human beings, or imminently likely to occur, such as large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

The Principles of Military Intervention state: ‘Rules of engagement which fit the operational concept are precise, reflect the principle of proportionality, and involve total adherence to international humanitarian law’. The Precautionary Principles include:

- *Right Intention*: to halt or avert human suffering. This is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
- *Last Resort*: when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
- *Proportional Means*: the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
- *Reasonable Prospects of Success*: the consequences of action, halting or averting the suffering which has justified the intervention, are unlikely to be worse than the consequences of inaction.
- *Right Authority*: the Security Council is the arbiter.

### **R2P and medical principles**

Medical organisations have been active in defining the rules of war. The first Nobel Peace Prize was given to the founder of the Red Cross, Henri Dunant, who also established laws governing care of the wounded in the first Geneva Convention. The ICRC won the Nobel Prize another three

times, in part related to its support and organisation of the Geneva Conventions. International Physicians for the Prevention of Nuclear War, winner of the 1985 Nobel Prize, worked with other NGOs for the International Court of Justice to declare that launching or preparing for a nuclear strike is generally illegal, save the rare case in which a state's survival is threatened. Medical groups have led efforts for conventions on chemical and biological weapons and landmines, and the ICRC opposed weapons systems that caused superfluous injury and unnecessary suffering (the S<sub>Ir</sub>US project). 455

How does R2P square up with medical ethics and humanitarian principles? R2P emphasises the importance of primary prevention and rebuilding, and these aspects are not controversial from the medical view; I have chosen rather to focus on the so-called 'last resort' of military action. Where does war fit into this with its violation of fundamental human rights? The Responsibility to Protect recognises duties of states as well as rights and seeks, as we do in medicine, to balance harm, minimise violence and injustice. 460 465

Instead of asking when a nation has the *right* to intervene, the Commission began with the premise that the primary *responsibility* of a nation state is to protect all of its people. It recognises the general principle of state autonomy, as doctors recognise patient autonomy, which cannot be overridden without proper authority. Its definition of 'incapacitance of the state' through unwillingness or inability to safeguard its citizens, and moving responsibility to the international community, appears analogous to a parental obligation to children and the obligation of society, and in particular the responsibility of health and social services professionals, to intervene when parents fail to act in the interests of a child. The 'Just Cause Threshold' must be present: as when health and social services take children away from their family, serious and irreparable harm to human beings must be happening, or imminently likely to occur. 470 475 480

The Hippocratic Oath pledge to 'follow the system of regimen which according to my ability and judgment I consider for the benefit of my patients and abstain from whatever is deleterious and mischievous' seems to reflect principles of Right Intention (beneficence), holding the welfare of the patient above self-interest or goals of the state. Malfeasance, the altruistic primary goal of the intervention, must be the protection of the people, to halt or avert human suffering, not to secure of the interests of another state. 485

The first rule of medicine *primum non nocere*, 'do no harm', is not absolute, as for example in the sacrifice of a foetus in twin-to-twin transfusion hydrops foetalis, when both could not survive together – taking one life to save another. However, we must have reasonable prospects of success in halting or averting the suffering which has justified the intervention. As in medicine, the consequences of inaction should be significantly worse than the consequences of action. 490 495

The international community is charged with responsibility not just to react but to prevent and rebuild; these correspond very directly to preventive health care, curative treatment and rehabilitation, with a strong emphasis on prevention. The last resort provisions for a military response to be considered – only after all non-military means have been exhausted, and the planned military intervention must be the minimum necessary and proportionate to manage its humanitarian objective – are similar to our parameters for surgery, radiotherapy, or indeed any therapeutic manoeuvre as we recognise that any treatment may have major side effects.

### Objections to humanitarian intervention

At an IPPNW conference in Germany [24], Walden Bello described various arguments against setting up rules for humanitarian intervention:

- Such rules could be used by powerful states to justify any intervention, from the US protecting medical students in Grenada, to similar excuses in Kosovo, Afghanistan and Iraq (the claim that evidence will be found of dangers of weapons of mass destruction in Iraq or the threat of an impending genocide in Kosovo).
- By sanctioning rules war becomes easier to launch (the ‘thin edge of the wedge’ argument).
- There is no point setting up rules, as the powerful will not obey them anyway (Thucydides wrote, ‘the strong do as they can, while the weak suffer what they must’).

Specific opposition to the utilitarian wars described above does not represent a challenge to R2P. Opponents of R2P should look at the precautionary principles contained within it. Though appeals to Just War criteria were used by belligerent governments, I would argue that not only would these wars not have fitted R2P criteria, but that had R2P criteria been accepted, these wars might not have achieved acceptance.

The NATO intervention in Kosovo was not under Right Authority, and violated Articles V and VI of the NATO Charter [25]. Action in Afghanistan, while in direct response to an attack and perhaps justifiable under international law and Just Cause under *jus ad bellum*, was not proportionate or under Right Authority.

Western leaders attempted to prove that Iraq posed an imminent threat with Weapons of Mass Destruction in 2003, given its previous use of chemical and biological weapons and its massacres of minorities. However, this intervention failed not only the criteria of R2P but also, according to former US President Carter, a number of necessary criteria for Just War [26]. Intervention was not a last resort; there was no imminent harm, no chances of success, and it was not under right authority. Even a Downing

Street memo recognises its illegality in conception without a second UN resolution [27]. British generals, worried about prosecution under Nuremberg criteria, forced Lord Goldsmith to redraft his legal opinion [28], and the former commander in Bosnia, General Sir Michael Rose, considers that Tony Blair should be impeached for conducting an illegal war [29].

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As far as *jus in bello* is concerned, the conduct of the war on terror in respect of illegal detention-without-trial in Guantanamo, kidnapping and extraordinary rendition to third countries, torture in Abu Ghraib, rape and murder in Haditha, the use of white phosphorus chemical weapons on Fallujah – none could be called Right Conduct. On the other hand, limited air strikes over Srebrenica under right UN authority, or a direct reaction to Iraqi action on Kurds or Shias during the time of ‘ethnic cleansing’, might have been justified had they taken place under Right Authority.

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Knowing that a military response under international authority might ultimately be possible could bring pressure, both internal and external, on regimes violating human rights and reduce the dangers of unilateral intervention. Alternatives to war would be sought earlier within the spectrum of response proposed by R2P. With more support from the international community, rules regarding the use of force might be refined.

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Is war indeed easier to launch under R2P, or does it set a higher threshold for war as a last resort than currently exists? It is my contention that this is indeed harder, because it removes the rationale of a state intervening selectively and unilaterally to protect human rights where it feels the international community is powerless to act. Launching wars of aggression would still be illegal.

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Though some continue to assert the right to act unilaterally in the name of human rights or in pre-emptive self-defence (the so called ‘preventive war’ in the US National Security Strategy), Robert Jackson explained its dangers:

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If certain acts of violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us. . . We must never forget that the record on which we judge these defendants is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well [30].

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### Personal caveats about R2P

My main problems with the R2P report include its advocacy of the Security Council as the current arbiter of what is acceptable. In the past the SC has not always operated according to a strict set of principles but rather in the

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interests of the Great Powers. The current default position in world affairs governance is *de facto*, not *de jure*. The only safeguard against collective aggression by the Great Powers is a balance of interests. However, the Great Powers may see some value in regaining moral legitimacy by following consistent principles and rules. Nation states may also see benefits to surrendering some authority to a duly sanctioned international body, moving from their current win-lose model of success. In other words 'Do unto others as you would have others do unto you' is not just for purely moral reasons but also for self-preservation. Norms forbidding landmines, biological, chemical and other weapons system have modified international behaviour.

It is also unclear who would conduct the military operations under Right Authority, though it seems that the UN is the most appropriate body to launch what ought to be police action. R2P does not separate the roles of judge, jury and executioner or suggest a separation of legislating, executive, judicial and enforcing authorities, but it does make action a multilateral responsibility. This is better than the *status quo*, with powerful nations, if strong enough, individually acting as judge, jury and executioner.

### **Defining good governance and 'failed states'**

The duty and responsibility of the international community are not western constructs but are innate in many other cultures. R2P criteria have been developed by actors from North and South, the military and non-governmental organisations, and as such, may be resilient and represent the will of the international community.

How would we judge compliance of regimes with international norms or good governance? A number of indicators of good governance have been suggested [31], including issues such as a low ratio of military to social budgets, non-possession of weapons of mass destruction, low disparity of wealth, low corruption, human and political rights including the absence of torture, disappearances, death penalty, and abuse of children, as well as positive rights to free speech, movement, religion and political association. The Green Party in the UK has adopted an Index of Governance [32]. Elements of civil society such as Amnesty International or Human Rights Watch might act as monitors for proper governance. Factors mitigating the failure of a state to achieve these norms, including the economic situation, factoring in the UN Development Programme (UNDP) Human Development Index, meeting the Millennium Development Goals or the Human Security framework, may be useful. In the world of global communications, such generally accepted norms could undermine the legitimacy of regimes in even the most tightly controlled societies, perhaps generating internal opposition.

**Conclusions**

Allowing and defining and delimiting the rules of war may increase the credibility of peace groups as realists with decision-makers and the general public. One might hope that R2P could empower civil society as guardians of international order. Once governments subscribe to these principles, we can also forcefully argue against war, identifying why wars are not last resort, proportionate, under right authority or with just cause as opposed to the current more murky state of international norms. With the focus of R2P on prevention as the first goal, we can develop the preventive, peace-promoting aspects. We must actually work to promote the non-violent alternatives represented by Sharp, Galtung and others to show that war indeed ought to be a last resort. Ironically, by setting strict rules for war, we may actually be better able to work for a world without war and violence.

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