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Since the year 2000, e-merge has sought to bring together online some of the best work by graduate students on emerging issues in international affairs.

In this edition, **Kelly-Anne Campbell** examines the Legality of the North Atlantic Treaty Organisation's Use of Force in Kosovo, **Brent Ellis** discusses the Lessons of Counterinsurgency for Contemporary Peace Operations, **Brent Ellis** also discusses "If It's Not Terrorism, It's not Relevant": Evaluating NATO's Potential to Contribute To the Campaign Against Terrorism. **Quinn Newcomb** dissects the 'Just War' Doctrine and it's implications of the New American Foreign Policy Framework. Last, but not least, **David Seekings** asks: Is there a Responsibility to Protect? An Ethical Evaluation of The Responsibility to Protect. Each work merits careful reading; together, they reflect not only the diversity of global issues, but also the inherently multi-disciplinary nature of their study.

On behalf of the e-merge editorial committee, I would like to extend our gratitude to the Norman Paterson School of International Affairs and its Centre for Security and Defence Studies, as well as the Faculty of Public Affairs and Management, all at Carleton University in Ottawa, for their financial support. I would also like to thank Professors David Carment, Paul J. Davidson, David Long, D.R.F. Taylor and Dane Rowlands for their expertise. Thanks also to our webmaster, Paul Brandner, to past-editor-in-chief Dean Dalke, and as ever, to the indefatigable Vivian Cummins, Janet Doherty, Janice Fochuk, Cindy Halden and Brenda Sutherland. Finally, I wish to commend once again the student authors, without whose talent, trust and determination, this edition of e-merge would not be the fine read that it is.

An Examination of the Legality of the North Atlantic Treaty Organisation's Use of Force in Kosovo

By Kelly-Anne Campbell

The seventy-eight day bombing campaign launched by the North Atlantic Treaty Organisation (NATO) against the Federal Republic of Yugoslavia (FRY) in March of 1999 was unique in two respects. First, it was a collective action by the world's richest and most powerful states. Second, the states involved in the bombing campaign made little effort to justify their actions under the legal categories available in international law.[1] As such, NATO's action poses significant and as yet largely unanswered legal questions regarding the use of force internationally.[2] It also brings to the fore the longstanding legal, political and moral debate surrounding the doctrine of humanitarian intervention as it pertains to the use of force internationally.[3]

This paper will examine whether NATO's use of force in Kosovo was legal according to international law as it existed at the time of the bombings. Specifically, it will examine the Kosovo campaign within the context of the general prohibition on the use of force which is present in both treaty and customary international law. The paper will also consider the possibility that NATO's intervention in Kosovo can be justified on the basis of a right of humanitarian intervention. Finally, it will examine the impact that the Kosovo campaign has had on the development of customary law and briefly outline some of the possible consequences for international law as a whole.

According to official NATO statements: "NATO intervened in Kosovo to halt a humanitarian catastrophe and restore stability in a strategic region lying between Alliance member states."[4] Public statements by individual NATO members reinforce this

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[1] David Wippman, "Kosovo and the Limits of International Law," (2001) 25(1) Fordham International Law Journal p. 132.
[2] Joyner, D.H., "The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm" (2002) 13 European Journal of International Law 597Joyner p. 1.
[3] http://www.ploughshares.ca/content/MONITOR/mond00a.html
[4] http://www.nato.int/kosovo/kosovo.htm

position. In 1999, President Bill Clinton addressed Kosovo Force (KFOR) troops in Macedonia. In what has been termed the 'Clinton Doctrine' he stated:

> It is not free of danger, it will not be free of difficulty. There will be some days you wish you were somewhere else. But never forget if we can do this here, and if we can say to the people of the world, whether you live in Africa or Central Europe or any other place, if somebody comes after innocent civilians and tries to kill them en masse because of their race or ethnic background or their religion, and it's within our power to stop it, we will stop it.[5]

The Netherlands stated that "the terrible, unceasing tragedy in Kosovo left no other choice," while Italy argued that it had been constrained to intervene "to avoid genocide; the use of force had been inevitable."[6] These statements indicate that NATO members took action in Kosovo because they refused to stand idly by and watch yet another campaign of ethnic cleansing.[7] Despite this convincing moral argument, on the basis of international law it is difficult to argue that NATO's actions in Kosovo were in fact legal.

At present, the status of international law is such that there exists a general prohibition on the use of force internationally. The primary source of this general prohibition is the Charter of the United Nations (UN) but it is also a part of customary international law. The preamble of the UN Charter states that the purpose of the UN is "to save succeeding generations from the scourge of war" by maintaining international peace and security and ensuring "that armed force shall not be used save in the common interest." Article 2 (4) of the UN Charter states that: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or

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[5] Joyner p. 3.
[6] Cassese, A., "*Ex iniuria ius oritur:* Are we Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?" (1999) 10 European Journal of International Law 23. p. 1.
[7] Ibid. p.1.

political independence of any state," while Article 2 (7) reaffirms the sovereignty and territorial integrity of the nation state. Furthermore, the United Nations Declaration on Friendly Relations, which can be seen as an expression of the status of international law, asserts that "no state or group of states has the right to intervene directly or indirectly for any reason whatever in internal or external affairs of any other state." Finally, the International Court of Justice (ICJ), in its determinations of *The Corfu Channel Case (1949)* and the *Case Concerning Military and Paramilitary Activities with and against Nicaragua,* has confirmed the existence of the principle of a general prohibition on the use of force internationally. This prohibition is also generally considered a rule of *jus cogens*, that is a peremptory norm of international law from which no subject of international law may derrogate.

There are, however, two exceptions to the general prohibition on the use of force. They too are a part of both treaty and customary law and must be considered when examining the Kosovo bombings. First, the right of self-defence is clearly articulated in Article 51 of the UN Charter. Article 51 states that:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Second, pursuant to Article 39 and 42 of the Charter the use of force when authorised by the Security Council is considered a legal use of force. Articles 39 and 42 give the Security Council explicit power to determine the existence of a threat to international peace and security and empower it to decide what measures shall be taken to maintain or restore international peace and security. Although these exceptions to the

general prohibition may be somewhat controversial in their application, they are the only two exceptions to the prohibition on the use of force which are accepted by the international community as a whole. As such, UN member states have clearly delegated the primary and authoritative role in the resolution of disputes to the United Nations Security Council. [8]

The supreme authority of the Security Council in matters regarding the use of force also extends to incorporate regional organisations. Article 33 of the Charter establishes a role for regional organisations in the maintenance of peace and security by allowing parties to a dispute to resort to regional organisations in order to seek a peaceful settlement provided that these actions are consistent with the purposes of the UN Charter. It is important to note however, that an intervention by a regional organisation is generally seen to require Chapter VII authority from the United Nations Security Council before it can proceed.

Application of the rules discussed above suggests that NATO's actions in March of 1999 were clearly illegal. The bombing of Kosovo constituted a breach of Article 2 (4) and Article 2 (7) in that it was a use of force against the territorial integrity and political independence of the FRY. Furthermore, NATO's actions cannot be justified on the basis of an accepted exception to the use of force internationally. NATO was not acting in self-defence and it did not have the prior express authorisation of the UN Security Council under Chapter VII of the Charter. On this basis alone NATO's intervention in Kosovo should be classified as illegal under international law.

[8] Joyner p. 3.

The intervention in Kosovo was undertaken by the world's richest and most powerful states, as such it is difficult to simply dismiss the action as "a transient breach of international law or the aberrant action of a single state that carries little or no precedential value."[9] A closer examination of NATO's action reveals that there are a number of factors that could potentially mitigate any legal condemnation of NATO's intervention.[10]

The first such argument can be made on the basis of implied authority. The Security Council in its resolutions of 23 September 1998 and 24 October 1999 affirmed "that the unresolved situation in Kosovo, Federal Republic of Yugoslavia, constitutes a continuing threat to peace and security in the region."[11] It endorsed the agreements signed in Belgrade on 16 October 1998 between the FRY and the Organisation for Security and Cooperation in Europe (OSCE) and on 15 October 1998 between the FRY and NATO concerning the verification of compliance by the FRY and all others in Kosovo. Furthermore, the Security Council demanded the full and prompt implementation of these agreements by the FRY.

Second, NATO only took action after Belgrade repeatedly refused to comply with the pertinent Security Council resolutions and only after extensive diplomatic efforts had failed. Third, FRY actions shortly before the bombing presented NATO with at least the possibility of major "humanitarian catastrophe." Security Council Resolutions 1199 and 1203 explicitly recognised this concern stating that it was: "Deeply alarmed and concerned at the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe, and re-emphasis[ed] the need to prevent this from

[9] Wippman p. 130.
[10] Ibid. p131-134.

happening."[12] Fourth, NATO's plan was not narrowly self-interested. It did not intend to impose a friendly regime, obtain control over resources, or otherwise pursue any selfish aims. As such, the breach of territorial integrity and political independence of the FRY can be seen as temporary in nature.

Finally, NATO's action commanded broad support in the international community. This is evidenced by the reaction to a draft Security Council resolution supported by China, Namibia, and Russia that condemned the NATO bombing. The draft was voted down twelve votes to three and has been interpreted as overwhelming support for NATO actions. In addition, Security Council Resolution 1244 supported the political settlement that was reached after the bombing campaign and it allowed NATO troops to form the core of the international peacekeeping mission to Kosovo. This suggests that NATO received if not implicit approval from the Security Council then at the very least approval after-the-fact.[13]

However, even taken collectively, these factors do not bring NATO's actions within the formal law of the UN Charter.[14] Furthermore, although these arguments are compelling, it is possible to offer a counter-argument to each one of them. With regards to implied authority, acceptance of the political result of the bombing does not necessarily constitute legal acceptance of the means by which the result was achieved. In terms of an intervention to end a 'humanitarian catastrophe', high altitude bombing, which reduces the risk of military casualties at the expense of increasing the risk to civilians, is at odds with NATO's stated humanitarian aim. In addition, regardless of its

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[11] Security Council Resolution (SCR) 1199 & 1203
[12] SCR 1199 and 1203
[13] Wippman p. 134.
[14] Ibid. p. 134.

temporary nature, any use of force against the territorial integrity and political independence of a state has generally been interpreted as a breach of Article 2 (4). Finally, it is difficult to argue that NATO was acting with universal support when two permanent members of the Security Council (Russia and China) objected to their actions and introduced a resolution to condemn it. This is further reinforced by the fact that the reason NATO did not seek Chapter VII authority from the Security Council is that it believed that a veto by Russia would prevent the granting of such authority. Thus, the factors that are often cited to legitimise NATO's actions are, upon further examination, quite weak.

The prohibition on the use of force present in both treaty and customary international law seems to indicate that the NATO bombings in Kosovo were illegal. However, given the stated aims of NATO's intervention, it might be argued that its actions were legal on humanitarian grounds. In order to make such a claim it must first be proven that such a right of humanitarian intervention existed at the time of the NATO bombing of Kosovo.

The first possible source of a right of humanitarian intervention is international treaty law. To be legal, an intervention on humanitarian grounds must be shown not to violate Article 2 (4). This can be done either by arguing that a genuinely humanitarian intervention would not be a use of force 'against the territorial integrity or political independence' of the target state, or that it would not be inconsistent with the Purposes of the United Nations Charter.[15]

[15] Simon Chesterman, "The Scourge of War: Humanitarian Intervention and the Prohibition on the Use of Force in the UN Charter," Chapter 2, *Just War or Just Peace? : Humanitarian Intervention and International Law,* (Oxford: Oxford UP, 2002) p. 48.

The Charter is a multilateral treaty subject to the Vienna Convention on the Law of Treaties which is now frequently applied by the ICJ. The Convention on the Law of Treaties provides that: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[16] It may be possible to interpret Article 2 (4) in two ways. First, it could be argued that, as a result of its wording, Article 2 (4) prohibits only the use of force against the territorial integrity or political independence of a nation state. Based on this interpretation, any use of force that does not compromise the territorial integrity or political independence of a nation state might be permitted. The second interpretation is one in which the definition of 'force' is expansive and therefore precludes all uses of force internationally not just those against the territorial integrity and political sovereignty of a state.

Numerous statements by the General Assembly and the ICJ concerning the meaning of non-intervention, and the practice of the Security Council which has declared unauthorised force illegal despite its temporary nature, suggest that the second interpretation of Article 2 (4) is the one accepted in international law. Therefore, Article 2 (4) should be read to prohibit all use of force not just that which is against the territorial independence and political sovereignty of a state. As such, the suggestion put forth by Oscar Schachter in 1984 that "a war waged in a good cause would violate neither the territorial integrity nor political independence of the target state," in fact runs contrary to the internationally accepted interpretation of Article 2 (4).[17]

[16] Chesterman p. 48.
[17] Ibid. p. 48.

A second argument regarding the potential existence of a right of humanitarian intervention in treaty law is the suggestion that it is not inconsistent "with the Purposes of the United Nations." It has been argued that in the Charter, the promotion of human rights is as important a purpose as the control of international conflict and thus humanitarian intervention should not be considered a violation of Article 2 (4).[18] This is based on an interpretation of Article 2 (4) that regards the use of the words 'or in any *other'* to suggest an inclusive meaning. Such an interpretation would lead to the conclusion that the appropriate reading of Article 2 (4) is that "any threat or use of force that is not directed against the territorial integrity or political independence of a state but is inconsistent with Article 1 of the Charter is *also* illegal."[19] This interpretation has been used to justify a right of humanitarian intervention. However, according to author Simon Chesterman it is highly questionable that the drafters of the Charter regarded human rights as of equal importance to peace. In addition, the first purpose of Article 1 is to maintain peace and security through the removal of threats to the peace and the settlement of disputes. International co-operation and the promotion of respect for human rights is listed as the third purpose of Article 1 and Chesterman concludes that interpretation of Article 2 (4) to include a right of humanitarian intervention is incorrect.

It may also be possible to interpret article 2 (4) as not precluding unilateral action as a form of self-help justified in customary international law, when the collective security regime envisaged by the Charter fails to address a crisis. Such an argument posits that this right of 'self-help' is not prohibited by Article 2 (4).[20] Determinations of the ICJ, however, suggest that this is not the appropriate interpretation. When, in 1946,

[18] Ibid. p. 52
[19] Ibid. p. 52.

two British warships were damaged by mines in Albanian territorial waters in the North Corfu Channel the United Kingdom (UK) quickly carried out a minesweeping operation against the clearly expressed wishes of the Albanian government. Albania made a counterclaim against the UK alleging that the intervention was a violation of its sovereignty. In its defence, the UK argued that its intervention, which enabled an aggrieved state to secure evidence in the territory of another state in order to submit it to an international tribunal, was a special application of the theory of intervention. However, the determination of the court was regarded as an 'emphatic rejection' of the right of intervention and any ambiguity regarding this decision was resolved in the *Nicaragua* case which supported a general principle of non-intervention. Furthermore, the UK's argument that its minesweeping operation was a mater of self-protection or self-help was rejected by the court on the basis that respect for the territorial sovereignty of states is an essential foundation of international relations.

Another possible argument for the right of humanitarian intervention is that the prohibition on intervention expressed in Article 2(4) is linked directly to the collective security arrangements in the UN Charter. The Vienna Convention on the Law of Treaties and the modern doctrine of *rebus sic stantibus* provides a right to suspend, terminate or withdraw from a treaty when the relevant circumstances surrounding a treaty change. However, in order for the doctrine of *rebus sic stantibus* to apply the circumstances in question must constitute an essential basis for the consent of the parties and the effect of the change must radically transform the extent of the obligations still to be performed under the treaty. It seems inconceivable that an 'essential basis' of the consent of the member states of the United Nations was an expectation that domestic affairs would be

[20] Ibid. p. 53.

subject to intervention by the United Nations or any other body.[21] It is even more unlikely given that such a meaning would result in the possible suspension, termination or withdrawal from the UN Charter which is the basis of the international system.

An examination of the relevant treaties leads to the conclusion that the right of humanitarian intervention does not exist as a matter of treaty law. However, it is possible that such a right emerged as a matter of customary international law. Customary international law together with treaty law comprises the bulk of what constitutes international law. Unlike treaties which are contractual in nature and generally written instruments, customary international law is composed of state practice and *opinio juris*. It is through analysis of the duration and character of these two elements that rules of customary international law eventually develop and become accepted by the international community as binding law. Before a principle may become a candidate for recognition as customary international law both elements must be satisfied.[22]

Modification of the Charter obligations under Article 2 (4) could occur either as a result of subsequent practice of the parties or by the emergence of a new norm of customary international law. There is at least one instance where UN provisions appear to have been affected by UN practice. Article 27 (3) provides that decisions of the Security Council on non-procedural matters "shall be made by an affirmative vote of nine members *including the concurring votes of the permanent members."* On 29 April 1946, the USSR abstained from a vote and the resolution was nevertheless considered adopted. Such abstentions have become an increasingly common feature of Security Council procedure, and the issue was directly confronted in the *Namibia* advisory opinion in

[21] Ibid. p. 57.
[22] Joyner p. 5.

1971. In that case, South Africa argued that the Security Council resolution requesting the advisory opinion of the Court was invalid due to the fact that two of the permanent members had abstained from voting. Despite this fact, the Court rejected this submission on the basis that there was 'abundant evidence' that beginning in 1965 members of the Security Council had consistently and uniformly interpreted the practice of voluntary abstention as not constituting a bar to the adoption of resolutions. It added that an amendment to Article 27 had been "generally accepted by members of the UN and evidences a general practice of that Organisation."[23] Therefore, although the issue is somewhat contentious it is possible to amend the Charter through state practice. As such, it is also possible that state practice has led to the emergence of a right of humanitarian intervention in customary international law.

The general prohibition on the use of force, however is generally considered *jus cogens*. Article 64 of the Vienna Conventions states that if a new peremptory norm of general international law emerges, any existing treaty that is in conflict with that norm becomes void and terminates. This should be read in conjunction with Article 53 which provides that a treaty is void at the time of its conclusion if, at the time of its conclusion it conflicts with a peremptory norm. This is important for two reasons. First, the emergence of a norm of *jus cogens* voids a treaty which could not sensibly apply to the UN Charter.[24] Secondly, the Vienna Convention makes it clear that one norm of *jus cogens* can only be modified by another such norm. As there is considerable support for

[23] Chesterman p. 59.
[24] Ibid. p. 59.

the view that prohibition of force is such a norm, this would raise the threshold for evidence of a countervailing norm.[25]

Since the institution of the UN Charter there have been a number of instances where military force has been used to intervene in the affairs of states arguably for humanitarian purposes even without the approval of the Security Council. During the Cold War States have accepted or at least ignored isolated instances of military intervention with predominantly humanitarian outcomes. More recently, the international community has become increasingly tolerant of military intervention without Security Council authorisation if the decision-making is multilateral and the purpose is genuinely humanitarian.[26]

Has this state practice led to the development of a right of humanitarian intervention in customary international law which allows military intervention in the affairs of other states for the purpose of protecting individuals from continuing grave violations of fundamental human rights?[27] The possible emergence of a customary law right of intervention was examined by the ICJ in the *Nicaragua* case and its position at that time was clearly inconsistent with the existence of such a right. It ruled that the US could form its own opinions regarding Nicaragua's respect for human rights however, "the use of force could not be the appropriate method to monitor or ensure such respect."[28]

Moreover, governments may state publicly that these interventions are based solely on humanitarian grounds yet very few countries have justified their interventions

[25] Chesterman p. 6.
[26] Wippman p. 36.
[27] Joyner p. 4.
[28] Chesterman p. 62.

on the basis of an independent doctrine of humanitarian intervention as exists in customary international law. In his examinations of alleged examples supporting the customary international law right of intervention Chesterman[29] suggests that "state practice discloses at most three 'best cases' of humanitarian intervention, but even these lack the necessary *opinio juris* that might transform the exception into the rule."[30]

This makes it difficult to conclude that states intervened in the domestic affairs of another state out of a sense of legal obligation. In the absence of the belief by these states that they were intervening as a result of a legal obligation to do so, it is impossible to establish *opinio juris* which is required for the establishment of the right of intervention in customary international law.

Similarly, the NATO governments failed to support their assertions of humanitarian intervention in that they did not make significant reference to prior state practice or to the long tradition of academic writing on humanitarian intervention.[31] This suggests that the majority of NATO states did not believe that a right of humanitarian intervention existed at the time of the Kosovo campaign. Therefore, although it may seem to be an endorsement of a legal right of humanitarian intervention on the surface, the precedential and obligatory weight of these statements is compromised significantly by a lack of evidence of *opinio juris*.[32]

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[29] Chesterman in his article "The Scourge of War" examined various incidents which were marshalled as examplesof humanitarian interventions and evaluated them on their value as *opinio juris* and state practice for the emergence of customary international law. He cites only three examples of interventions (East Pakistan 1971, Uganda 1978-9, and Kampuchea 1978-9) that are regarded favourably by the international community. However, none of these cases used humanitarian concerns as the justification for the use of military force. P. 84.

[30] Chesterman p. 87.

[31] The Belgian government was the sole NATO member to justify its actions on the basis of humanitarian intervention.

[32] Joyner p. 6.

The final argument that might make the intervention in Kosovo legal is that customary law does not necessarily require a consistent repetition over time for a new rule to take shape. There may be instances where a single episode of some magnitude, combined with the appropriate reaction of other states may suffice to bring about the formation of a rule.[33] However, it is much easier to make the claim that one action might create a law in an area where international law is not clearly stated. In the case of Kosovo the rights and obligations under discussion are real and concrete. The action in question affects a very well-defined area of international law. It involves the right of sovereign states to the exclusive jurisdiction over their territory and the obligation of states to respect sovereignty as well as the obligation of member states to refrain from using force without the authorisation of the Security Council pursuant to Article 51.

These laws are clearly articulated in treaty law, and as mentioned previously, can be considered an international norm. In addition, the failure of NATO states to justify their actions on humanitarian grounds before the ICJ undermines the legal argument that NATO, through its actions created a right of humanitarian intervention. In addition, NATO was not acting with the universal support of UN members. Objections by two of the permanent members of the Security Council Russia and China are difficult to overlook . Simply stated, the matter is simply too controversial to warrant the contention that the evolution of international law in this area may result from a single episode however significant in its magnitude and regardless of the involvement of many states and the reaction of others.[34]

[33] Cassese p. 6.
[34] Ibid. p. 6.

The legal scholars consulted appear to agree that unilateral or unauthorised intervention by a state or group of states on humanitarian grounds is currently illegal. As such, there is no existent principle of humanitarian intervention in customary international law by which NATO countries could credibly legitimise their intrusion into the sovereignty of the FRY.[35] It is not however impossible that a customary rule permitting unauthorised intervention could develop in the future. Author, Antonio Cassese has argued that the NATO action in Kosovo could be a step towards the development of such a customary rule. Cassese states:

> This particular instance of breach of international law may gradually lead to the crystallisation of a general rule of international law authorising armed countermeasures for the exclusive purpose of putting an end to large-scale atrocities amounting to crimes against humanity and constituting a threat to the peace.

According to Cassese *opinio necessitatis* was forcefully and loudly proclaimed by the states engaging in the military action in that many indicated that they acted out of a sense of impelling moral and human necessity shared by other states. He argues that this sense of moral obligation or *opinio necessitatis* could constitute the required psychological element for the formation of a customary law except that it did not yet possess "the requisite elements of generality and non-opposition." What is not yet clear is whether a sense of moral obligation can be equated with a sense of legal obligation (*opinio juris)*. Therefore, although it is premature to maintain that such a customary rule has emerged, repetition of such actions under the same conditions and exigencies might be enough to create an international right of humanitarian intervention.

[35] Joyner p. 7.

If indeed such an evolution in customary international law were underway what impact would it have on international law? Presently, a clear rule of law governs what can be considered the most important area of international relations.[36] Unlike treaties which are contractual written instruments, customary international law is a very dynamic source of law. It is created by the acts and intentions of states and is thus in a relatively constant state of flux with the continual possibility of change from a variety of sources. *Opinio juris* is definitionally unsure and often very difficult to apply. Even when the definition of its terms is agreed upon nations are not the final arbiters of what is or is not customary international law.

Absent codification by treaty, the only means of concretely establishing rules of customary international law is by the rendering of an opinion in an adjudication before an international court. As adjudication is generally rare, customary international laws suffers from ambiguity because it often lacks sure existence and is interpretively unclear in many instances. Therefore, any element of the international legal regime that is governed by customary international law is therefore compromised by the inherent uncertainty of the form of law upon which it is predicated. Without a clear and mutually acknowledged system of objective rules to govern the international use of force the entire system of ordered international interactions which international law has traditionally sought to provide becomes moot in its ineffectiveness to provide for the most basic protection of human life, freedom and prosperity.[37]

In other areas of law the potential problems emanating from such ambiguity are not as extreme as in the case of the governance of the use of force. Reliance on

[36] Ibid. p. 9.
[37] Ibid. p. 9.

customary international law as a basis for the legal governance of international uses of force carries with it profound disadvantages in clarity and susceptibility to abuses as compared to governance by treaty especially a treaty with the most universal acknowledgement and general prohibitory structure of the UN.[38] This may be why NATO states such as the Federal Republic of Germany clearly expressed that although the action was warranted they did not wish their actions in Kosovo to set a precedent in international law.[39]

The 1999 NATO bombing of Kosovo created serious challenges for the international community. Nowhere is this more apparent than in the field of international law. Although an examination of the customary and treaty law surrounding both the use of force and the right of humanitarian intervention indicates that NATO's use of force in Kosovo was illegal, it seems likely that this action will continue to have future repercussions. In particular, NATO's actions may have a significant impact on the potential development of customary law in a crucial area of international law, namely the prohibition on the use of force internationally. Should the right of humanitarian intervention develop into customary international law it will no doubt have a profound impact on the international system. As such, the ramifications of NATO's actions are perhaps yet to be seen.

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[38] Ibid. p. 9.
[38] Cassse p. 2.

Back to the Future?
The Lessons of Counterinsurgency for Contemporary Peace Operations

Brent Ellis
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Prof. Carment
4 April 200

Abstract:

A recent consensus has emerged within peace operations doctrine validating "robust" or "assertive" peacekeeping as an effective mechanism to intervene in complex and volatile intrastate conflicts. The assertion of the validity of "robust peacekeeping" is problematic due to a lack of empirical evidence supporting the application of this management tool. Yet the similarity between the context and tasks required of such a "robust" intervention and those required in a counterinsurgency campaign allow past counterinsurgency doctrine to act as a yard-stick to evaluate contemporary doctrine. Moreover, principles drawn from the British approach to counterinsurgency can inform current peace operations practice. This paper evaluates the content of the new "consensus" through a comparison to the British approach to counterinsurgency and proposes key recommendations for the improvement of peace operations doctrine. The conclusion suggests that the principles of British counterinsurgency can provide a framework to guide the further development of doctrine. The best way forward may be 'back to the future.'

Introduction: Post-Cold War Peacekeeping

Perhaps the greatest change between the nature of the interventions being conducted in the post-Cold War period and the majority of the previous peacekeeping missions was the fact that an increasing number of missions were being conducted intervening in intrastate conflicts with more complex and volatile operational environments. Often the conflict was ongoing, there was no peace to keep, consent of the local parties was ambiguous and lacked consistency, and impartiality was difficult to maintain.[1]

The difficulties of these missions led the majority of observers to conclude that the mechanism of traditional peacekeeping was only of limited utility in the managing of these types of conflicts.[2] This realization has led analysts in different directions. Some suggested that traditional peacekeeping could still be of some use, although limited, in certain types of internal conflict, depending upon the level of consent of the belligerents and their support for a resolution of the conflict.[3]

On the other hand, some observers presented the idea that the principles of traditional peacekeeping could be updated and modified to deal with the new conditions characteristic of the changed operational environment of the post-Cold War period. They called for a new doctrine to guide the more complex post-Cold War interventions. Indeed, Ruggie, perhaps the first observer to frame the call, identified a "doctrinal void", between peacekeeping and traditional enforcement action, that had to be filled.[4] The idea of assertive or robust peacekeeping as a mechanism to allow intervention into active conflicts emerged. Indeed, an evolutionary process occurred whereby new forms of peacekeeping doctrine were developed to guide interventions into ongoing conflicts in the "grey area" between traditional peacekeeping and enforcement. British, French, U.S., NATO, forces all developed new forms of doctrine allowing for more "assertive" intervention into ongoing conflicts

where consent may not be present, combining larger, more combat capable forces and mandates allowing for the wider use of force than in traditional peacekeeping.[5]

The notion of assertive peacekeeping has been heavily influenced by the experience of the post-Cold War "grey area" operations.[6] Few peacekeeping operations during the Cold War possessed the characteristics common to the post-Cold War environment.[7] Although a consensus has emerged, the relatively few cases from which relevant principles can be drawn to guide the development of new doctrine undermines somewhat its empirical validity, this despite assertions that the doctrine has both empirical and theoretical support.[8] The simple fact that the empirical validity of the concept of robust peacekeeping relies heavily on the experience of the Congo, Bosnia, and Somalia, should lead to a more cautious position regarding the validity of the doctrine. One should not be overzealous in unequivocally asserting the validity and usefulness of a doctrine so recently developed and based on relatively few cases.

Yet, there may be room for a second means to validate the principles of the emerging consensus beyond drawing on the lessons of recent, post-Cold War interventions. Thomas R. Mockaitis has suggested that there is a linkage between peace support operations in the "grey area" between consent-based peacekeeping and traditional enforcement, and counterinsurgency operations during the Cold War, campaigns where western governments attempted to defend states against subversion and insurgencies conducted by predominantly communist guerillas attempting to overthrow the government of the threatened state.[9] He suggests that "intervention to end civil conflict more closely resembles counterinsurgency than it does any other form of military activity."[10] Recognizing this linkage, he suggests that the current practice of peace support operations can be informed by the experience of British counterinsurgency during the post-World War Two period.[11] The British approach to counterinsurgency is specifically singled out because Britain developed an elaborate and distinct approach to combating insurgencies and achieved greater levels of success than any other

state during the period.[12] The British experience is therefore in a privileged position to inform the current practice of peace operations.[13]

In order to evaluate the validity of the new and recently asserted consensus on peace operations in the "grey zone," and to make recommendations regarding the further development of doctrine to guide such interventions, this essay examines main principles of British counterinsurgency doctrine that are relevant to the conduct of peace operations and evaluates the content of the "consensus" in relation to the principles of the British approach. The first section of the paper elaborates the relevant principles, drawing primarily upon two principal sources, Sir Robert Thompson's *Defeating Communist Insurgency* and Frank Kitson's, *Low Intensity Operations: Subversion, Insurgency and Peacekeeping*.[14]

The second section of the paper examines the basis of the linkage between counterinsurgency and contemporary "grey area" peace operations. The linkage between the two, seemingly conceptually distinct forms of activity, rests upon two main similarities: the complex nature of the problem each type of operation confronts, and the nature of the operational environment within which such operations take place.[15] The strength of the similarity between the two types of operations validates the basic methodology utilized in the following analysis. [16]

The third section of the paper examines the content of current peace operations doctrine for operations in the "grey zone" compared to the principles outlined in the first section. Overall, the emerging consensus is largely consistent with the principles derived from the British approach to counterinsurgency, suggesting that the evolution of doctrine has been in the right direction. However, the fact that many of the principles have not yet been fully adopted or incorporated suggests that there is still much work to be done in developing doctrine to guide such operations. Thus, there remains space for the experience of counterinsurgency to guide further doctrinal developments. The fourth section elaborates specific recommendations for the development of peace operations doctrine drawn from the principles of British counterinsurgency. The final section

summarizes briefly and suggests that the experience of counterinsurgency can provide a consistent framework to guide further developments in peacekeeping doctrine.

Principles of the British Approach

A Comprehensive Plan and A Clear Overall Objective

Perhaps the cardinal feature of the British approach to counterinsurgency, elaborated by both Kitson and Thompson, is the recognition of the need for a comprehensive plan and a clear overall objective that can guide the actions of all actors within the conflict zone. Robert Thompson presents five primary principles to guide counterinsurgency operations. Significantly, the first principle he elaborates is the need for a clear political aim. He suggests that this aim should be "to establish and maintain a free, independent and unified country which is politically and economically stable and viable."[17]

The idea of establishing legitimate government and good governance plays a key role in British counterinsurgency doctrine. The focus of the plan must be to gain control of the population and to win its support. This is what is commonly referred to as a "hearts and minds" approach to counterinsurgency. The focus is not upon defeating the insurgency militarily, but upon restoring law and order as well as government authority.[18] In order to do this effectively, the popular support of the population is the key factor.[19] Indeed, Kitson conceives of the campaign as essentially a battle for the support of the population: "It is this interplay of operations designed by both sides to secure the support of the population and at the same time to damage their opponents, that constitutes a subversive campaign."[20]

Within the British approach there is an explicit recognition of the root causes of the conflict that reach beyond the purely military nature of the conflict. The military aspect of the problem cannot be treated in isolation from the other underlying causes of the conflict. Kitson makes this clear. He recognizes that legitimate grievances underlie the conflict and must be rectified as part of the counterinsurgency campaign, especially those that are exploited by the insurgents.[21] Thompson uses

this idea to defend the broad nature of the overall goal he proposes, focusing on creating political and economic stability.[22]

It is also recognized that in order to restore law and order, as well as government legitimacy, one must focus on building a reliable government administration focusing on institution building and the training of personnel.[23] Indeed, government weakness and poor administration actually aid the insurgents and contribute to the continuation of the conflict. Thus Thompson suggests,

> The correction of these weaknesses is as much a part of counterinsurgency as any military operation. In fact, it is far more important because unless the cracks in the government structure are mended, military operations and emergency measures, apart from being ineffectual, may themselves widen the cracks and be turned to the enemy's advantage.[24]

Flowing from the recognition of the importance of confronting the root causes of the conflict and the establishment of good governance as the overall objective, is the idea that the overall plan must combine both civil and military tasks and operations. The plan must be comprehensive. Kitson suggests that this combination of civil and military tasks is essential due to the nature of the conflict whereby the insurgents are likely to employ a range of tactics combining political, economic, psychological and military measures.[25] Thompson also notes the importance of a comprehensive plan incorporating military and security measures as well as "all political, social, economic, administrative, police and other measures which have a bearing on the insurgency."[26] It is clear that counterinsurgency is a complex problem that requires a complex and comprehensive solution, combining both negative and positive inducements with the overall aim of winning the support of the population. Thus, as Mockaitis notes, "quashing rebellion requires a judicious application of incentives and punishments to win the loyalty of the disaffected population."[27]

Thus, it is clear that force and military measures on their own will be insufficient to achieve a lasting solution; they will not resolve the underlying causes of the conflict. As Thompson notes, "It is just possible that force might achieve a temporary victory; but it would leave almost every single internal problem unresolved."[28] Thus, the achievement of the overall goal of establishing a viable

and stable political and economic environment is dependant upon the application of additional means beyond the use of force.[29] Force and coercive measures may be used to gain control and establish security but beyond that more positive inducements must be utilized to gain the allegiance of the population.

Moreover, faced with such a complex task it is essential that the roles and responsibilities of all actors are well defined to ensure that there is no duplication of effort or gaps in the strategy pursued against the insurgency.[30] In order to do this effectively it is essential to have a unified planning process bringing together all actors within the system. Kitson suggests "No matter how well aware of the problem the authorities are, they will only be able to solve it if they can devise machinery at every level which can assess all the factors, whether they are operational or administrative, short-term or long-term, make a plan and put it into effect."[31] Due to the interdependence of the tasks required to be fulfilled, it is essential that such a unified planning process takes place. If no unified plan is developed, there is an increased chance of measures interfering with each other or acting in isolation, affecting the achievement of overall success.[32] Kitson points to this danger explicitly, noting consultations at the planning state must include "all concerned government departments and identify all operational implications both civil and military before the start of the operation." He warns that "Unless this is done, policy on matters important to the outcome of the struggle will just grow up as opposed to being decided on consciously in light of all of the relevant factors."[33]

Thompson builds on the importance of coordinated planning noting the importance of coordinating military and civilian action.[34] Similarly, he also suggests that military operations must be planned in coordination with civilian activities following the military operations to achieve lasting success.[35] It is clear that efforts enacted in isolation from other aspects of the overall strategy are limited in their effect and must be actively discouraged, and that the development of the plan must incorporate all aspects of the problem and include contributions from military and civilian actors. Moreover, such a planning process must consistently focus upon the long-term goal of the campaign and resist the

tendency to adopt short-term reactive measures applied in an ad hoc and uncoordinated fashion, with little consideration of their long-term implications.[36] Indeed, the importance of civil-military cooperation is so great, especially beyond the planning stage where initiatives are actively being implemented, that civil-military cooperation is a principle of the British approach to counterinsurgency itself.[37]

Civil-Military Cooperation

Mockaitis describes civil-military cooperation as a broad principle of the British approach to counterinsurgency.[38] He describes how the British developed a committee-based structure to facilitate civil-military cooperation from the local level to the national level. The approach is described as being "bottom-up," in that it starts with cooperation at the local level, forcing soldiers to "adapt to the needs of the civilians on the ground."[39]

Thompson is a clear advocate of this style of approach. He suggests that committee structures incorporating all relevant actors be utilized at the national and local levels to ensure coordination. The committee at the national level also has the responsibility to develop clear plans and policy, as noted in the previous section. The various policies created are then implemented by the various departments and headquarters involved, with regular committee meetings at the local level to ensure coordination amongst the local actors. He clearly differentiates between coordination and command, noting that the committees do not override normal command procedures within the organizations involved, military or civil, and only serve a coordinating function.[40]

British doctrine also suggests the use of an overall Director of Operations with a coordinating role responsible for all military and civil operations.[41] Such a Director was utilized in Malaya when General Templer was appointed overall high commissioner and director of operations, combining the civil and military commands at the highest level.[42] The Director of operations can assist in the resolution of any disputes that arise surrounding the implementation of policy at each level.[43]

Within the literature there is an understanding that coordination of the various actors is a daunting task that is further complicated by complex command and organizational structures of the various actors and when a multinational force is involved. This is perhaps most clearly commented upon by Kitson. He suggests that in order to counter these complicating factors, a common understanding of the coordinating system should be fostered.[44] He builds on this idea noting that common training for advisors in a multinational context despite their specific and specialized roles should be adopted so that the advisors "all understand the system as a whole, as well as their own place in it."[45] Kitson stresses a similar point within a discussion of the need for common military doctrine among the various national contingents of a multinational force. A common understanding of the doctrine in use is essential if operational success is to be achieved.[46] One does not have to stretch these comments very far to see the implications for contemporary peace operations.

Minimum Force

The use of minimum force is the first broad principle outlined by Mockaitis. He suggests that this principle emerged as a result of British colonial administrators being bound by the common law principle of minimum force and the legal concept of "aid to the civil power" that governed the administration's response to situations of unrest.[47] According to the doctrine the military's task was "not the annihilation of the enemy, but merely the suppression of a temporary disorder, and therefore the degree of force to be employed must be directed to that which is essential to restore order and must never exceed it."[48]

The British Pamphlet, *Keeping the Peace (Duties in Support of the Civil Power)*, clearly laid out four conditions which govern the use of force under the principle of minimum force. First, there must be a necessity and justification for each separate act. Second, the use must be preventive and not punitive; there must be a reason for using military force. Third, no more force should be used than is necessary to achieve the minimum aim. Fourth, members of the military must act impartially and calmly at all time and their actions must comply strictly with the law.[49] Under the minimum

force criteria force is not an end in itself but must serve a wider purpose. The focus in determining whether or not to use force is upon how the use of force contributes to the achievement of the desired outcome; how it achieves its instrumental purpose.[50]

Kitson supports the principle of minimum force noting especially the negative affect the use of excess force can have, driving the population away from the government towards the extremist opposition.[51] Yet he also recognizes that the use of force may be beneficial in the pursuit of the wider goal of the "hearts and minds" campaign, to win the support of the population. He suggests that some amount of force can be utilized as a means to create conditions where the population is "reasonably uncomfortable" in order to provide them with an incentive to return to normal life, and to act as a deterrent against the resumption of the subversive campaign.[52] In the former case, force is utilized in order to restore order and achieve breathing space where more positive inducements and concessions can have an effect.[53] Regarding the latter purpose of the use of force, Kitson recognizes the military may have an incentive to cultivate a reputation suggesting an ever-present threat of the use of force in order to contain the situation and deter challenges. Thus, he suggests that,

> However great the restrictions imposed on the use of force by soldiers, every effort should be made to retain the respect and awe of the civilian community for the ultimate in terms of force which they might use. If an impression can be built up that although the troops have used little force so far, they might at any moment use a great deal more, the people will be wary and relatively fewer men will be needed.[54]

A point of caution is noted, however. Kitson recognizes that an element of bluffing, and therefore risk, is involved in this process.[55] However the benefits of cultivating such a reputation are significant, in terms of maintaining order and requiring fewer resources to do so.

Kitson also posits that the amount of force utilized within the framework of the counterinsurgency campaign is dependent upon the nature of the opposing threat. He suggests that when the forces are confronted by a situation of civil disorder and terrorism, especially in urban areas, as opposed to a full-scale insurgency where actual insurgent forces are conducting traditional military operations, the level of force utilized will necessarily change. In the latter case, a heightened level of force will be

used, focused upon destroying the insurgent forces. In the former case the operational emphasis is upon "divorcing extremist elements from the population which they are trying to subvert."[56] In achieving this aim the focus on the use of offensive armed force gives way to a greater focus on persuasion, although offensive use of armed force is still be required.[57] The greater focus on persuasion increases the role played by information operations and psychological warfare in counterinsurgency operations, while maintaining the key role to be played by intelligence gathering in both operational contexts.[58] It is to these areas that the discussion now turns.

The Need for Intelligence

Both Kitson and Thompson strongly advise that intelligence plays a key role in guiding operations in counterinsurgency operations. Kitson even goes so far as to suggest that good information is of paramount importance.[59] Thompson suggests that, because subversion and insurgency are carried out ultimately by individuals, the aim of intelligence gathering in the counterinsurgency context is to identify those individuals who pose a threat to the security of the country. This facilitates the elimination of the threat and the prevention of illegal actions.[60]

Kitson agrees that the key role of intelligence is to identify threats to security in order to allow action. Yet, he notes that in counterinsurgency situations identifying threats is often a difficult task due to the fact that the insurgents often strike and then hide amongst the population, relying upon anonymity for security.[61] Kitson makes a related observation that the intelligence that is gathered often does not lead to direct contacts, but must be analyzed and developed from its original form to guide operations. He makes the distinction between the intelligence that is first gathered, which he calls "background information," which is often of a very general nature, and the modified intelligence that can effectively guide operations; what he calls "contact information."[62] Kitson elaborates on the process by which background information is developed into contact information. He describes an ongoing process of information collection from numerous sources, including all actors in the campaign, and from the results of all activities undertaken, combined with an ongoing

process of analysis gradually and systematically leading to the successful identification of the threat and its location. He describes the process as being a snowball effect culminating in the prospect of a successful operation.[63] He notes however, that the chain of information gathering and analysis leading to a successful contact is tenuous and easily broken, requiring the whole process to begin again.[64] He suggests that this realization reinforces the need for a systematic approach to information collection and analysis, in order to achieve long-term success.[65] Only a systematic approach can lead to long-term success and a reduction in the security threat by eliminating the insurgent's organization and infrastructure.

Kitson also recommends the rapid-deployment of an effective intelligence capability that can guide operations through the early stages of a campaign. He argues that "insurgents are particularly vulnerable in the early stages of a campaign because at that time they have not perfected their security measures and may not have cajoled or terrorized more than a relatively small proportion of the population into supporting them." An effective intelligence capability, present early in the campaign, would increase the ability of the counterinsurgent forces to conduct effective operations and capitalize on the vulnerability of the insurgents perhaps having a decisive impact on both the outcome and duration of the campaign; potentially decreasing the length of time needed to achieve a government victory.[66]

Both theorists also suggest that intelligence gathering cannot be separated from the wider activities undertaken in the civil, non-military aspects of the campaign. There is a clear linkage between the intelligence gathering aspect of the campaign and the wider efforts designed to win the "hearts and minds" of the population. The attitude of the population is key in the provision of intelligence information. Kitson makes this relationship absolutely clear while pointing to the importance of efforts to maintain security:

> All actions designed to retain and regain the allegiance of the population are relevant to the process of collecting background information because its provision is closely geared to the attitude of the people. In other words the whole national programme of civil military action

> bears on the problem… The operational responsibilities of a commander or committee at a local level, e.g. Province or District, for the collection of background information are usually concerned with affording a measure of security to the loyal and uncommitted sections of the population…[67]

Moreover, Kitson also suggests that civic-action programs can have a direct effect upon the population's perception of a secure environment.[68] Thompson builds on the importance of the population's perceptions. He notes how the creation of a perception whereby the population feels they have a stake in the maintenance of stability and hope for the future encourages the population "to take the necessary positive action to prevent insurgent reinfiltration and to provide the necessary information to eradicate any insurgent cells that remain."[69] Thus, winning the battle "for the hearts and minds" of the population reinforces intelligence success. The significance of the population's perceptions is directly related to the importance of an information campaign in counterinsurgency operations; the topic discussed in the following section.

The Primary Importance of Information Operations

Just as both theorists advocate the primary role for intelligence operations in counterinsurgency both stress the need for a coordinated and integrated effort to win the support of the population. It is recognized that the nature of the conflict, that the ultimate goal is to win the support of the population, suggests that the insurgents will use propaganda as a means to attract the population to their side. In order to counter insurgent propaganda the government must conduct an information campaign that presents the government program in an attractive fashion.[70] The campaign is essential to maintaining the initiative on the side of the government.[71]

Thompson specifies that the campaign should publicize all government policies and the reasons underlying their institution, and stress government successes without overstating the facts. He is adamant that the government information services should avoid propagandizing the message and focus on conveying factual information in a confident tone without overstating the facts.[72] Otherwise the credibility of the government, "the most precious propaganda asset of the government," could be

undermined, and the government's message ineffectual.[73] He also makes it clear that the campaign requires close coordination between those responsible for its implementation and the agencies or departments responsible for the implementation of government programs.[74]

The information campaign can also make it easier to implement more coercive measures, thus supporting the use of both positive and negative inducements in the wider campaign. Thompson makes this point when he notes that implementing tough measures, particularly in the security domain, is made much easier when "the foundation of the government approach and the basis of its policy appeal to the peasant have been made clear."[75]

Kitson also makes several recommendations to guide the operation of the information campaign. He suggests that the campaign must structure its messages to suit the local context. In this respect, local input at the planning stage is essential to ensure that the message is not misunderstood by the population. He also recommends that, like an intelligence capability, an information operations capability should be rapidly set up at the beginning of a campaign warning that "there must be no delay."[76] Moreover he suggests that the military, due to its resource advantage in the communications field, may be well-suited to this role.[77]

A Long-Term, Long-Haul Approach

The British approach was characterized by the British themselves as a "low-cost, long haul approach" because it often took years to achieve the desired aim.[78] This principle is directly connected to the wider focus of the British strategy on resolving the underlying sources of the conflict to prevent its recurrence and to foster an environment of peace and stability. It is also connected to the nature of the British approach focusing on winning the support of the population. In such a contest, impressions of government confidence and determination are key.[79] Building on this idea Thompson suggests that the government adopt a steamroller approach, securing priority areas first and then moving methodically out from that point, that fosters an impression of the government's confidence and determination to win.[80] This may foster a perception of ultimate

government victory within the population. Thus, "by preparing for a long-haul, the government may achieve victory quicker than expected."[81] The danger of the opposite approach is clear. If a lack of confidence or determination is reflected either by word or action, the governments cause can be weakened and popular support lost.[82]

The Linkage Between Counterinsurgency and "Grey Area" Peace Operations: Mission Complexity and the Operational Environment

At first glance, one would probably object to any link being drawn between counterinsurgency doctrine and that guiding contemporary peace operations. Indeed, Mockaitis acknowledges that the comparison may "raise eyebrows", due to the illiberal connotation that sometimes marks counterinsurgency in part due to its colonial origins and the seeming antithetical nature of the two forms of activity; counterinsurgency being where a threatened government had to defend against an internal revolt against its authority, and peace operations that presuppose "a neutral international force intervening to separate the belligerents in a conflict."[83] Indeed, no notion of neutrality or impartiality is recognized within the counterinsurgency literature. However, once one looks beyond the historical context within which counterinsurgency developed, two strong similarities between the two seemingly conceptually distinct types of operation are revealed.

The first relates to the nature of the problem confronted in contemporary peace operations in an intrastate context. The locale of such operations is predominantly within failed or failing states, characterized by a collapse of civil infrastructure, the absence of law and order, large numbers of refugees and displaced people, and high levels of human deprivation and suffering.[84] Thus, in this context, the solution to the problem must be comprehensive encompassing not only military action but economic, social, and political action as well. This has necessitated a proliferation of actors within peace operations, which now include greater numbers of non-military personnel, including police, humanitarian aid workers, and representatives from international organizations, and placed an increasing emphasis on the need to coordinate planning and operations conducted by each of the

agencies and actors within the conflict zone. The similarity between the response required to deal effectively with contemporary failed states and that outlined in the British approach to counterinsurgency is striking; both call for an integrated effort combining civil and military action to counter all aspects of a complex and multidimensional problem that cannot be solved through military action alone. Thus, essentially, the two types of operation are working from the same central premise.

The second similarity between the two operations is related to the nature of the operational environment that characterizes both forms of activity.[85] In each case, the operational environment is complex and ambiguous, both in terms of the geographical area of operations, which lacks clear boundaries or front-lines and in terms of the nature of belligerent parties. Indeed, both types of operation are characterized by conflict involving both regular and paramilitary forces operating within difficult rural or urban terrain that often utilize the population as a means of concealment and pursue their military objective using guerilla or insurgent tactics.[86] In each case it is difficult to identify the belligerents who may lack formal command and control hierarchies. This often results in the population being targeted directly,[87] and places a premium on intelligence gathering for the successful guidance of operations. In many cases the belligerents also utilize terror tactics to either enforce compliance amongst their own population or to intimidate their opponents, and also utilize propaganda as a means to increase support for their cause, both within the conflict area and internationally.

The similarity between the operational environment and the nature of the problems characteristic of the two types of operations, has resulted in a convergence between the developing principles guiding peace operations in such an environment and those of counterinsurgency. This similarity is reflected in the suggestion made by Sens, that control of the population, a key objective in the British approach to counterinsurgency, will become a key objective of future peace operations conducted in such an operational environment.[88] This convergence is also reflected in the strong similarity

between the principles common to the recently developed doctrine for peace operations and the principles of the British approach to counterinsurgency; the subject of the following section.

The Consensus: A Reflection of the British Principles?

Peter Viggo Jakobsen has recognized that the "doctrinal fog" that characterized the debate surrounding the evolution of peace operations doctrine has lifted through the emergence of a consensus in the doctrine of western states surrounding "grey zone" operations. He summarizes the principles of the consensus in the following passage:

> The consensus provides a straightforward answer to the problem created by limited consent: when in doubt deploy a force capable of using both carrots and sticks to promote consent, deter non-compliance and, if necessary, enforce compliance. Negotiation and a wide variety of consent-promoting techniques, including rewards for cooperation, must be employed to generate trust and cooperation from the local population, and force is only to be used as a last resort in a discriminate and proportionate manner against parties threatening the civilian population or preventing the peace force from achieving its mandate. The objective is not to defeat one or more of the parties to the conflict but to create the conditions for a stable peace settlement.[89]

One can clearly see many reflections of the British counterinsurgency approach within the "consensus" approach. The approach utilizes a combination of positive and negative inducements to promote consent, trust and cooperation within the local population and specifically calls for cooperation to be rewarded. This was in effect the hallmark of the British approach to counterinsurgency focused on winning the "hearts and minds" of the population.

The consensus also recognizes that the use of force ideally is kept to a minimum and only used as a last resort against those posing security threats or obstructing the achievement of the mandate. This clearly reflects the minimum force approach of British counterinsurgency. Force is used when necessary in a discriminate and proportional manner to remove a specific threat, as called for according to the minimum force precept that guided counterinsurgency operations. Indeed the British doctrine elaborated in Joint Wafare Publication 3-50, the current British doctrine for peace support operations, elaborates the minimum use of force specifically as one of the three primary principles of the doctrine.[90] The recognition that force may be required against specific targets that

pose a security threat or an impediment to the implementation of the mandate also reflects the British approach to counterinsurgency that posited that offensive action would be required in both full-scale insurgency but also when confronting situations of civil disorder and terrorist actions where the action would be of a lesser scale, directed at "divorcing extremist elements from the population which they are trying to subvert."[91]

While the consensus approach supports the principle of the minimum use of force the deterrent effect of a credible coercive capacity is also a main theme. This reflects the idea, presented by Kitson above, that a strong military force can actually deter action by groups or individuals that would undermine the security environment. Thus, just as the British counterinsurgency approach balanced the minimum use of force principle with the benefits of a credible coercive threat of the use of military force, the current consensus seeks to balance the same principles.

The consensus identifies fostering the conditions conducive to a stable peace settlement as the main objective of the peace force. Elaborating this focus, the current British doctrine specifically mentions that one practical activity that must be undertaken is the "identification of the underlying causes and symptoms of the problem so as to facilitate reconstruction and longer-term settlement."[92] The similarity between this approach and the British counterinsurgency doctrine premised upon the mitigation of the underlying sources of conflict is clear. Moreover, the British doctrine also specifies that the role of the military contingent as "essentially creating the necessary security conditions so that the efforts of civilian counterparts can bear fruit."[93] There is a clear recognition that military measures cannot achieve success in isolation;[94] perhaps the fundamental principle underlying the British counterinsurgency approach. This also clearly reflects the role played by military forces in British counterinsurgency approach whereby the military force would create the "breathing space" within which the wider civilian efforts could be conducted.

The strength of the links between the new consensus and the principles of British counterinsurgency are strengthened by the recognition among the countries developing the new

doctrine that improvements in three specific areas are crucial to enhancing the prospects for success. These three areas are: civil military cooperation, "creating an effective partnership with civilian agencies and NGO's based on mutual respect and coordination by consensus and not command"; consent promotion, including information campaigns and other efforts to win the "hearts and minds" of the local population; and intelligence, specifically the "ability to gather, analyse and disseminate intelligence data quickly."[95] Significantly, these three areas where improvements are considered to be required reflect three main principles of the British approach, civil-military cooperation, and the essential role of intelligence gathering and the information campaign in countering internal threats.[96] The recognition of this fact emphasizes the strength of the convergence between peace operations doctrine and the principles of counterinsurgency, reinforcing the ability of counterinsurgency to inform current doctrine.

What are the implications of the linkage for an evaluation of the current consensus? The similarity between the emerging consensus and the principles of the British approach suggests the evolution of doctrine has been in the right direction. However, the fact that many of the principles have not yet been fully adopted or incorporated suggests that there is still much work to be done further developing doctrine to guide such operations. Thus, there remains space for the experience of British counterinsurgency to guide further doctrinal developments.

Key Recommendations for the Development of Contemporary Doctrine

The overview of British counterinsurgency principles conducted above suggests the following recommendations for the development of peace operations doctrine.[97] First, the provision of an information operations capability must be incorporated into the structure of "grey area" peace operations.[98] To be effective, the operation of this capability should be shaped by the local context and environment. Furthermore, emphasis must be placed upon the rapid deployment of an effective capability to ensure this vital role is filled in the crucial early stages of the operation.[99]

Second, peace operations must include a systematic approach to information collection and analysis in order to provide the required intelligence to guide offensive operations against security threats.[100] Furthermore, Kitson's work suggests that quality analysis of the information collected is essential if it is to be useful in guiding operations; the focus must of intelligence operations in peace operations must therefore be as much upon analyzing the information collected as upon the collection of the information itself. Moreover, intelligence should be collected by all actors within the conflict zone including police, military, and non-governmental organizations. [101] The use of a committee structure, as utilized in British counterinsurgency, would allow for the effective coordination of the intelligence side of the operation and facilitate dissemination and joint analysis of the information collected.[102] The linkage between civilian peacebuilding initiatives, the attitude of the population, and their willingness to provide intelligence information, also supports the suggestion that mission budgets should allow for "quick-impact" projects in the initial stages of the operation.[103] Such projects could lead to the provision of good intelligence information early in the mission laying a foundation for operational success.

Third, effective civil-military cooperation must be coordinated at all levels from the local to the national level. Recent missions including Bosnia and Kosovo, have shown that coordination among national military contingents as well as between civil and military actors, particularly at the local level, has not been sufficiently coordinated or ensured that the actions taken have reflected an overall plan.[104] The British committee structure could be implemented to ensure coordination among the various actors at both the national and local levels.[105] The appointment of a director of operations, perhaps in the person of the Special Representative of the Secretary General in UN operations, to facilitate coordination of mission components would also be a positive development.

Fourth, building on the need for effective civil-military cooperation, mission planning should be conducted in advance and incorporate as many of the mission components, civilian and military, as possible, to ensure an integrated approach. Such coordinated planning would be likely to foster a

common understanding of major issues, and facilitate the establishment of clearly defined roles and responsibilities to combat duplication of effort.[106]

Lastly, peace operations doctrine should define the establishment of good governance as the overall mission objective.[107] The creation of legitimate government through winning the "hearts and minds of the population" was the overall goal of British counterinsurgency doctrine elaborated by Thompson and Kitson. Current doctrine establishes the rather vague notion of the creation of a stable peace settlement as the overall mission objective. The proposed objective is superior in that it defines more precisely the end-state envisioned as the overall goal of the intervention. Redefining the end-state in this manner would also likely entail recognition that a "long-haul" approach is required to fulfill this overall objective.

Conclusion: The Way Forward – "Back to the Future?"

These recommendations are merely the principal lessons that can be drawn from the British experience in counterinsurgency. Given the necessity of the further evolution of peace operations doctrine,[108] the potential to draw lessons from the British counterinsurgency experience should not be overlooked. The strong similarity between the characteristics of the operational environment and the complex nature of the problem confronted in contemporary "grey area" operations to those encountered in previous counterinsurgency campaigns allows lessons learned in the latter to be applied to the former. The fact that many of the recommendations currently being made mirror the lessons derived from the British approach to counterinsurgency reinforces the strength of this conclusion, and suggests that British counterinsurgency doctrine may be able to act as an overall framework to guide the continuing evolution of peace operations doctrine. Indeed, utilizing the British approach to counterinsurgency as a starting-point would base the developing doctrine on a solid-foundation of hard-won experience, reflected in principles that proved successful in a similar endeavor. The way forward may well be 'back to the future'.

However a word of caution is in order. While the doctrinal void identified by Ruggie is being filled, and a viable doctrine to guide "grey zone" operations is currently developing, the experience of counterinsurgency also suggests that the complexity and difficulty of operating in this type of operational environment should not be underestimated. The history of counterinsurgency is both one of failures as well as victories, and in many cases the final outcome took years to be determined. Decision-makers should bear this in mind when evaluating options for conflict management – the current doctrine is no silver-bullet. It may be prudent to reiterate Thompson's assertion of the three "indispensable" qualities in counterinsurgency: patience, determination, and offensive spirit tempered by discretion. As he suggests there are "no-short cuts and no gimmicks" in conducting this type of operation.[109] Preparing for "grey area" operations is likely to necessitate preparing for the long-haul. Developing doctrine may guide the conduct of operations, yet it cannot assure the requisite will and determination necessary to ensure its successful implementation. However, basing that doctrine on a sound foundation of established principles drawn from counterinsurgency as well as more recent lessons learned from contemporary operations may foster an environment conducive to the production of the will necessary to see it applied successfully; it may even enhance its development.

Notes

[1] The Brahimi report makes this clear, noting that post-Cold War missions tended to deploy "where conflict had not resulted in victory for any side, where a military stalemate or international pressure or both had brought fighting to a halt but at least some of the parties to the conflict were not seriously committed to ending the confrontation. United Nations operations did thus did not deploy into post-conflict situations but tried to create them." See, United Nations, Report of the Panel on Peace Operations, 2000, viii.

[2] Thomas R., Mockaitis summarizes this perception when he notes that the "inescapable conclusion to be drawn from recent missions is, of course, that intervention in an active civil war is not peacekeeping" and that applying the principles of traditional peacekeeping to such operations "leads to disaster." See, Thomas R. Mockaitis, *Peace Operations and Intrastate Conflict: The Sword or the Olive Branch,* (Westport Conn: Praeger, 1999), 127. John Ruggie also elaborated this idea while making an argument for a doctrine between peacekeeping and peace enforcement, when he stated that "It is in the gray area between peacekeeping and all-out war-fighting that the UN has gotten itself into serious trouble. The trouble stems from the fact that the United Nations has misapplied perfectly good tools to inappropriate circumstances." See, John Gerrard Ruggie, "Wandering in the Void: Charting the UN's New Strategic Role," *Foreign Affairs 72,* no. 4 (Novermber/December 1993): 28.

[3] For examples of this line of thought see, Alan James, "Peacekeeping and Ethnic Conflict: Theory and Evidence," in David Carment and Patrick James eds., *Peace in the Midst of Wars* (Columbia: University of South Carolina Press, 1998)*,* 163-193*;* Stuart Kauffman, "Preventing Ethnic Violence: Conditions for the Success of Peacekeeping, in David Carment and Patrick James eds., *Peace in the Midst of Wars* (Columbia: University of South Carolina Press, 1998)*,*194-229. A main implication of this argument is that intervention should be applied where prospects for success are evident, and that where such conditions are not apparent no intervention should be launched. In the words of Stuart Kauffman, "If any party is determined to continue to fight, the best that peacekeepers can do is stay away." See Kauffman, "Preventing Ethnic Violence," 224.

[4] Ruggie argued that "the United Nations has entered a domain of military activity – a vaguely defined no-man's-land lying somewhere between traditional peacekeeping and enforcement – for which it lacks any guiding operational concept." See, Ruggie, 26. This call for new doctrine was echoed by Adam Roberts who identified a "need to recognize that occasionally there is a need for, and a possibility of, an approach which is conceptually distinct both from impartial peacekeeping based on consent of the parties and from simple enforcement action on behalf of an attacked state." See, Adam Roberts, "From San Francisco to Sarajevo: The UN and the Use of Force," *Survival 37*, no. 4 (Winter 1995-96): 26.

[5] See, Peter Viggo Jakobsen, "The Emerging Consensus on Grey Area Peace Operations Doctrine: Will it Last and Enhance Operational Effectiveness?" *International Peacekeeping 7, no. 3* (Autumn 2000): 36-56; Woodhouse also notes the development of such doctrine, "a framework for a new doctrine of peacekeeping is emerging which presents a model of peacekeeping more robust than the classic model, but which retains the crucial distinction between peacekeeping and war fighting or peace enforcement." See, Tom Woodhouse, "The Gentle Hand of Peace? British Peacekeeping and Conflict Resolution in Complex Political Emergencies", *International Peacekeeping 6*, no. 2, (Summer 1999): 24. The UN in the Brahimi report has also affirmed the concept of robust peacekeeping, suggesting that more assertive forms of intervention can be utilized to mitigate ongoing conflicts.

[6] Ibid., 45.

[7] The primary mission during the Cold War that operated in similar circumstances was the UN mission in the Congo. See, Mockaitis, *Peace Operations,* 6.

[8] See Jakobsen, 42.

[9] Prominent examples of counterinsurgency campaigns include the British experience in Malaya and Northern Ireland and the U.S. experience in Vietnam.

[10] Mockaitis, *Peace Operations,* 7.

[11] Mockaitis suggests that Britain's counterinsurgency experience can be added to the cases of peace operations in the grey area to inform current practice. Ibid., 141. See also, Thomas Mockaitis, "Civil Conflict Intervention: Peacekeeping or Enforcement," in *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution,* eds. Alex Morrison, Douglas A. Fraser and James D. Kiras (Clementsport NS: Canadian

Peacekeeping Press, 1997): 47-48. Richard Lovelock echoes the call for lessons from past counterinsurgency experience to inform current practice. He states that the Kosovo experience suggests that the comprehensive nature (that it included a fusion of civil and military actors) of the British counterinsurgency approach is "fundamental to contemporary peace support operations." See, Richard Lovelock, "The Evolution of Peace Operations Doctrine," Joint Force Quarterly (Spring 2002): 71.

[12] According to Mockaitis, "only the United Kingdom has enjoyed any sustained success at defeating insurgencies." See, *Peace Operations*, 132-33.

[13] Ibid., 132. Allen G. Sens also recognizes the British expertise in this form of conflict and notes that their expertise developed amongst a wider complacency towards developing doctrine to guide action in "unconventional wars." See, Sens, *Somalia and the Changing Nature of Peacekeeping: The Implications for Canada*, (Ottawa: Minister of Public Works and Government Services Canada, 1997), 28, note 6. He notes specifically that the United States tended to ignore the importance of insurgency warfare, "Despite the prominence of several insurgency wars during the Cold War period, the ability to combat insurgencies was not considered a military priority, especially in the United States." He continues to suggest that this lack of focus on counterinsurgency had a potentially negative impact on the ability of Western militaries to conduct peace operations in the low-intensity conflicts of the post-Cold War period, thus reinforcing the linkage between counterinsurgency practice and the conduct of contemporary peace operations. He states that "as a result, western militaries… were slow to develop the military expertise or the requisite fusion of political social, and military strategy that could have been so helpful for intervention (and peacekeeping) in the internal low-intensity conflicts of the immediate post-Cold War period." Ibid., 28.

[14] Frank Kitson, *Low Intensity Operations: Subversion, Insurgency, Peace-keeping* (London: Faber and Faber, 1971); Sir Robert Thompson, *Defeating Communist Insurgency: The Lessons of Malaya and Vietnam* (New York: Praeger, 1966). This methodology is sound due to the significant impact these two authors had upon the subsequent development of British doctrine. Mockaitis asserts that the "Official literature of counterinsurgency since the mid-1970s has been heavily influenced by the work of Robert Thompson and particularly Frank Kitson", and suggests that there two works are still required reading within the subject. These two works therefore can be understood as elaborating the broad principles of the British approach. An analysis of Mockaitis' work, which examines the nature of the British approach, and the content of the two works supports this statement. Both works reflect the general principles Mockaitis elaborates in his works.

[15] This includes the nature of the belligerents active within that operational environment.

[16] This section also acknowledges some differences between the two types of operations. However, these differences are not sufficient to endanger the ability of past counterinsurgency experience to inform current peace operations practice or to evaluate the content of contemporary doctrine.

[17] Thompson, 50.

[18] Thompson expresses these aims as overall goals, 51.

[19] Ibid., 51.

[20] Kitson, 48.

[21] Kiston, 51.

[22] He states that, "It may be contended that this is rather too broad, if desirable an aim; but in newly independent or underdeveloped territories it is essential to recognize that an insurgent movement is only one of the problems with which such governments are faced. The insurgency may demand priority, but it cannot be treated in isolation." See, Thompson, 51.

[23] Ibid., 51.

[24] Ibid., 52.

[25] Kitson states that the "enemy is likely to be employing a combination of political, economic, psychological and military measures, so the government will have to do likewise to defeat him." Kitson, 7.

[26] Thompson, 55.

[27] Mockaitis, *Peace Operations,* 130. Thompson as well, goes into some detail on this point, elaborating the importance of establishing an environment of security for the population while noting that establishing security alone is not sufficient to win the support of the population. He suggests that establishing security is merely the first step. The second is to win over the population through the application of positive inducements that are clearly shown to be a consequence of security. Thompson states that "Security by itself is not enough to make

the peasant willing to choose to support the government. Without it he cannot, even with it he may not. The next step is to influence his choice, which must still remain a free choice. He can only be made to support the government if the government can show him that what it has to offer is something better than the insurgent can offer him. The importance of improving the standard of living of the peasants socially, politically, economically and culturally has already been stressed… It is important to get across that the benefits are a reward and a consequence of security, not a bribe. They serve as an example of what can be achieved when peace is restored." Thompson, 143. This quote also indicates the importance of a public information campaign to express the government's aims and to affect the thought process of the population. This idea will be elaborated upon in the following section dealing with the importance of an information campaign in counterinsurgency.

[28] Thompson, 168.

[29] Ibid.

[30] Ibid., 55.

[31] Kiston, 53.

[32] Ibid., 51.

[33] Kitson, 70.

[34] He suggests that "civilian measures, particularly in areas disputed by the insurgents, are a waste of time and money if they are unsupported by military operations to provide the necessary protection." Thompson, 55.

[35] Ibid.

[36] Thompson, 52, 55;

[37] Mockaitis even points to civil-military cooperation as one of the three broad principles most important in British counterinsurgency. See, Mockaitis, *Peace Support Operations,* 133-34. The other two principles are minimum force and tactical flexibility. Each is discussed below.

[38] Ibid. See not 45 above.

[39] Ibid., 136. The Malayan campaign is a good example. In that campaign the British utilized a system coordinating action at three levels within the country; at the district, state and national levels.

[40] He states that the local committees are there "to ensure greater coordination in the execution of policy by reaching agreement on how it should be implemented in the particular area for which the committee is responsible." Thompson, 83.

[41] Thompson and Kitson both note and support the use of a Director of Operations to facilitate overall coordination. See, Thompson, 83 ; Kitson, 57.

[42] Mockaitis, 136.

[43] This is noted by Thompson, 83.

[44] See Kitson, 55, 60.

[45] Ibid., 60.

[46] He states that "it is unlikely that the actual operations which it [the military force] subsequently carried out would be of much value unless the various contingents had some common understanding of the military problems concerned in fighting insurgents." Ibid., 60.

[47] Mockaitis, *Peace Operations,* 133.

[48] *Duties in Aid to the Civil Power*, 3, quoted in Mockaitis, *Peace Operations*, 133. Mockaitis notes that this principle is elaborated in "virtually every pamphlet on counterinsurgency or civil unrest in the twentieth century."

[49] Quoted in Mockaitis, *British Counterinsurgency in the post-imperial era* (New York: Manchester UP, 1995), 135.

[50] Mockaitis discusses the instrumental nature of minimum force compared to the more reactive nature of self-defence common to peacekeeping operations, *Peace Operations,* 133.

[51] Kitson, 84-85.

[52] Kitson, 87.

[53] Ibid., 87.

[54] Ibid., 90.

[55] Kitson, 91. Kitson is not particularly clear in explaining this "element of bluff." It appears that he is suggesting that, within a framework of minimum force, it may not be the case that the force would be likely to

utilize high levels of force in many situations. Thus, he suggests that "one of the most difficult tasks facing a military commander is to get the maximum value out of it [the reputation] without having the bluff called." Ibid., 91. Obviously having the bluff called would result in the loss of the reputation that had been fostered previously.

[56] Ibid., 199.

[57] Ibid.

[58] Ibid.

[59] Kitson, 95.

[60] Thompson, 84.

[61] Kitson, 95.

[62] Background information encompasses information on broader social, political, and economic factors in addition to direct intelligence on the activities of insurgent forces. The scenario Kitson outlines makes this clear. In the scenario the commander of the army contingent collects information ranging from personal information of the villagers in his area of operations, to information related to businesses in the area and the local government. See, Kitson, 102-114.

[63] Ibid., 97-98.

[64] This increases the importance of continuity of forces in a particular area, as contacts established with other agencies and actors as well as the population could be lost if continuity is not maintained. Kitson recognizes that short-deployment times are a problem in that they encourage turnover which can threaten the intelligence gathering and analysis framework he proposes, 130.

[65] Kitson is adamant that a random approach to the conduct of operations is less efficient and offers less prospects of success in rooting out the insurgents and the underlying structure of their organization. Ibid., 98

[66] The importance of effective operations early in the campaign is not lost on Kitson, who recognizes that "if the government is able to develop its full potential quickly and mount effective operations in the early stages of the uprising it has a chance of cutting years off the time for concluding the business successfully or avoiding defeat."Ibid., 190. Kitson also points to the critical importance the early stages of the campaign elsewhere noting that the foundations that are laid in the initial stages will "either promote or bedevil all that follows," 81.

[67] Kitson, 97.

[68] Ibid., 80.

[69] Thompson, 89.

[70] Kitson, 77-78.

[71] Thompson, 96.

[72] Ibid.

[73] Thompson elaborates on the danger of swaying from the truth. He suggests that "one government information officer that prevaricated with the truth will, if the truth subsequently becomes apparent, undo the good work of hundreds of other officers, because the very simplest peasant is capable of drawing the conclusion that the government which such an officer represents lacks faith in its own cause," 96.

[74] Ibid., 98.

[75] Thompson, 144.

[76] Kitson, 79.

[77] Kitson, explains that the Malayan campaign was adversely affected by the lack of an effective information operations capability early in the campaign "when it was so sorely needed," 79.

[78] Mockaitis, *Peace Operations,* 134.

[79] Thomson points to three virtues, patience, determination and offensive spirit, 171. Kitson also places emphasis on the importance of the government making its determination to win clear.

[80] Thompson, 58.

[81] Thompson, 58.

[82] Kitson suggests this is what happened with disastrous effects in Aden in 1966 when Britain announced its forces would withdraw in 1968 following independence. Kitson notes how this undermined all faith in an eventual government victory and how security forces from that point received little public support. See, Kitson, 50.

[83]Mockaitis, *Peace Operations,* xi.
[84] Such crises have been termed Complex Political Emergencies, CPEs. The current British Peace Operations doctrine *Joint Warfare Publication 3.01*, recognizes these types of conflict are the primary context of contemporary peace operations. See, Woodhouse, 31. Mockaitis also notes that the context of post-Cold War grey area operations is within the "failed states" of the contemporary period. Mockaitis, *Peace Operations,* 5.
[85] The following paragraph relies upon the similarities between the two forms of activity highlighted by Mockaitis, *Peace Operations*, 128-29. See also the discussion of operational challenges in contemporary peace operations in Sens, 36-37.
[86] Sens notes that belligerents in contemporary peace operations will not "operate according to traditional western modes of conventional combat but will pursue insurgency tactics designed to neutralize their technological and firepower disadvantages." See, Sens, 37.
[87] This would apply predominantly to the belligerent parties and not to the intervening forces. Sens notes that this is an trend common to warfare in the post-World War Two period (thus including the insurgency wars where the British were involved) whereby the distinction between soldier and civilian and combatants and non-combatants has broken down "with the civilian population playing an increasing role in the political and military strategies of warring factions." See, Sens, 26.
[88] He notes that "interventions will take place in 'complex human environments', as control of the population is often a key objective." See, Sens, 36. Lovelock supports this similarity as he notes "the complex situation and the predominantly human dimension lead to strong similarities between the operational concepts and responses." Lovelock, 70.
[89] Jakobsen, 41-42.
[90] Ibid.
[91] Kitson, 199.
[92] Michael J. Dziedzic and Benjamin Lovelock, "An evolved "Post-Conflict" Role for the Miiltary: Providing a Secure Environment and Supporting the Rule of Law," in *Post Conflict Justice,* ed. M. Cherif Bassiouni (Ardsley NY: Transnational, 2002): 854.
[93] Ibid.
[94] This is most clearly reflected in the current US doctrinal statement on peace operations which states that, "settlement not victory, is the ultimate measure of success, though settlement will rarely be achievable through military efforts alone. Peace Operations are conducted to reach a resolution by conciliation among the competing groups rather than termination by force… [They are} designed to create or sustain the conditions in which political and diplomatic activities may be conducted." See, US Joint Warfare Center, *Joint Task Force Commanders Handbook for Peace Operations,* 16 June 1997, para 1-7 quoted in Dziedzic and Lovelock, 854.
[95] These three areas are noted by Jakobsen, 42.

[97]These recommendations apply generically to peace operations whether they are conducted under UN control or through a coalition of willing states or regional organization.
[98] Ingrid A. Lehman has performed some commendable research into this area of peace operations. She emphasizes the critical role information operations play in these types of operations. She urges that "field missions must have integral information programs," and suggests "these must be installed from the outset in the basic structure of the mission," warning that "Eleventh-hour improvisations and add-ons, no matter how brilliant, run just too many risks of being, at the least, too little and too late. At the worst the mission may be speechless and impotent." She also reinforces the need for information operations in the more volatile and complex environment faced recently: "In the new peacekeeping environment of civil and ethnic wars, where hate propaganda is increasingly used as a weapon by the belligerents, ignoring the impact of this information tool is no longer an option." See, Ingrid A. Lehman, *Peacekeeping and Public Information: Caught in the Crossfire* (London: Frank Cass, 1999), 152-53.
[99] The need for rapid-deployment of an information operations capability has been recognized in the Brahimi report. Recommendation 12 specifies the need for a "rapidly deployable capacity for public information." See United Nations, *UN Panel Report on Peace Operations,* 56.
[100] Much recent scholarship has stressed the need for intelligence gathering in peace operations. See for example, Sens, 41; Paul Johnston, "No Cloak and Dagger Required: Intelligence Support to UN

Peacekeeping," *Intelligence and National Security 12*, no. 4 (October 1997): 102-113; A. Walter Dorn, "The Cloak and the Blue Beret: The limits of Intelligence-Gathering in UN Peacekeeping," in *Intelligence and Peacekeeping* (Clementsport, NS: Canadian Peacekeeping Press, 1999): 1-33; David A. Charters, "Out of the Closet: Intelligence Support for UN Peacekeeping," in *Intelligence and Peacekeeping* (Clementsport, NS: Canadian Peacekeeping Press, 1999): 34-69. Charters in particular, connects the increasing need for intelligence support in peacekeeping operations to the more complex and volatile environment characteristic of post-Cold War peace operations. He suggests that "this new operational environment and the roles and missions that flow from it require the integration of intelligence into all aspects of planning and operations." He also echoes Rundner's assertion, noted in the following note, that the approaches framed for operation in mid-high intensity combat operations are not wholly appropriate to the environment characteristic to these operations. Thus, he suggests that "the most relevant approaches may be found in LIC [low-intensity conflict, essentially another name for insurgency and counterinsurgency warfare] concepts." See, Charters, 41. Thus, Charters within an intelligence discussion, reinforces the validity of the argument made in this paper, that concepts initially developed for use in a counterinsurgency context may apply in the context of contemporary peace operations.

[101] Martin Rudner suggests that intelligence operations in peace support operations "require Information and Intelligence capabilities that can differ from those of traditional conflict situations." Such operations are both more complex and ambiguous than traditional conflict situations for which military intelligence and information systems were designed. This requires a more balanced application of all intelligence capabilities, especially the application of HUMINT, human intelligence sources, and the integration of military sources with those of other actors within the conflict zone including the local authorities and nongovernmental organizations. Rudner also suggests that assessment of that intelligence must take a "wide view" and incorporate wider political, social and economic factors, in addition to military concerns. This analysis largely corroborates Kitson's conclusions stressing the need for intelligence collection from numerous sources, and an ongoing process of analysis to turn general background information, which ranges from military to non-military, political, social, and economic factors, into the requisite contact information. See, Martin Runder, "The Future of Canada's Defence Intelligence," *International Journal of Intelligence and CounterIntelligence 15*, no, 4 (Winter 2002-2003): 551-552.

[102] The need for some form of organization is implied by Edward Flint who notes that, "one of the problems facing any response to a complex emergency is that of gathering pertinent information… Information gathered by both military and civilian organizations when fused, will contribute, potentially, toward the formulation of a more coherent response. It is surprising therefore that such information exchanges are at best patchy and… there is a need for further developments to overcome the rather ad hoc nature of existing relationships." See, Edward Flint, "Civil Affairs: Soldiers Building Bridges," in *Aspects of Peacekeeping*, ed. D.S. Gordon and F.H. Toase (London: Frank Cass, 2001), 244-245.

[103] The Brahimi report has made the recommendation that such quick impact projects be incorporated. It is not clear that it was intended to affect the population's provision of intelligence information, although the link in this regard seems logical, especially in light of the focus upon popular support made in the counterinsurgency literature.

[104] On the CIMIC experience in Bosnia see, J. W. Rollins, "Civil-Military Cooperation (CIMIC) in Crises Response Operations: The Implications for NATO," *International Peacekeeping 8,* no. 8 (Spring 2001): 122-29. Rollins notes specifically that coordination with civil agencies and NGO's is lacking at the "middle management level," and that ensuring actions taken are coordinated with an overall plan, 127-28; On the issue of civil-military coordination in Kosovo see, John G. Cockell, "Civil-Military Responses to Security Challenges in Peace Operations: Ten Lessons From Kosovo," *Global Governance 8,* (2002): 483-502.

[105] Lovelock notes that committees similar to those utilized by Britain in a counterinsurgency context are currently being utilized in Kosovo, suggesting that this lesson is already being learned. See, Lovelock, 70.

[106] These recommendations are similar to those drawn from the Kosovo experience dealing with unity of planning and coordination at the strategic level by Cockell. See, Cockell., 497. The United Nations has developed an integrated mission task force concept that would bring together the many departments in the UN Secretariat involved in some aspect of the mission at the planning stage and would assist mission management. See the Comments by Canadian Ambasador Colin Granderson, "The Brahimi Report and the Future of

Peacekeeping," in *Future Peacekeeping: A Canadian Perspective*, ed. David Rudd, Jim Hanson and Adam Stinson (Toronto: CISS, 2001): 5-15.

[107] This has been suggested recently, independent of any recognition of the influence of British counterinsurgency doctrine, by Manwaring and Corr. They suggest that contemporary security "is at its base a governance issue" noting that a primary threat in the contemporary security environment is illegitimate governance. See, Max G. Manwaring and Edwin G. Corr, "Defense and Offence in Peace and Stability Operations," in *Beyond Delcaring Victory and Coming Home: The Challenges of Peace and Stability Operations,* eds. Max G. Manwaring and Anthony James Jones (Westport CT: Praeger, 2000), 35;

[108]Lovelock suggests that current practice, particularly in Kosovo, has moved beyond current doctrine, necessitating its further development. See, Lovelock, 68.

[109] Thompson, 171.

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"If It's Not Terrorism, It's not Relevant": Evaluating NATO's Potential to Contribute To the Campaign Against Terrorism

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In response to the increasing threat posed by transnational terrorism NATO is expanding its role in the realm of counterterrorism. Is NATO's emerging role in this area desirable, or is it merely the outcome of an institutional incentive to ensure the organizations survival? In order to answer this question the following is an assessment of the ability of NATO to contribute to the international campaign against terrorism. The first section sets the groundwork for the overall assessment of NATO's potential through a brief examination of the literature on the subject of counterterrorism. Overall the literature on the subject stresses the need for international cooperation and a holistic and multidimensional approach to the campaign against terrorism. These two factors present the opportunity for a significant NATO role in the campaign. The second section outlines a number of contributions NATO could make in the campaign against terrorism. These contributions are divided into four main realms, diplomacy, military operations, intelligence-sharing, and defence cooperation. The third section of the paper outlines the two principal challenges facing NATO if it continues to develop a role in counterterrorism, a trend that by all appearances seems destined to continue. The conclusion summarizes briefly and presents a set of specific policy recommendations aimed at adapting the alliance for a counterterrorism role. The paper closes with a few comments on the prospects for a significant NATO role in the campaign against terrorism.

Introduction

Lord Robertson has stated that "9/11 transformed terrorism from a domestic security concern into a truly international security challenge."[1] In response to this new global security challenge, that of transnational terrorism, NATO is expanding its role in the realm of counterterrorism. While terrorism was a component of NATO's enlarged post-Cold War security agenda, it is now front and center on the current agenda and is emerging as the principal focus of the alliance. The Secretary-General of the Alliance, Lord Robertson, summarized the emergence of counterterrorism as the primary role of the alliance since Sept. 11 stating that "Defence against terrorism was already one of the new tasks highlighted by our 1999 Strategic Concept. Now it's front and center – a main focus of our activities."[2] In the same speech, Robertson also commented that the alliance "is moving forward with a sense of urgency to retool the Alliance to tackle terrorism" clearly signaling the intent to move forward with an alliance role in counterterrorism.[3]

In the aftermath of September 11 the emerging dominance of NATO's counterterrorism role in determining the alliance's policy agenda can be clearly seen. In response to the September 11 attacks the alliance invoked article 5 of the Washington Treaty for the first time in the alliance's history – stating that an attack on one member was to be considered an attack on all;[4] fourteen of 19 NATO allies sent contingents to Afghanistan; NATO has undertaken overall command of the ISAF peace support operation in Afghanistan – its first "out of area" deployment; the alliance has developed both a Partnership Action Plan on Terrorism and a military concept for defence against terrorism for which a concept of operations is being developed to put the concept into effect; and alliance members committed themselves to developing the types of military capabilities that will allow them to take military action against terrorism through the Prague Capabilities Commitment and the developing NATO Response Force.[5] Indeed, the Prague Summit, held in November 2002, was initially scheduled to focus upon the issue of enlargement. After 9/11 the focus of the summit was changed to the issue of Alliance transformation – reflecting the need for the alliance to adapt and respond to changes in the international

security environment, in particular, to respond to the heightened terrorist threat reflected by the 9/11 attacks.[6]

In many ways that the NATO agenda has been altered by the events of 9/11 is not surprising. Writing shortly after the attacks Philip Gordon commented: "What seems certain, however, is that it [September 11] will have a significant impact on practically every aspect of NATO and the context in which it operates – the future of transatlantic solidarity, alliance military structures, enlargement, NATO-Russian relations, the European Security and Defence Policy, and NATO's future organization, roles and missions."[7] Given that 9/11 altered the environment in which NATO operates, if the alliance did not adapt, especially in terms of its organization, roles and missions, to meet the demands of the new environment it would risk becoming irrelevant as an actor within that environment. This argument has been asserted by a number of commentators including Richard Lugar who states: "If NATO is not up to the challenge of becoming effective in the new war against terrorism, then our political leaders will be inclined for something else that will answer the need."[8] Gordon also reveals this line of thought, arguing that "while the anti-terrorism campaign changes NATO's character and carries many risks, it also demonstrates NATO's continued utility and provides an opportunity to renovate and give new life to an alliance whose future was uncertain."[9]

While not all would agree with Gordon's assertion that NATO's future was uncertain, the comment raises an important point. NATO itself has a clear institutional incentive to adapt and take on a counterterrorism role in order to ensure its own survival as an international security organization. Thus, the question that must be asked is whether NATO, an alliance which developed during the cold war as a response to a state-based military threat in the form of the Soviet Union, is suited to this new counterterrorism role and whether the alliance can make a significant and lasting contribution to the campaign against terrorism. Is a NATO role in counterterrorism desirable and clearly beneficial or is this merely a quest by the organization to maintain its relevance in a changed security environment – a reflection of the mindset or the reality that "if it's not terrorism it's not relevant"?[10]

In order to answer this question this paper presents an assessment of the ability of NATO to contribute to the international campaign against terrorism. The first section sets the groundwork for the overall assessment of NATO's potential through a brief examination of the literature on the subject of counterterrorism. Overall the literature on the subject stresses the need for international cooperation and a holistic and multidimensional approach to the campaign against terrorism. These two factors present the opportunity for a significant NATO role in the campaign. The second section outlines a number of contributions NATO could make in the campaign against terrorism. These contributions are divided into four main realms, diplomacy, military operations, intelligence-sharing, and defence cooperation. The third section of the paper outlines the two principal challenges facing NATO if it continues to develop a role in counterterrorism, a trend that by all appearances seems destined to continue. The conclusion summarizes briefly and presents a set of specific policy recommendations aimed at adapting the alliance for a counterterrorism role. The paper closes with a few comments on the prospects for a significant NATO role in the campaign against terrorism.

An analysis of this type, a focused evaluation of NATO's ability to contribute in the campaign against terrorism, is important for two principal and interrelated reasons. First, if international cooperation is an essential component of the campaign against terrorism and international organizations are seen as an essential means of facilitating such cooperation, it must be decided which international organizations are best able to contribute.[11] A clear evaluation of NATO's potential to contribute to the campaign against terrorism facilitates the comparison of the benefits of an enhanced NATO role in the campaign with that of other organizations, thus facilitating the decision-making process required to make such a strategic determination.

The other principal reason underlying the importance of this analysis is related to the decision-making process by which NATO would develop a more prominent role in the campaign against terrorism. It is no secret that the NATO role in the campaign has been limited at best, especially in terms of contributing to the military campaign against the Taliban and Al Quaeda in Afghanistan.[12] A primary reason why NATO has not played a greater role to this point is due to an American decision in favour of a less structured and

more flexible "coalition of the willing" framework through which to conduct the military operations in the campaign against terrorism. It is clear that any initiative to enhance NATO's role in the campaign against terrorism will most likely have to come from the United States.[13] If the US unwillingness to view NATO as a viable tool in the war on terrorism has been due to a lack of understanding of the value-added the alliance can bring to the campaign, an analysis outlining possible NATO contributions may help to create a more informed opinion regarding the strengths of the alliance and its ability to make a significant contribution and play a prominent role in the campaign.[14]

However, before the potential contributions of the alliance to the campaign against terrorism are developed it is necessary to review the literature on counterterrorism to lay the foundation for that analysis.

The Counterterrorism Literature: Cooperation, Intelligence and a Multidisciplinary Approach

Throughout the literature on counterterrorism there are three main themes relevant to a possible NATO role in the campaign against terrorism. The literature stresses that the counterterrorism response must be holistic and multidimentional in its approach combining military, diplomatic, economic and financial means to counter the terrorist threat; that intelligence-sharing is the essential foundation of all counterterrorism efforts; and that international cooperation is an essential component of the response to transnational and globalized threats. Each of these interrelated elements is discussed in turn to highlight possible roles for NATO in the conduct of the campaign against terrorism.

The Necessity of a Multidisciplinary Approach

Terrorism has always been a complex phenomenon; yet in the recent years with the development of religiously motivated terrorist groups and the confluence of various trends it has become increasingly complex.[15] This complexity of terrorism itself is matched by the complexity of the counterterrorism response required to manage it; a complex and multidimensional response combining a diverse spectrum of measures from the military, diplomatic and economic realms is required to manage the complex terrorism problem. It is argued that the counterterrorism response should include a variety of mechanisms ranging from diplomacy, criminal law, financial controls, military force, intelligence and covert action, to

economic development and foreign aid.[16] Indeed, since September 11 many have argued that the confluence of failed states and terrorism is a major security threat necessitating large-scale interventions into such "complex emergencies" as a counterterrorism response dealing with a root cause of the terrorist threat.[17] If that is the case then peace support operations aimed at stabilizing a country or a region can be considered an element of the counterterrorism response. Indeed, preventing the resurgence of an environment conducive to terrorist operations is one of the major justifications for the current peace support operation in Afghanistan.[18]

Paul R. Pillar compares counterterrorism to other policymaking problems. He states that "no single approach makes an effective counterterrorist policy. The policy must have several elements. In that respect, counterterrorism is similar to other policy problems, including other ones that involve the physical well-being of the public."[19] As a means of organizing the complexity of counterterrorism policymaking Pillar proposes that there are four major fronts on which counterterrorism policies can be enacted, thus dividing measures into categories dealing with the root causes of terrorism; measures affecting the ability of terrorist groups to conduct attacks; measures to affect the intentions of terrorist groups and their willingness to carry out attacks; and measures that are defenses against terrorist attacks. Pillar suggests that each of these categories "corresponds to a phase in the life cycle of terrorism, from simmering discontent to the conduct of an actual terrorist operation." He stresses that "important and useful work can be done on each front" but that "efforts on any one front are insufficient to manage the problem and are necessarily limited by competing objectives and equities."[20] Thus, effective counterterrorism requires measures in all four categories but also a coordinated approach that ensures the various measures work in concert or at least not against one another.[21] This reinforces the need for international cooperation, the next element of counterterrorism to be discussed.

International Cooperation: An essential element of success

There is perhaps no greater consensus surrounding the possible responses to terrorism than on the subject of international cooperation. Indeed it is difficult to find a contemporary piece on the subject that does not in some way comment on the need for international cooperation. This focus upon international

cooperation is a direct impact of the development of the "new terrorism"; groups, more often than not having a religious motivation, able to operate transnationally and more willing than traditional terrorists to conduct mass-casualty attacks.[22] Bruce Hoffman, analyzing the trends in terrorism resulting from the development of religiously motivated terrorism, argued that,

> Terrorism today has arguably become more complex, amorphous and transnational. The distinction between domestic and international terrorism is also evaporating… Accordingly, as these threats are both domestic and international, the response must therefore be both national as well as multinational in construct and dimensions.[23]

However, Hoffman also stresses that sound national measures are an essential prerequisite to countering the terrorist threat. He argues that "national cohesiveness and organizational preparation will necessarily remain the essential foundation for any hope of building the effective multinational approach appropriate to these new threats. Without internal (national or domestic) consistency, clarity, planning and organization, it will be impossible for similarly diffuse multinational efforts to succeed."[24] Thus international cooperation is an adjunct to sound national policy. This realization points to a main area of for international cooperation in the realm of counterterrorism – technical assistance to assist less developed countries develop the capacities required to counter the terrorist threat. If a strong national response is required, assisting states in this endeavor by assisting planning, training, and the general development of national counterterrorist capacities could make a significant contribution to international terrorist efforts.[25] This argument is reinforced by the realization that most often it is national forces operating within their national territory that are the most appropriate instrument to take action against terrorists operating there.[26] The United States has taken measures to improve the counterterrorism capacities of other states, including the Phillipines and Georgia.[27] The need for joint planning, capability development, and training, has also been noted in the area of consequence management and especially in the response to terrorist use of weapons of mass destruction.

Paul Wilkinson suggests that increased concern related to the transnationalization of terrorism, largely due to the development of religiously motivated terrorism and the intersection of terrorism and transnational organized crime has led to increased concern amongst governments and other organizations.

He notes that these concerns led to "the growing realization that terrorism can only be combated effectively through greatly enhanced international cooperation: sound national measures against terrorism are of course essential, but by themselves they are not going to be adequate to deal with an increasingly transnational phenomenon."[28] Thus, Like Hoffman, Wilkinson suggests international cooperation is required in addition to sound national counterterrorism responses. This sentiment is echoed by analysts at the RAND corporation who argue that "just as terrorism is becoming an overtly transnational problem, the international dimension of counterterrorism policy is acquiring greater importance, both in terms of counterterrorism efforts and comparative lessons to be learned."[29] This statement implies that lessons can be learned from differing national experiences in counterterorrism and shared through the mechanism of international cooperation. Thus, the distribution of "best-practices" in the realm of counterterrorism becomes a possible element of international counterterrorism cooperation.

The need for international cooperation is also clearly stressed within the framework of the current campaign against terrorism. In the most comprehensive outline of the American strategic challenge in the campaign against terrorism, a CSIS publication titled, *To Prevail: An American Strategy for the Campaign Against* Terrorism.[30] The authors stress that international cooperation is an essential element of the campaign noting that "most of the important and enduring elements of the campaign against terrorism will involve the United States acting with other states, rather than acting alone" and that "effective measures from law enforcement and intelligence collection to the prosecution of the military campaign all require international cooperation; *indeed, without it, US efforts will fail.*"[31]

Indeed, arguments surrounding America's need for allies in the war on terrorism and the need for a large coalition are continually stressed.[32] Barry Posen has even linked the U.S. need for allies in the campaign against terrorism with the critical role of intelligence in the campaign, arguing that "the critical importance of intelligence is one of the main reasons why the United States needs the support of U.S. allies"; not all of the intelligence required to guide American responses can be provided through American sources – allies sources will play a crucial role.[33] Thus, the need for international cooperation

and the primary importance of intelligence in the campaign against terrorism, the subject of the next section, are interrelated and reinforcing.

Intelligence: The "Long-Pole in the Tent"

Intelligence is perhaps the most essential element in the campaign against terrorism: "Nearly all of the threatened or their experts agree that the key to an effective response to terrorism is good intelligence and that such intelligence is difficult to acquire."[34] Posen states that "enhanced intelligence capabilities are necessary for both defense and offense. Students of terrorism and its close cousin insurgency, invariably stress the critical importance of intelligence."[35] Wilkinson also stresses the critical need for intelligence when he notes that "high-quality intelligence is at the heart of the proactive counter-terrorism strategy."[36] Intelligence has also been described more recently within the framework of the current campaign against terrorism as the "long-pole in the tent" - "an indispensable element of the campaign on which the successes of all others will depend."[37] Clearly intelligence is seen as the key to an effective counterterrorism response.[38]

Intelligence or rather intelligence sharing is seen as a key enabler of international responses to terrorism: "Just as the lack of intelligence sharing between uniformed and non-uniformed security agencies often damages national terrorism responses, so international mistrust and reluctance to share information often vitiates an effective international response."[39] So if international coordination is required to counter the terrorist threat, the need for intelligence sharing moves to the top of the list of priorities for the international response.[40] Indeed, within a US context it is suggested that "if intelligence is the long pole in the combating terrorism tent, enhanced cooperative relationships with foreign intelligence agencies are the ground lines that will enable it to stand."[41]

It is clear from the foregoing discussion of the nature of counterterrorism and the contemporary campaign against terrorism that the campaign must be multidimensional, and multinational with a strong focus upon international cooperation – confronting a transnational threat requires a transnational response – and that intelligence and intelligence sharing will play a critical role in the campaign. One other element that is often stressed by terrorism experts is that the campaign against terrorism necessitates a

long-term vision. It cannot be won in the short-term and necessitates a long-term focus and commitment in order to achieve success.[42] Meeting the challenge of terrorism "will require the US and its coalition partners to mount a long-term campaign on a broad range of fronts."[43] It is also suggested that the long-term focus of the campaign is a challenge in itself: "Such a global threat demands a global response, and the long-term multifaceted campaign against terrorism will require constant coalition-building and maintenance."[44] Sustaining international cooperation against terrorism may be one of the most difficult tasks facing the leaders of the global coalition against terrorism as the "politics of the last outrage" fade and other policy priorities emerge to take precedence over the counterterrorism campaign.[45] Now that the nature of the campaign has been outlined, the possible contributions of the alliance can be presented.

NATO Contributions to the Campaign Against Terrorism: A Key Player

The nature of the campaign against terrorism itself facilitates a strong NATO role in that it puts a priority upon international cooperation in the realm of defence and security. If "organization, cooperation and coordination" are the keys to successfully dealing with terrorism NATO can provide all three.[46] There are four main realms where NATO can make a significant contribution to the campaign: diplomacy, military, intelligence-sharing and defence cooperation, which suggests that NATO can make a significant contribution to a multi-dimensional campaign.

The Diplomatic Realm: A Forum for Discussion and Action

Strobe Talbot suggests that NATO's "military and political functions have always been intertwined" and argues that "at its inception, NATO was about more than just banding together against a common enemy; it was also about creating, consolidating and expanding a zone of safety within which common values and cooperative institutions could prosper."[47] This fact opens room for a significant diplomatic role for NATO in fostering support for the campaign on terror which underpins the critical element of international cooperation - "NATO can contribute in a number of different ways. Its comparative advantage is centered on its military clout, but it is certainly not limited to it."[48] If maintaining coalition support and solidarity is a key element of the campaign against terrorism, then surely one role NATO can play is as a forum for the mobilization of such support and solidarity, especially noting the strong, shared

values that unite the members of the alliance. Article 4 of the Washington Treaty commits alliance members to consultation on security issues, and provides a basis for such consultation and cooperation.[49]

The role NATO can play in this area is highlighted by the invocation of article 5 of the Washington Treaty in the aftermath of the September 11 attacks. Gordon suggests that the "political solidarity" evoked by the NATO response to the attacks was highly significant even if the NATO allies were not very active in the military campaign in Afghanistan.[50] Indeed NATO possesses assets beyond the North Atlantic Council in this diplomatic role. The Euro-Atlantic Partnership council is perhaps the just as important a forum as the NAC in that it includes a wider set of states including some, such as those in Central Asia, that are key to the war on terrorism.[51] Indeed on September 12 the members of the "Euro-Atlantic Partnership Council" condemned the terrorist attacks on the US and "pledged to undertake all efforts to combat the scourge of terrorism."[52] The members of the EAPC have also signed a "Partnership Action Plan against Terrorism" which includes a variety of measures including commitments to sign the relevant UN conventions related to the campaign against terrorism, commitments to find ways of improving intelligence sharing and generally improve international cooperation in the campaign against terrorism. NATO also possesses key assets in the form of the Mediterranean Dialogue, an initiative developed in 1994 as a means of improving cooperation and political dialogue with countries in the Mediterranean region, and the NATO-Russia Council which was launched in May 2002.[53]

The importance of political solidarity in the campaign against terrorism is not just for its own sake; it underpins successful action in the military sphere. Discussing potential roles for the military in combating terrorism Lord Robertson has suggested that all potential roles have one thing in common: they require political support; "a broad base of support, political as well as practical." He cites the experience of Afghanistan as an example: "The recent operations against Al-Quaida would not have been possible without the political and logistical support offered by a unique coalition – a coalition including Russia, many Central Asian countries, Pakistan and in the Gulf Region."[54] Thus, NATO contributions in the diplomatic realm facilitating international cooperation are interrelated with contributions in the military realm of the war on terror, the next subject to be discussed.

The Military Dimension: NATO Operations or NATO Toolbox?

There are two primary roles NATO can play in terms of making a military contribution to the campaign against terrorism: NATO can take military action directly, conducting operations under the command and control of NATO itself, in the manner of the Kosovo campaign of 1999, or it can facilitate operations of "coalitions of the willing" by acting as a toolbox from which interoperable forces can be drawn in order to conduct military operations.[55] There are also two types of military operations in which NATO military forces may make a contribution to the campaign against terrorism: the first is by conducting combat operations against terrorist groups or their supporters directly; the second is a military operation in the form of a peace support operation designed to ensure stability, either national or regional, in an area of terrorist activity.

The recent campaign in Afghanistan contains examples of both types of operation. The American campaign, "Operation Enduring Freedom," is an example of the former type of operation, which includes direct, high-intensity, combat operations against terrorist forces and their supporters directly. The multinational deployment of the International Security Assistance Force located in Kabul, mandated to support the stability of the Afghan Interim Authority, is an example of a peace support operation (PSO) within a counterterrorism framework.[56] Based upon this analysis it is possible to categorize the possible NATO military contributions to the campaign against terrorism in a two by two matrix showing four possible types of military operations.[57] Accordingly the American "Operation Enduring Freedom" can be categorized as a combat operation in a coalition of the willing operation facilitated by NATO,[58] whereas the ISAF deployment is a PSO deployed under NATO command.[59]

While NATO has not yet conducted direct combat operations in a counterterrorism role within an operation under NATO command, NATO does seem to be putting the requisite pieces in place showing some potential to do so. NATO has developed a military concept for defence against terrorism and is currently developing an operational concept of operations to put it into effect. Critically the military concept against terrorism underlines the Alliance's readiness to act against terrorist attacks or the threat of such attacks and to deploy forces "as and where required to carry out such missions."[60] As well NATO is

developing the NATO Response Force (NRF), an elite force designed as a highly flexible, rapidly deployable, technologically advanced, elite force. This force is to be initially operationally capable by October 2004 and reach its full operating capability by October 2006 and is reported to be well-suited to a counterterrorism role.[61] If this is the case, NATO may have a sound option on the table for direct counterterrorism combat operations by 2006. Until then, one should not underestimate the significance of NATO's role in conducting PSOs. Indeed, this is most likely the area where the United States needs more assistance,[62] and an area of considerable NATO expertise where NATO can make a significant contribution to the campaign against terrorism.[63]

The Intelligence Dimension: Share and Share Alike

The third major area where NATO can make a contribution to the campaign against terrorism is through participating in intelligence sharing – perhaps the single most important element of the campaign. The alliance has a long-standing intelligence sharing relationship among its members, particularly with the United States.[64] Indeed, NATO's ability to contribute in this area is reflected in the US request of 4 October 2001 for assistance from the allies in a number of areas. Significantly, increasing intelligence sharing was near the top of the list.[65]

Nor is the potential for the alliance to contribute in this area limited to the allies only. The Partnership Action Plan on Terrorism, which was agreed upon by all members of the EAPC (the 19 NATO allies and the 27 Partner countries), includes provisions to improve intelligence sharing arrangements. Paragraph 16.1.2 specifies that "EAPC States will intensify their efforts to share information and views related to terrorism."[66] The alliance has also created an EAPC/PfP Intelligence Liaison Unit to promote exchange of intelligence relevant to terrorist threats.[67] It is suggested that the unit should enhance information sharing.[68] Both the Mediterranean Diologue and the NATO-Russia Council are also being leveraged as mechanisms to contribute to the sharing of intelligence regarding terrorist threats.[69]

However, limitations and constraints upon NATO's ability to contribute to intelligence-sharing exist – as Pillar notes, "even with an alliance such as NATO, constraints on sharing sensitive intelligence increase along with the numbers of participating countries."[70] Perhaps the greatest challenge facing

NATO is that of the prevailing institutional culture of the alliance regarding intelligence. Michael Herman describes the post-war alliance doctrine as regarding intelligence as "essentially a national matter" and suggests that this remains the case in the post-cold war period today.[71] If this is indeed the case, making the shift to where intelligence and intelligence-sharing is recognized as a main focus of the alliance may be the most significant contribution of the alliance to the campaign against terrorism.

Defence Cooperation: Enhanced Capacity through International Cooperation

NATO has a longstanding history of defence and security cooperation.[72] If a cohesive and capable national response is key to countering the terrorist threat, as both Hoffman and Wilkinson suggest, NATO can play a key role by facilitating and assisting the development of counterterrorism capacities in both its member states and in its partner countries. Enhancing partner capabilities is extremely important as these countries often do not have the expertise or the resources required to develop such capacities.[73] The potential for NATO action in this area is noted in the Partnership Action Plan on Terrorism, which is being leveraged as a mechanism to guide such practical cooperation. The plan states that:

> EAPC States co-operate across a spectrum of areas in the Euro-Atlantic Partnership Council and Partnership for Peace that have relevance to the fight against terrorism. These include inter alia political consultations; operations; issues of military interoperability; defence and force planning and defence reform; consequence management, including civil emergency planning; air defence and airspace management; armaments cooperation; border control and security; suppression of financing of terrorism; prevention of arms and explosives smuggling; science; and arms control and non-proliferation.[74]

The plan outlines cooperation on two broad fronts: developing capacities to combat terrorism directly; and developing capacities required to manage the consequences of terrorist attacks especially those utilizing weapons of mass destruction. It has also been suggested that the plan may also serve as an instrument for the dissemination and distribution of lessons learned in counterterrorism. Yavuzalp states that through the plan "Allies and Partners which have developed particularly effective mechanisms for addressing this problem over the years, may provide mentoring programmes to countries seeking to improve there own anti-terrorist capabilities."[75] To this end the plan calls for: defence and security sector reform to aid the development of "properly structured and well-equipped forces able to contribute to combating terrorism"; force planning to that effect; information exchange about counterterrorism forces;

joint inter-allied and inter-partner exercises related to combating terrorism to improve capabilities and to share experiences; and the development of enhanced capabilities to contribute to consequence management through joint exercises and the sharing of information and experience in this area.[76]

Interestingly the plan also calls for the consideration of the establishment of a PfP Trust Fund to "assist individual member states in specific efforts against terrorism" noting that the fund may be particularly relevant to Partners from Central Asia, the Caucasus and the Balkans and "will be implemented as a matter of priority."[77] This suggests the alliance collectively understands the important contribution that can be made in this area.

Challenges Facing the Alliance: The Double Gap Dilemma

There are two primary challenges facing the alliance that may inhibit the development of a significant alliance role in the campaign against terrorism: the capabilities gap; and what can be termed the threat/response gap. The capabilities gap is best defined as "the aggregate of multiple gaps relating to the organization and conduct of large-scale expeditionary operations" between European and American military forces.[78] The gaps can be related to either technology, or in investment and procurement; they combine to add up to US superiority, in both qualitative and quantitative terms, especially regarding expeditionary operations, the type required to conduct most anti-terrorist type operations.[79] The threat/response gap is a less tangible concept than the capabilities gap; the term refers to the gap between the United States and its European allies in terms of the perception of the terrorist threat in terms of both the severity and level of threat accorded to it and the counterterrorism responses required in its management. The United States tends to favour technical responses to the problem, especially military measures, whereas the Europeans tend to stress the relevance of a "root causes approach" to the problem.[80]

The significance of the dual gap problem is that they act to inhibit a cohesive alliance response to the challenge of terrorism and reinforces American tendencies towards unilateralism thus undercutting an international response to an international problem.[81] It is likely that the capabilities gap played a large

role in the US decision to go into Afghanistan under a coalition of the willing framework acting as the lead nation – the Europeans simply didn't have the capabilities required to conduct such an operation.[82]

The level of threat the dual gap poses for the alliance should not be underestimated. Indeed, one commentator even goes so far to suggest that dual gap is a mortal threat to the health of the alliance: "continued gaps in capabilities and severe differences between America and its European allies in the gravity accorded to threats is relegating NATO to the graveyard of collective security irrelevance."[83] While this may be an exaggeration in the short-term, unless measures are taken to mitigate the dual gap the long-term survivability of the alliance and its ability to contribute to the campaign against terrorism will be severely affected.

Conclusion:

It is clear that NATO can make a significant contribution to the campaign against terrorism in four interrelated realms of the campaign by facilitating diplomatic cooperation; military operations; intelligence-sharing; and defence cooperation. If the campaign against terrorism places a premium upon international cooperation in all dimensions of the campaign and upon intelligence-sharing in particular the potential for NATO to make a significant contribution should not be undervalued.

Indeed it appears that NATO is well placed to make a significant contribution largely thanks to the institutions it developed throughout the 1990's as it adapted to the post-Cold War period, the EAPC, the PfP, the NATO-Russia council and the Mediterranean Dialogue, as it shifted from a collective security focus to that of a cooperative security focused framework.[84] Celeste A. Wallander argues that these institutions developed within NATO as it attempted to reconfigure itself to the requirements of the post-Cold War security environment.[85] She argues that NATO persisted after the Cold War because it possessed general assets for political consultation and decision-making, and military planning, coordination and implementation, which made the alliance an effective security institution capable of dealing with the problems of the post-cold war security environment; the institutions NATO developed through the 1990's, the same institutions that are the key assets in NATO's role in counterterrorism, were based on NATO processes and procedures from the Cold War period adapted to the new strategic

environment. This process of adaptation in the post-cold war period suggests that if the alliance persisted in the post-Cold War environment utilizing similar institutions, NATO's persistence in the current period should not be that surprising – the general assets NATO brings to the table, as a mechanism for consultation and action in both the political realm and that of the military, are as relevant to the contemporary security environment as they were in the post-Cold War period - international cooperation is essential to the campaign against terrorism.

However this does not mean that adaptation is not required. Indeed, if NATO is to play a key role in the campaign against terrorism three key changes need to be made. First, NATO should adopt some form of joint intelligence assessment in order to undercut the affects of the threat-response gap. Herman suggests that joint assessment along the model of the British Joint Intelligence Committee can facilitate international decision-making and coalition action.[86] As such, instituting such a mechanism within NATO could lead to a closing of the threat/response gap and also invigorate European investment in the military capabilities required for counterterrorism operations. Second, the alliance should update its Strategic Concept so that it clearly reflects the contemporary focus upon the campaign against terrorism. This too could undercut the threat/response gap as the process of updating the concept would require a thorough discussion of the nature of the terrorist threat which could lead to a more focused and shared conception of the threat among all members of the alliance. Indeed, such a discussion could lead to a better strategy in the war on terrorism overall as inherent in the threat/response gap is a "logical complimentarity" which could lead to a more multidimensional and holistic strategy overall.[87] Third, the alliance needs to improve its capacity to undertake complex peace support operations. NATO does have expertise in the area but more work needs to be done – NATO does not even have a peacebuilding unit – to institutionalize and otherwise improve the capacity to undertake such operations which may be a major contribution of the alliance to the campaign.[88] All told, these three reforms will facilitate a greater NATO role in the campaign. Together they offer a concise agenda for alliance adaptation to a counterterrorism role.

Yet what is also clear is that NATO cannot be the only international organization involved in counterterrorism; there is no one-stop shopping in counterterrorism. Other institutions such as the UN, the G8, the EU and the OSCE all have a role to play. For example, it is difficult to see NATO playing a significant role in the economic domain of counterterrorism, cracking down on terrorist financing;[89] as others have suggested, an international "coalition of coalitions" or "network of networks" is required to counter the threat of transnational terrorism.[90] Can NATO act as the key node in this network, taking on a coordinating role?[91] Answering this question is strictly beyond the scope of this paper as it involves a comparison of the attributes and strengths of various organizations. However, it is clear that NATO brings significant assets to the table, particularly in the diplomatic and military realms, including conducting operations and defence cooperation activities, which could allow NATO to play such a coordinating role.

Ultimately however, it is likely that NATO's participation in the campaign against terrorism will largely be a function of the US choice of grand strategy.[92] In this respect an enhanced NATO role in the campaign faces a tautological dilemma. US unilateralist impulses lead to an American dismissal of NATO's potential in the campaign against terrorism, negating a significant NATO contribution, thus seemingly confirming that NATO is unable to play a significant role in the campaign.[93] If NATO is to play a significant role, US support and investment is required and will be key to the development of an enhanced NATO role in the campaign. Realizing the many assets NATO possesses relevant to the campaign, those outlined in this paper, may help to shape US grand strategy. Yet perhaps the greatest strategic advantage of NATO participation would be the institutionalization of international cooperation an enhanced NATO role would allow. If international cooperation is plagued by the "politics of the last outrage," institutionalizing support for the long-term campaign against terrorism could be the alliance's single greatest contribution and the foundation of success in the campaign; it may be that "A permanent coalition is better than a temporary one. An interoperable coalition is better than an incapable one. A value sharing coalition is better than a coalition of convenience. And a NATO coalition is better than anything else." [94] While the decision to increase NATO's role in the campaign may rest with American

decision-makers, the way forward may be clearer than we think; that at least, leaves some room for optimism.

Endnotes

[1] Lord Robertson, "Transforming NATO," *NATO Review* (Spring 2003): 3. Online: www.nato.int/review.

[2] Lord Robertson, "Tackling Terror: NATO's New Mission" Speech to the American Institute's New Atlantic Initiative, Washington D.C., 20 June 2002). Online. Available: www.nato.intdocu/speech/2002/s020620a.htm.
[3] Ibid.
[4] Philip Gordon has pointed out that, interestingly, this first invocation of Article 5 of the Washington Treaty involved a scenario that would not have entered the minds of any of the signatories to the treaty in 1949 – in response to a non-state actors attack upon the United States. He states that "not a single signatory could have imagined that its first invocation would involve Europeans coming to the aid of the United States rather than the other way around. Yet that is precisely what happened, and NATO will never be the same again." See, Philip H. Gordon, "NATO after 11 September," *Survival 43*, no. 4 (Winter 2001/02): 89. Gordon's comment also reveals the contention that the attacks of 11 September will have a significant, wide ranging impact on the transatlantic alliance – a main theme of this paper. Bennett echoes this assessment suggesting that the invocation of article 5 of the Washington treaty by NATO, an acknowledgement that a terrorist attack by a non-state actor could invoke the treaty, has, in effect, mandated the alliance "to make combating terrorism an enduring NATO mission." See, Christopher Bennett, "Combating Terrorism," *NATO Review* (Spring 2003): 5. Online: www.nato.int/review.
[5] For a good summary of recent NATO initiatives see, Christopher Bennett, "Combating Terrorism," *NATO Review* (Spring 2003): 5-7. Online: www.nato.int/review; NATO, *NATO After Prague: New Members, New Capabilities, New Relations* (Brussels: NATO Office of Information and Press); NATO, *NATO Fact Sheet: 11 September – 18 Months on NATO's Contribution to the Fight Against Terrorism*. Updated 4 Aug. 2003. Online: www..nato.int/terrorism/factsheet.htm; Elinor Sloan discusses the PCC and the NRF and notes their relevance to a counterterrorism role, see Sloan, "Beyond Primacy: American Grand Strategy in the post-September 11 Era," *International Journal LVIII*, no. 2 (Spring 2003): 303-319.
[6] Michael Ruhle discussing the summit states: "Initially billed as an "Enlargement Summit," the idea of making the admission of new members the sole focus of the meeting was dropped after 9/11. All the allies agreed that NATO enlargement would be a historic step, consolidating Europe as a single security space from the Atlantic to the Black Sea, and from the Baltic to the Balkans. There were widespread fears, however, that the United States might lose interest in the alliance if the Prague meeting did no more than issue membership invitations. Accordingly, the Prague Summit was relabeled a "Transformation Summit." See Michael Ruhle, "NATO After Prague: Learning the Lessons of 9/11," *Parameters* (Summer 2003): 93. Ruhle also suggests Prague was an opportunity for the alliance to prove that it could deliver on NATO reform to ensure its relevance to the new security environment by finding a balance between traditional euro-centric missions and a focus upon new global threats such as terrorism and WMD; acquiring the military capabilities required to operate in the new environment; and by learning to react quickly and flexibly to new challenges. Ibid. While it is perhaps premature to offer an overall verdict on the success of the Summit in achieving these goals, one cannot but be impressed with the output from the summit in terms of the PCC, the NRF, the Military Concept for Defence against Terrorism, the reform of the NATO Military Command Structure, and the enlargement of the Alliance with the invitation for seven countries to begin membership-accession talks. If nothing else, such production shows at least a high-level of activity and effort to adapt the alliance to the contemporary security environment.
[7] Gordon, "NATO After 11 September," 89.
[8] Richard D. Lugar, "Redefining NATO's Mission – Preventing WMD Terrorism," *Washtington Quarterly 25*, no. 3 (Summer 2002): 13; The argument is also implied in more practical terms in Ruhle's comment cited above when he notes of a European concern that the American's would lose interest in the Alliance if the Prague Summit did not move beyond the issue of enlargement.
[9] Gordon, "NATO After September 11," 89.
[10] This quite if from a senior NATO official in a briefing regarding NATO's role in counterterrorism. NATO, Briefing to the Canadian Security and Defence Forum, Brussels, 17 June 2003. This may be an accurate reflection of the reality of policymaking in the international security realm at this time. Elinor Sloan suggests that "It is a measure of how profoundly the events of 11 September have affected the American psyche that most US foreign relations are viewed through the prism of its war on terrorism. The post cold war era is over; it lasted a decade. The post 11 September era has begun; the war on terrorism is as all-pervasive an organizing principle for American foreign and defence policy as the cold war." Sloan, 301. This assertion, if a true reflection of the contemporary American strategic mindset, suggests that such an effort could be as much an effort to maintain NATO's relevance to the US' strategic agenda as to meeting the demands of the contemporary security environment.
[11] In light of the complexity of the international system, especially in Europe with its plethora of international organizations, the difficulty of this task should not be underrated. For example, which organization should take the lead in countering terrorism: the EU, the G8, the OSCE, the UN, NATO, or another organization? Paul Wilkinson

notes the difficulty of deciding which organization should take the lead in countering terrorism in Europe: "on matters of European security concern, NATO, the EU, WEU and OSCE all have a finger in the pie. Which organization, if any, should take the lead role in regards to measures against terrorism?" See, Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response* (London: Frank Cass, 2000), 201. This task is made even more complicated when differing views persist on what needs to be done and by what organization. See, Wilkinson, 200-201.

[12] On this point see for example, Rebecca Johnson and Mica Zenko, "All Dressed Up and No Place to Go: Why NATO Should be on the Front Lines in the War on Terror," *Parameters* (Winter 2002-03): 48. Johnson and Zenko describe the American response to NATO in the context of the campaign in Afghanistan: "While officials in Washington have endorsed NATO's invocation of Article 5 for the first time in the alliances history and accepted limited contributions of troops and equipment for the military campaign and later support for the restricted peacekeeping mission in Afghanistan, they have refused to allow NATO to engage in the sort of operations the alliance embraced when it affirmed its Article 24 commitments in April 1999." See Johnson and Zenko, 48.

[13] This idea is developed more fully in the conclusion below.

[14] It appears that a gap in the literature surrounding the war on terrorism exists. While some commentators such as Johnson and Zenko and Lugar have argued in favor of a greater role for the alliance in a counterterrorism role, no one has systematically analyzed or proposed a set of possible roles for the alliance drawing on the literature of counterterrorism. This is probably due to the fact that most of the best literature on terrorism and counterterrorism is produced by practitioners in the field of intelligence and counterterrorism or by experts on those subjects. Richard K. Betts notes that "the academic field of security studies has some reason to be embarrassed after September 11. Having focused primarily on great powers and interstate conflict, literature on terrorism was comparatively sparse; most of the good books were by policy analysts rather than theorists." See, Richard K. Betts, "The Soft Underbelly of American Primacy: Tactical Advantages of Terror," *Political Science Quarterly 117*, no. 1 (2002), in *Terrorism and Counterterrorism: Understanding the New Security Environment Readings and Interpretations*, ed. Russel D. Howard and Reid L. Sawyer (Guilford Connecticut: McGraw-Hill Dushkin, 2004), 381. Thus, applying principles and concepts from that literature to NATO requires somewhat of an interdisciplinary approach, combining the study of both counterterrorism policy and international relations and security studies. While this paper is limited by its short length, it is hoped that it in part will fill this gap, by applying some key elements of the counterterrorism literature to the alliance in order to at least partially fill the gap.

[15] For an examination of the increased complexity of the terrorist phenomenon and an analytical framework to counter that complexity see, Brent Ellis, "Countering Complexity: An Analytical Framework to Guide Counter-Terrorism Policymaking," *Journal of Military and Strategic Studies* (Spring/Summer 2003), in *Terrorism and Counterterrorism: Understanding the New Security Environment Readings and Interpretations*, ed. Russel D. Howard and Reid L. Sawyer (Guilford Connecticut: McGraw-Hill Dushkin, 2004), 109-122.

[16] For example, Forster and Wallace argue that "as the events of September 11 illustrate only too well, the threats to western stability now come from unstable regimes in weak states; from radical movements operating across national frontiers; from anti-Western governments willing to lend such movements support; and from he broader resentments from which such movements grow… Western responses also require a broad spectrum of non-military instruments, from cooperation among police and intelligence agencies through to assistance with political and economic development." See, Anthony Forster and William Wallace, "What is NATO for?" *Survival 43*, no. 4 (Winter 2001/02): 110; A multidimensional response is also stressed by Christopher Harmon, *Terrorism Today* (London: Frank Cass, 2000), 235, 241-42. For a good introduction to a variety of measures see, Paul. R. Pillar, *Terrorism and US Foreign Policy* (Washington DC: Brookings Institution Press, 2001), 73-129.

[17]See for example, Chester A. Crocker, "Engaging Failing States," *Foreign Affairs* (September/October 2003): 32-44; Ray Takeyh and Nikolas Gvosdev, "Do Terrorist Networks Need a Home," *Washington Quarterly25*, no. 3 (Summer 2002): 97-108; Campbell and others, *To Prevail*; and Steven E. Miller, "The End of Unilateralism or Unilateralism Redux?" *Washington Quarterly 25*, no. 1 (Winter 2002): 16. Takeyh and Nikolas suggest that if the United States is serious about rooting out terrorism, it must take reconstruction after military strikes seriously. They suggest that "The United States and its allies cannot conduct the fight against global terrorism in a vacuum. Effective combat is impossible as long as the failed states that terrorist movements use for refuge are left to flounder… Once the military strikes end, state reconstruction must occur." Takeyh and Nikolas, 105. The authors of *To Prevail* suggest that "One of the lessons of September 11 is that failed states matter – not just in a humanitarian sense, but in national security terms as well… If allowed to fester, such states can become sanctuaries for terrorist networks, not to mention organized criminals and drug traffickers who exploit the dysfunctional environment." Campbell and others, 167-68. Miller states that "the construction of stable polities with reasonably

successful economies in places where failed states now exist may be a prerequisite for long-term success in eliminating terrorism" and suggests that "nation-building" is a potentially key element in a counterterrorism strategy. Miller, 16. For an argument stressing the need for a PSO in Afghanistan see, Kimberley Zisk Marten, "Defending Against Anarchy: From War to Peacekeeping in Afghanistan," *Washington Quarterly 26*, no. 1 (Winter 2002-2003): 35-52.

[18] See, Canadian Forces, "Backgrounder Operation Athena: The Canadian Forces Participation in ISAF," Media Release, BG-03.039a, 18 July 2003, Online: http://www.army.dnd.ca/lf/English/6_4_2003-07-18.asp?FlashEnabled=1&. The backgrounder makes a clear link between ensuring stability in Afghanistan and the campaign against terrorism: "Afghanistan's full and sustained recovery is key to eliminating the threat of terrorism and achieving greater international security and stability."

[19]Pillar, 29.

[20]Ibid.

[21] Pillar, 123. Pillar states that "the limitations of each of the counterterrorist instruments make it necessary to use-or at least consider the use of-all of them. Moreover they must be used in concert. Most counterterrorist work involves more than one instrument. Intelligence has a role in almost every counterterrorist operation, and diplomacy does in most of them. The instruments are complementary, and the value of using them should be-and generally is-more than the sum of the parts. If the process is not properly managed, the value may be less than the sum of the parts, because of the different instruments working at cross-purposes – a military operation making the arrest of a fugitive more difficult, for example, or an arrest negating a valuable source of intelligence." The need for a comprehensive and coordinated approach to counterterrorism is perhaps the strongest theme running throughout Pillar's work. The fact that intelligence and diplomacy are two realms of counterterrorism that pervade almost every operation, as Pillar states, supports the argument that NATO can play an active role in the campaign on terrorism as these are two of the principal areas, outlined below, where NATO can play a role.

[22] On the subject of the "new terrorism" see, Steven Simon and Daniel Benjamin, "America and the New Terrorism," *Survival 42*, no. 1 (Spring 2000): 59-75 and the responses to the article in Oliver Roy and others, "America and the New Terrorism: An Exchange," *Survival 42*, no. 2 (Summer 2000): 156-72.

[23] Bruce Hoffman, "The Confluence of International and Domestic Trends in Terrorism," *Terrorism and Political Violence 9*, no. 2 (Summer 1997): 10. Hoffman also stresses the need for international cooperation in *Inside Terrorism* his major work. He stresses the critical role of international cooperation stating that "In the future, therefore, if governments are effectively to prevent and pre-empt other such attacks, increased and strengthened multinational intelligence sharing and law enforcement cooperation on a more regular and systemic basis will be critical. Given the transnational dimension of many of these threats… any response that is to yield results will have to involve enhanced binational and multinational intelligence exchange, cooperation over extradition, the enactment of more formal accords and treaties both between individual countries and on o more comprehensive basis, and the coordination of national policies to monitor, prevent, pre-empt and judicially resolve terrorist acts." See, Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 1998), 211.

[24] Ibid. 10.

[25] It is noted that "third world and newly independent states are not only the major settings for terrorism, they are also the least well equipped in terms of resources to counter terrorist challenges." Ian O. Lesser and others, *Countering the New Terrorism* (Santa Monica CA: RAND, 1999, 94.

[26] This is suggested by Elinor Sloan, "Beyond Primacy," 309. Sloan states: "In many cases it will not be necessary or even possible for American forces to do the fighting. Rather the military and police forces of individual states may be the more appropriate instruments to apprehend terrorists operating within their national borders." Sloan, 309. This argument is put forward by Barry R. Posen who explains that local forces have a number of advantages including better access to local intelligence, notably HUMINT – they know the territory and the people better – and are better able to deal with any collateral damage that results from an operation. See, Barry R. Posen, "The Struggle Against Terrorism: Grand Strategy, Strategy and Tactics," *International Security 26*, no. 3 (Winter 2001/02) in *Terrorism and Counterterrorism: Understanding the New Security Environment Readings and Interpretations*, ed. Russel D. Howard and Reid L. Sawyer (Guilford Connecticut: McGraw-Hill Dushkin, 2004), 431-32.

[27] Sloan, 309.

[28] Wilkinson, 197.

[29] Ian O. Lesser and others, *Countering the New Terrorism* (Santa Monica CA: RAND, 1999), 114. Pillar also calls for lessons learned to be derived from international experience and shared. He argues specifically that the United States should seek out lessons from other countries terrorist experiences and perspectives on the problem of counterterrorism. See, Pillar, 228.

[30] Kurt M. Campbell and Michele A. Flournoy and others, *To Prevail: An American Strategy for the Campaign Against Terrorism* (Washington DC: CSIS Press, 2001).
[31] Ibid., 26. Emphasis added. The latter quote also reflects the multidisciplinary nature of the campaign as it is outlined by the authors.
[32] For good examples see, Jusuf, Wanadi, "A Global Coalition against International Terrorism," *International Security 26*, no. 4 (Spring 2002): 184-189. Wanadi argues that "the September 11 attacks and the global reactions to them, however show that neither isolationism nor unilateralism will suffice in the fight against terrorism. Thus, even in military matters, the United States will need the assistance of various allies when taking specific actions." Wanadi, 184. See also, Audrey Kurth Cronin, "Rethinking Sovereignty: American Strategy in the Age of Terrorism," *Survival 44*, no. 2 (Summer 2002): 133.
[33] Posen, "The Struggle against Terrorism," 433.
[34] J. Bowyer Bell, *A Time of Terror: How Demorcratic Societies Respond to Revolutionary Violence* (New York: Basic Books, 1978), cited in Posen, "The Struggle Against Terrorism," 440, footnote 13.
[35] Posen, "The Struggle Against Terrorism," 433.
[36] Wilkinson, 215.
[37] Campbell and others, 77. On the importance of intelligence see also Posen, "The Struggle Against Terrorism," 433; Pillar, 118-116;
[38]On the importance of intelligence see also, Christopher Harmon, *Terrorism Today* (London: Frank Cass, 2000), 255. Harmon states that "Good intelligence must support all long-arm arrests, every successful extradition, and nearly every other counter-terrorism measure." He also stresses the need for HUMINT. See, Harmon, 257.
[39] Wilkinson, 215.
[40]The contributors to *To Prevail* call for a widening and deepening of the United States' intelligence relationships with other countries. They also note that "for years the centerpiece of US counterterrorism policy has been bilateral intelligence relationships with a number of key countries." See, Campbell and others, 78. Miller states that the US will need "the active cooperation of at least some other states if it is to prosecute this war in an effective fashion. It will depend on unprecedented international sharing of intelligence for its vision of a relentless, long-term campaign against terrorism to meet with success. Miller, 16.
[41] Campbell and others, 87.
[42] On the need for a long-term focus see, Campbell and others, 52, 302; Pillar, 89.
[43] Campbell and others, 302; Audrey Kurth Cronin, "Rethinking Sovereignty: American Strategy in the Age of Terrorism," *Survival 44*, no. 2 (Summer 2002): 133.
[44] Kurt M. Campbell and others, 52.
[45] Wilkinson suggests that sustaining international cooperation is a fundamental problem due to the "politics of the last outrage." See Wilkinson, 198-199.
[46] Frank J. Cilluffo and Daniel Rankin suggest that "organization cooperation and coordination are the keys to successfully dealing with this problem" that is international terrorism. See, Frank J. Cilluffo and Daniel Rankin, "Fighting Terrorism," *NATO Review* (Winter 2001/2002): 12.
[47] Strobe Talbot, "From Prague to Baghdad: NATO at Risk," *Foreign Affairs 81*, no. 6 (November/December 2002): 50.
[48] Lord Robertson, "International Security and the Fight Against Terrorism," Speech, Vienna, Austria, 14 June 2002. Online: www.nato.int.docu/speech/2002/s020614a.htm.
[49] Gordon suggests that article 4 became more central to the alliance in the post-cold war security environment where the importance of article 5 receded due to the lack of a significant threat. See, Gordon, "What is NATO for?" 114.
[50] Gordon, "NATO After September 11," 89; Lord Robertson has also stressed NATO's role in fostering political solidarity. He stated that "The NATO allies have first of all proved a strong political coalition, united in their solidarity with the United States and determined to help fight terrorism. The invocation of article 5 of the North Atlantic Treaty, the Alliance's collective defence mechanism, was an electrifying demonstration of this." Lord Robertson, "International Security and the Fight Against Terrorism," Speech to the conference on International Security and the Fight Against Terrorism, Vienna, Austria, 14 June 2002. Online: www.nato.int/docu/speech/2002/s02614a.htm.
[51] The EAPC is an outgrowth of the North Atlantic Cooperation Council developed in 1991 as a means to expand the political side of the alliance and reach out to the Eastern European counties in transition in the post-cold war period. The EAPC brings together the 19 current allies and the 27 partner states that are members of the Partnership for Peace program. See, Forster and Wallace, "What is NATO for?" 115.

[52] See NATO, *Partnership Action Plan against Terrorism*, Prague, 22 November 2002. Online: www.nato.int/docu/basictxt/b021122e.htm.
[53] The countries involved in the Mediterranean Dialogue include Egypt, Israel, Jordan, Mauritania, Morocco, Tunisia and Algeria. See, NATO, *Handbook* (Brussels: NATO Office of Information and Press, 2001), 91-92. The NATO-Russia Council is another mechanism to facilitate cooperation at the diplomatic level. Indeed, counterterrorism is identified as one of the areas for NATO-Russia consultation and practical cooperation. See, NATO, "11 September – 18 Months On: NATO's Contribution to the Fight Against Terrorism," Online: www.nato.int/terrorism/factsheet.htm.
[54] Lord Robertson, "NATO Russian Cooperation in Combating Terrorism: A Good Idea Whose Time has Come," Keynote Address at the NATO-Russia Conference on the Military Role in Combating Terrorism, NATO Defence College, Rome, 4 February 2002. Online: www.nato.int.docu/speech/2002/s020204a.htm.
[55] The NATO as a toolbox concept is elucidated by a number of commentators including Michael Ruhle, "NATO after Prague," 96. He suggests that NATO is the "worlds most effective facilitator of military coalitions." Ibid., 93. Ruhle asserts that there is an undeniable trend towards this option – it cannot be resisted. He states that "the idea of NATO acting on occasion as a toolbox, i.e. as a pool from which to provide coalitions of the willing with specific capabilities is here to stay. Even if the notion of a toolbox-Alliance does indeed run counter to NATO's self-perception as a cohesive, all-for-one and one-for-all organization, resisting it may turn out to be futile. Rather than fighting against this concept, the time may have come to look at how a toolbox approach can be reconciled with the continuing need for political cohesion." See, Ruhle, "NATO After Prague," 96. See also, Gordon, "NATO After September 11," 89. The Partnership for Peace program is a key asset in this role as it fosters interoperability among NATO and partner states. The deployments in Yugoslavia were aided by interoperability created by the program. See, Celeste A. Wallander, "NATO After the Cold War," *International Organization 54*, no. 4 (Autumn 2000): 728-730. She suggests that the program has thus facilitated NATO's adaptability to the new security environment: "Partnership for Peace has become the mechanism for extending integration and interoperability beyond NATO members, and these, in turn, have served as the basis for NATO's adaptability to its political and military non-threat security missions." Ibid., 729.
[56] NATO took command of ISAF in August of 2003, previously it had been under various lead nations that were NATO member states. NATO allies provide a high percentage of the personnel in the operation; 95% of the personnel in the third rotation of ISAF command were from NATO allies. See, NATO, 11 September – 18 Months On NATO's Contribution to the Fight Against Terrorism. Online: www.nato.int/terrorism/factsheet.htm. Canada is currently the largest contributor to ISAF.
[57] The two by two matrix includes the combinations: combat operation/NATO command, combat operation/NATO facilitated coalition of the willing, PSO/NATO command, PSO/NATO facilitated coalition of the willing.
[58] While the operation was predominantly American a number of NATO members participated as did the Australians among others. NATO countries that participated directly included the UK, Norway, Denmark, Germany, and Canada. Countries contributing other assets or support included: Canada, France, Germany, Greece, Italy, the Netherlands, Spain and the UK. See, NATO, 11 September – 18 Months On NATO's Contribution to the Fight Against Terrorism. Online: www.nato.int/terrorism/factsheet.htm.
[59] The ISAF deployment was initially a PSO in a NATO assisted coalition of the willing framework when the lead nation first the United Kingdom and then Turkey, Germany and the Netherlands. See, NATO, 11 September – 18 Months On NATO's Contribution to the Fight Against Terrorism. Online: www.nato.int/terrorism/factsheet.htm.
[60] The military concept is described in NATO, 11 September – 18 Months On NATO's Contribution to the Fight Against Terrorism. Online: www.nato.int/terrorism/factsheet.htm. The concept also outlines possible NATO roles in consequence management and in the support of coalition action or those undertaken by other international organizations.
[61] Sloan describes the NRF as containing "about 20,000 land, sea and air elements ready to move quickly to conduct anti-terrorist operations anywhere around the world. The force is to be deployable within seven to thirty days, able to sustain itself in the field for a month and capable of operating effectively with American troops." See Sloan, 313.
[62] On this point see Barry R. Posen, "Command of the Commons: The Military Foundations of U.S. Hegemony," *International Security 28*, no. 1 (Summer 2003): 30-36, 44. In particular Posen identifies a key shortage of military manpower in the form of infantry; those soldiers needed mostly in post-conflict PSO's. Posen states: Several of the allies have good ground forces, and perhaps most, critically, good infantry that seem able to tolerate at least moderate casualties. The British Army and Royal Marines have 43 infantry battalions – all professionals – nearly half as many as the United States; France has another 20. Given the relative scarcity of U.S. infantry, allied ground forces are also particularly useful in the post-conflict peace-enforcement missions necessary to secure the fruits of

any battlefield victory." Posen, "Command," 44. The current American struggles in Iraq reinforce the contention that allied contributions are required.

[63]This assertion assumes that "nation-building" and PSOs will play a large part in the campaign. However, to this point both key engagements of the opening phase of the campaign, Afghanistan and Iraq, have included a post-combat PSO component indicating the likelihood of a significant role in this area. While Iraq may or may not be considered part of the campaign against terrorism, according to the American's it is. Even if it isn't, it still has a significant effect on the campaign from a winning the "hearts and minds" perspective. Thus, the original campaign may have not been a component of the campaign but the after-effects certainly are – making the debate essentially a moot point and somewhat academic.

The expertise of the alliance in this role is noted by Christopher Bennett, "Aiding America," *NATO Review* 49, no. 4 (Winter 2001). Online: www.nato.int/review; and by Forster and Wallace who note that NATO has set the standards for such missions in terms of interoperability, command and control and standard operating procedures and that "Multinational forces under NATO command in Bosnia and Kosovo, using NATO procedures and doctrine, have demonstrated levels of professionalism and effectiveness which contrast sharply with UN forces in Sierra Leone and Rwanda." Forster and Wallace, "What is NATO for?" 117. Though this comparison may be unfair, the expertise of NATO forces in this area is clear.

[64] The relationship is noted by Steven E. Miller, "The End of Unilateralism," 21.

[65] See Gordon, "NATO After 11 September," 93. The request was issued by the United States calling for assistance from NATO allies in the fight against terrorism. The allies agreed to take eight measures "to expand the options available in the campaign against terrorism." The measures included, "enhanced intelligence sharing, blanket overflight rights and access to ports and airfields, assistance to states threatened as a result of their support for coalition efforts, as well as the deployment of NATO naval forces to the eastern Mediterranean and Airborne Early Warning aircraft to patrol US airspace." See, NATO, "11 September – 18 Months On"

[66] NATO, Partnership Action Plan Against Terrorism, Prague, 22 November 2002, para. 16.1.2, Online: www.nato.int/docu/basicstxt/b021122e.htm.

[67] Ibid.

[68] Osman Yavuzalp, "Working with Partners to Fight Terrorism," *NATO Review* (Spring 2003), 9, Online: www.nato.int/review. Yovuzalp states that "The development of an EAPC/PfP Intelligence Liaison Unit should enhance information sharing. In this context, the possibility of establishing permanent working contacts among intelligence agencies of interested EAPC countries and especially those in the Caucuses and Central Asia could prove particularly useful."

[69] This is noted in the case of the Mediterranean Dialogue by Strobe Talbott, "From Prague to Baghdad: NATO at Risk," 54. Talbott states that the purpose of the Dialogue is to "support scientific cooperation, education, training on crisis management and defence planning, and the *sharing of information on terrorism*." Emphasis added. The NATO-Russia council identifies terrorism as one of the areas of consultation and cooperation to be developed and identifies intelligence sharing and the development of common threat assessments as a possible mechanism. See, NATO, "11 September – 18 Months On".

[70] Pillar, 76.

[71] Michael Herman notes that " NATO as a body still seems to feel, as in the Cold War, that intelligence is a suspect national activity, on which exchanges should remain a matter for select groups behind green baize doors, unacknowledged in the mainstream of the alliance." See, Michael Herman, "Intelligence Doctrine for International Peace Support," in *Peacekeeping Intelligence: Emerging Concepts for the Future*, eds. Ben de Jong, Wies Platje, and Robert David Steele (Oakton Virginia: OSS International Press, 2003), 162.

[72] Forster and Wallace, "What is NATO for?" 107.

[73] Pillar notes that NATO member states are in a good position to share their lessons learned. He states: "Developed countries such as the members of NATO do tend to have more highly skilled and professional security services than many other states." This creates space for the sharing of expertise with other less-developed countries. See Pillar, 186-187. The provision of such technical assistance is suggested, see, Harmon, 258; J. Paul DE B. Taillon, *Hijacking and Hostages: Government Responses to Terrorism* (Westport Conn.: Praeger, 2002), 73.

[74] NATO, Partnership Action Plan against Terrorism, para7.

[75] Yavuzalp, "Working with Partners," 8. Indeed, the plan suggests EAPC states "will develop mentoring programmes for specific terrorism-related issues in order to share specific experiences in combating terrorism." See para. 16.5.3.

[76] See, NATO, Partnership Action Plan against Terrorism, para. 16.2-16.4.

[77] Ibid., para. 16.5.2.

[78] This definition is put forward by David S. Yost, "The NATO Capabilities Gap and the European Union," *Survival 42*, no. 4 (Winter 2001-2002): 97. For another definition of the gap see, Alan L. Isenberg, "Last Chance: A Roadmap for NATO Revitalization," *Orbis 46*, no. 4 (Fall 2002): 644-647.
[79] Yost notes US superiority in expeditionary operation, the connection to anti-terrorism operations is mine. See, Yost, 98-99.
[80] For a good exposition of the gap see, Nicole Gnesotto, "Reacting to America," *Survival 44*, no. 4 (Winter 2002-2003): 101-102. Gordon also notes differences between the United States and the Europeans and organizes them into five key elements stressed by the Europeans collectively: emphasis on the primacy of non-military measures; insistence that the military response is limited to Afghanistan; the need to avoid falling into a "clash of civilizations"; a focus on legitimacy and the need for a broad coalition; and a focus upon the importance of renewed engagement to resolve regional problems if terrorism is to countered. He also notes European agreement on the need for "short-term diplomatic, economic and military measures to combat terrorism," and a focus upon the need to take a root causes approach. See, Gordon, "NATO After 11 September," 94-95.
[81] This is suggested by Miller in terms of the threat/response gap. He states that the US "will take the steps it thinks are necessary and expect its fiends and allies to stand with the forces of civilization against the global blight of terrorism. It may be, indeed, that the lonely hegemon expects others to adapt to its needs and preferences rather than the other way around, especially *now that it is at war*." Emphasis added. See, Miller, "Unilateralism," 27. The US perceives itself to be at war, whereas others may not feel the same way – a fundamental gap in perception of the threat of terrorism. James Ruhle notes that the capabilities gap increases US uniltateralism. See, Ruhle, "The Lessons of 9/11," 91.
[82] See, Gordon, "NATO After 11 September," 93.
[83] Isenberg, "Last Chance," 641.
[84] Allen G. Sens argues that NATO has moved from being a collective defence organization to a cooperative security organization with a collective defence foundation. Cooperative security is based on the principle of inclusion over exclusion and aims "to engage members and non-members and like-minded and non-like minded actors into a larger framework"; aims to achieve shared security objectives and are not aimed at one specific external threat; focuses upon a broadened conception of security and aims at promoting military and non-military security objectives; is aimed at the transformation of existing institutions; utilizes a cautious gradual approach to establish cooperation; and recognizes the value of other bilateral or multilateral security relationships. See, Allen G. Sens, "From Collective Defense to Cooperative Security? The New NATO and Nontraditional Challenges and Mission," in *NATO After 50 Years*, eds. S. Victor Papacosma, Sean Kay, and Mark R. Rubin (Wilmington, Delaware: Scholarly Resources Inc., 2001), 165-190.
[85] Celeste A. Wallander, "NATO After the Cold War," *International Organization 54*, no. 4 (Autumn 2000): 731-732.
[86] See, Herman, "Intelligence Doctrine," 161. Herman discusses decision-making at the strategic level – that of national decision-makers in an international context – within a peace operations framework. He notes that "Decisions are agreed at this level by governments in negotiations in national capitals, and in around the appropriate international forums… Negotiation and decision-taking her is a diffuse and difficult process. The more this applies, the more it would benefit from having agreed intelligence assessments on which it could be based. Inter-governmental agreement is difficult in any circumstances, but it is more achievable if there is concurrence about the relevant facts and forecasts." Such assessments can counter the challenge of differing threat assessments. See, Herman, "Intelligence Doctrine," 161.
[87] See, Gnesotto, "Reacting to America," 102. Gnesotto notes the "logical complimentarity" between the European and American approaches to responding to terrorism, but notes that too often there has been a "dialogue of the deaf." Promoting a discussion within the framework of the NATO strategic concept could help break this impass.
[88] Crocker identifies the lack of institutionalization of expertise in reconstruction and state-building and notes that a recent bipartisan commission (US) called for the creation of dedicated staffs addressing the issue within the State Department, USAID and NATO. See, Crocker, "Engaging Failed States," 41. Indeed, while on the NATO SDF Tour Summer 2003, the lack of a peacebuilding unit within NATO was noted.
[89] This is asserted by Johnson and Zenko, "All Dressed Up," 63, note 51.
[90] Kurt M. Campbell and others, suggests a coalition of coalitions is required. See, Campbell and others, 52-53, 302. The authors of *To Prevail* even suggest a strong NATO role in the coalition of coalitions: "Long-standing security ties, such as the NATO alliance… are serving as the building blocks for the various anti-terror coalitions." Ibid., 306. This strongly suggests NATO can play a coordinating role. The network of networks idea is forwarded by

RAND analysts John Arquilla, David Ronfeldt and Michele Zanini, see, Lesser and Others, *Countering the New Terrorism*, 55-56.
[91] For an argument in favour a NATO coordinating role see, Johnson and Zenko, "All Dressed Up".
[92] This idea is developed in the final part of the introduction above.
[93] This tautological problem is identified by Gnesotto in the context of the capabilities gap. I extend the concept to NATO's role generally. See, Gnesotto, "Reacting to America," 100.
[94] Robertson, "Tackling Terror".

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Redefining the 'Just War' Doctrine:

Implications of the New American Foreign Policy Framework

or

Jus ad bellum to *Jus ad Bush*: Unleashing the Dogs of War

By Quinn Newcomb

January, 2004

Rumsfeld wondered if Iraq, not Afghanistan, should be the first target of a U.S. counterattack. Powell argued that Washington would lose its allies if it hit Iraq before it had hard evidence that the Iraqis had backed the September 11th attacks. Bush said he didn't want other countries dictating American actions. "At some point, we may be the only ones left," he said. "That's okay with me. We are America."

- Bob Woodward, *Bush at War*

Introduction

There can be no doubt that the terrorist attacks that shook the world on September 11th, 2001 had a profound effect on the way in which foreign policy frameworks operate within a global context. Indeed, the lasting effects of the September 11 terrorist attacks on American foreign policy can be found in the foundations of the policies of pre-emption and of unilateral militarism. Such a shift within a foreign policy framework that had previously been dedicated to the notions of multilateralism and an agenda of human security has led to a re-evaluation of the ancient doctrine of 'just war' (*jus ad bellum*).

In September 2002, the President of the United States, George W. Bush, announced a new strategy in the American effort to secure its people and its position in the modern world. This strategy, called *The National Security Strategy of the United States of America*, is a 30-page document outlining the steps that the government of the United States is prepared to take in order to triumph over the threats of terrorists and states who see America as their enemy. The document focuses on several major steps as parts of the United States' international strategy. These steps include such measures as strengthening alliances, working to expand economic growth through free markets and free trade, expanding development aid in order to strengthen the infrastructure of democracy around the world, and enhancing America's military might both domestically and internationally. However, these issues pale in comparison to the tremendous impact that the policy paper has with regards to the step the United States is now prepared to take in order to prevent its enemies from threatening it with weapons of mass destruction (WMD). For the first time, the security strategy explicitly describes America's policy of

pre-emptive warfare whenever and wherever it is deemed necessary: "We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends" (National Security Strategy [NSS]: 14).

From this re-evaluation of the traditional norms that underlie the international system of laws, has emerged an American foreign policy enshrined within a realist framework of unilateral action, including the explicit conduct of pre-emptive warfare and the rejection of a system of international laws (including the Geneva Convention). Through an evaluation of the increased incidence of unilateral militarism and the actions taken by the United States to protect traditional concepts of sovereignty, this paper will demonstrate that the norms that underlie the way in which international statecraft is pursued, specifically the normative character and *modus operandi* of conventional warfare in international society, are undergoing a dramatic transformation. The Bush administration's adjustment to the ancient doctrine of *jus ad bellum* not only rejects any serious consideration of an international human security agenda, but also threatens to expose the community of nations to Hobbesian anarchy and incalculable risk.

The *Jus ad Bellum* Doctrine

The 'just war' doctrine, originated by Thomas d'Aquinas and developed by the 17th-century jurists Grotius and Pufendorf, sets out a prescriptive and regulative process on how war may rightly be fought (and is thus the penultimate source of international laws, including the Geneva Convention) and when a nation-state has the right to initiate war

(*jus ad bellum*). As William Leiss notes, "[*Jus ad bellum*] includes two types of actions in self-defence, namely, responding to an actual attack, and pre-emption of one that is anticipated" (43).

The theory underlying the *jus ad bellum* doctrine states that, for a war to be just, the combatant nation-state must fulfil five specific requirements regarding a the conduct of warfare. For a state to declare a 'just war,' the conflict must emerge only as a last resort. Furthermore, it must be conducted by a legitimate authority – ideally by military forces under the command of a democratically elected government and it must have the 'right intention' – meaning, for example, that it should not be done simply to further individual wealth. The combatant state must have a reasonable chance of success, and, most importantly, the attacking state must have a 'just cause' to pursue war. The 'just cause' requirement generally refers to three possible situations where war can be conducted justly: the state must be reacting in self-defence, it must be providing third party support in assisting an ally state, or it must be acting in the appropriate traditions of humanitarian intervention. The five requirements, with the 'just cause' requirement at the core of the package, form the basis of what must be fulfilled for a war to be considered 'just.' Indeed, as Jackson writes, "*Jus ad bellum* involves both types of ethics: we need valid procedural grounds to embark on a policy of war, but we also need to prudently weigh the (anticipated) consequences of any decision to go to war. Such a decision could be considered wrong if it had no legal or moral justification recognised by international society; it would also be wrong if it was reasonably clear in advance that state-leaders were needlessly placing their citizens in jeopardy" (Jackson 240).

A New Doctrine

The policy of pre-emption that has been emboldened within the heart of the Bush administration's *National Security Strategy*, and, more specifically, the rationale for waging war on Iraq, seems to emerge from a re-evaluation of the ancient 'just war' doctrine. As we will see, authors such as Leiss go so far as to argue that the shift in American foreign policy represents a reckless new version of the gunboat diplomacy – although the preferred circumlocution at present is 'muscular diplomacy' – which the United States has practised for well over a century in Central and South America and now seeks to extend to the entire world: "Only by the most tortuous exercise of logic could this be considered as an application of the ancient doctrine of *jus ad bellum*" (43).

This is not to say that the notion of pre-emptive warfare itself necessarily contravenes the ancient doctrine of *jus ad bellum*. Indeed, Bush's June 2002 speech explicitly recognised the limitation that had been built into the earlier concept of 'just war': "Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat – most often a visible mobilisation of armies, navies, and air forces preparing for war" (Leiss 44). Indeed, the logic then follows that the emergence of 'rogue states and terrorists,' it is argued, means that this 'condition' must be repealed; however, no limitation or restriction is imposed in its place (44).

The claim by the Bush administration's *National Security Strategy* is that the old right of pre-emptive war requires adjustment to reflect the current threats of the new world and the new reality of 'rogue states and terrorists': "We must be prepared to stop

rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends" (NSS 14). The *National Security Strategy* also notes, "The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively...[but] will not use force in all cases to pre-empt emerging threats, nor should nations use pre-emption as a pretext for aggression" (Leiss 44). It is the notion of striking these states *before* they strike that defines the new security strategy as one of pre-emption. The more subtle definition of *preventative warfare* is aimed at stopping states from emerging as a legitimate threat in the first place. In this way, it is the immediacy of the perceived threat that defines responsive military action as either pre-emptive or preventative.

The *National Security Strategy* itself describes how the United States can no longer afford to rely on a reactive posture: "Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today's threats, and the magnitude of potential harm that could be caused by our adversaries' choice of weapons, do not permit that option. We cannot let our enemies strike first" (NSS: 15). As has already been noted, in order to support its new security policy, the document points out that, for centuries, international law has recognised that nations do not need to wait for an attack before they can lawfully take action to defend themselves against an imminent

threat. However, in the modern era, it argues, imminent threats can no longer be characterised as visible mobilisations of armies, navies and air forces preparing to attack. The *National Security Strategy* states: "We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists…rely on acts of terror and, potentially, the use of weapons of mass destruction – weapons that can be easily concealed, delivered covertly, and used without warning" (NSS: 15). It is therefore within this context of a less-predictable and indeterminate security environment that the United States explicitly declares its policy regarding pre-emptive action: "The United States has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively" (NSS: 15).

Thanks to the good investigative and reporting skills of Seymour M. Hersh in *The New Yorker* and Steven R. Weisman in *The New York Times*, we know where and when the new doctrine and the shift in American foreign policy actually originated – namely, in 1998 among the ranks of a conservative cabal known as the "Project for the New American Century" (Leiss 44). Among the key players are some now-familiar faces – Donald Rumsfeld, Paul Wolfowitz, and Richard Perle. These three are also among the signatories to an open letter addressed to President Clinton and dated January 26, 1998 (pre-dating September 11 by almost four years), which stated that "removing Saddam

Hussein and his regime from power" should become "the aim of American foreign policy" (44).

The Problem with the New Doctrine

The Bush administration's foreign policy shift, namely the opening of Pandora's box regarding pre-emptive warfare, is not a simple re-evaluation of the ancient *jus ad bellum* doctrine. Rather, such a policy shift completely undermines the rules of war and the international system of laws, thus exposing the United States and the world entire to the dangers of new and more unpredictable foreign policy options. Indeed, as we will see, the lack of either an inherent limit or an inherent rationale in its potential range of application leaves the new doctrine open to abuse in the name of realist and even misguided utilitarian notions of national security.

While it is true that pre-emptive warfare does not necessarily contradict the ancient *jus ad bullum* doctrine, a state was limited in its action since it could only justly react to a clear and present threat (as traditionally illustrated, for example, by the mobilisation of armies, navies, and air forces). However, by detaching the concept of imminent threat from its essential limitation (location in a *particular* source) and giving it an open-ended and arbitrary application, the new doctrine of pre-emption actually undermines the ancient concept of *jus ad bellum*. A shift in the framework of foreign policy options that exposes the world of nations to unrestricted pre-emption also exposes the world to anarchy and incalculable risk. It opens the door to the notion that one nation-state has the legitimate right to decide which of its contemporaries is in need of regime

change directed from abroad – and this risks nothing less than the emergence of an anarchic and Hobbesian global order.

An Empirical Analysis

In order to evaluate the implications of the new doctrine as established in America's foreign policy shift, this paper will look at two cases that emerge after the September 11 attacks. The first, the case of Afghanistan, and the second, the case of Iraq, both emerged as American action to ensure national security and justified by the Bush administration's 'war on terror.' While the former case occurred prior to the explicit policy shift to pre-emptive war, the latter emerged after the United States had developed a new national security agenda. As we will see, these two cases differ in dramatic ways and offer great insights into how a doctrine of unrestricted pre-emption can lead to unjust war.

Afghanistan

After the September 11 terrorist attacks in New York and Washington D.C., the United States' intelligence forces linked the acts to the al-Qaeda terrorist network and its leader, Osama bin Laden. Bob Woodward's *Bush at War* gives a lucid description of the war cabinet meetings held on the weekend of September 15, 2001 at Camp David where the plan to send troops into Afghanistan was first unveiled. "The CIA director (Tenet) had come to Camp David carrying a briefcase stuffed with TOP SECRET documents and plans, more than four years of work on bin Laden, al-Qaeda and world-wide terrorism.

He distributed a briefing packet with the attention-grabbing title 'Going to War.' In the upper-left-hand corner was a picture of bin Laden inside a red circle with a slash superimposed over his face, the CIA's adaptation of the universal symbol of prohibition" (75). The CIA director's presentation focused on destroying al-Qaeda and closing the safe haven, namely Afghanistan – bin Laden's operating base and home. "[Tenet] described a role for the opposition tribes in the southern part of Afghanistan, groups hostile to the Northern Alliance but crucial to a campaign against al-Qaeda and the Taliban" (77). General Shelton, Chairman of the Joint Chiefs of Staff, had three general options for war in Afghanistan: The first option was a strike with cruise missiles, a plan the military could execute quickly if speed was the president's overriding priority and the targets included al-Qaeda's training camps; the second option combined cruise missiles with manned bomber attacks and targets included al-Qaeda training camps and some Taliban targets; and, the third and most robust option was described as cruise missiles, bombers, along with elite commando units of U.S. Special Forces, and possibly the Army and Marines, being deployed inside Afghanistan (80). President Bush noted that the ideal result from the campaign would be to "kick terrorists out of places like Afghanistan and through that action persuade other countries that had supported terrorism in the past, such as Iran, to change their behaviour" (81). Secretary of State Powell advised Bush that every country in the international coalition was prepared to go after al-Qaeda, but that they would risk losing some of them if the war was extended to other terrorist groups or target countries. Woodward notes, "The President said he didn't want other countries

dictating terms or conditions for the war on terrorism. 'At some point,' he said, 'we may be the only ones left. That's okay with me. We are America'" (81).

In evaluating the case of the United States' war with Afghanistan, it is important to note that there were not only clear threats of imminent actions in the run-up to September 11, there were also a number of actions: the planning for simultaneous attacks on airliners in the Philippines, the 1993 bombing of the World Trade Center and the Khobar Towers in Saudi Arabia in 1996, the blasts at the United States' embassies in Nairobi and Dar es Salaam in 1998, and the attack on the U.S.S. *Cole* Yemen in 2000. Leiss asks, "Why would anyone think that bin Laden had called off his *jihad* after the last one, since all of his utterances delivered exactly the opposite message?" (44). Indeed, the September 11 attacks were the final step; the United States' action against the Taliban regime in Afghanistan was designed to forestall any other strikes from al-Qaeda and bin Laden and was clearly justified by the traditional *jus ad bellum* since the state was effectively protecting the man threatening American national security. In other words, America had a 'just cause' to use military might to push for regime change in this case.

Iraq

While the United States' war cabinet meetings held on the weekend of September 15, 2001 at Camp David established a plan to send troops into Afghanistan, it was also the occasion where the idea to attack Iraq was first discussed. After the consideration of Afghanistan as the primary target, National Security Advisor Condoleezza Rice asked whether they could envision a successful military campaign beyond Afghanistan, which

put Iraq back on the table (Woodward 83). “Deputy Defence Secretary Paul Wolfowitz perked up. Mild in manner but hard-line in policy, Wolfowitz, 57, believed that the abrupt end to the Desert Storm ground campaign in 1991 which left Saddam in power had been a mistake” (83). Woodward notes, “Since taking office, Bush had been seeking ways to undermine Hussein, with Wolfowitz pushing efforts to aid opposition groups, and Powell seeking support for a new set of sanctions. The fear was that Saddam was still attempting to develop, obtain and eventually use weapons of mass destruction, and without United Nations inspectors in the country, there was no way to know the exact nature of the threat they faced. The terrorist attacks of September 11 gave the U.S. a new window to go after Hussein” (83). Wolfowitz asserted that the United States would have to go after Saddam at some time if the war on terrorism was to be taken seriously. Secretary of Defence Rumsfeld asked if this was the right time to attack Iraq. “Powell objected. You’re going to hear from your coalition partners, he told the President. They’re all with you, every one, but they will go away if you hit Iraq. If you get something pinning September 11 on Iraq, great – let’s put it out and kick them at the right time. But let’s get Afghanistan now. If we do that, we will have increased our ability to go after Iraq – if we can prove Iraq had a role” (84). Eventually, it was Vice-President Cheney who noted that attacking Iraq at that time would be a mistake: “Building a coalition to take advantage of the opportunities, he said, suggests that this may be a bad time to take on Saddam Hussein. We would lose momentum. ‘If we go after Saddam Hussein, we lose our rightful place as good guy’” (91). In the end, Cheney, Tenet, and

Chief of Staff Andy Card opposed action on Iraq – Rumsfeld remained uncommitted: "To anyone keeping a tally, it was 4 to 0 with Rumsfeld abstaining" (91).

Unlike the case of Afghanistan, the clear threats of imminent actions in the run-up to September 11, the attacks on airlines, the embassy bombings, the attack on the U.S.S. *Cole*, and even the 2001 World Trade Center attacks themselves, could not be linked to Saddam Hussein's regime in Iraq. In this way, "nothing in any of these events justified, at any time, action against Iraq" (Leiss 44).

In January 2002, President Bush, in his State of the Union Address, characterised Iran, Iraq, and North Korea as constituting an "axis of evil, arming to threaten the peace of the world." While 'axis' means, in this context, an agreement among countries united in a common purpose, Leiss notes that at no time in human history have Iraq, North Korea and Iran ever formed an axis of any sort (44). Indeed, the real result of the 'axis of evil' pronouncement was to show the world that the United States could, at their discretion, unilaterally label any nation-state in the world as a 'rogue state' (44). Furthermore, the main implication from this assertion is that the United States has the unilateral power to characterise any nation as a 'rogue state' and, in doing so, legitimates their taking of pre-emptive action under the new doctrine. Bush's speech established the administration's policy to pursue regime change in Iraq. Having first pursued multilateral policy options by bringing Iraq's continued disregard for United Nations' Security Council resolutions, the United States, along with Britain and some 45 other allies, opted to go to war with Iraq. In the words of US Ambassador to Canada, Paul Cellucci, "We are at war to liberate Iraq, to protect the people of the United States and other countries from

the devastating impact of weapons of mass destruction being used by terrorists or the Iraqi government to kill thousands of innocent civilians."

Before the war on Iraq, President Bush, and eventually Secretary of State Powell both made every effort to link Saddam Hussein's regime to terrorist activities and the possession of weapons of mass destruction. Even now, in the post-war period, Bush continues to insist that somehow the invasion of Iraq was linked to the world-wide fight against terrorism. Jeffrey Simpson of *The Globe and Mail* recently noted, "He blends everything together – Iraq, terrorism, weapons of mass destruction, threats to the U.S. heartland – in ways most other countries, and most serious analysts of world affairs, do not. He's got Americans convinced so far, but almost no one else." In this way, America failed to make a convincing case of an imminent threat from Iraq prior to the war and opted to attack the country with the support of only one major ally (Great Britain). Now that the war is over and Iraq is under the authority of the United States, President Bush watches as his claims of weapons of mass destruction are proved a lie.

While the Iraq case is but one instance of pre-emptive warfare, it is an extremely significant case as it represents the potentials that emerge from a new American foreign policy that have resulted in a transformation of the ancient *jus ad bellum* doctrine has led to an undermining of the system of international laws. Indeed, even beyond the increase in unilateral and pre-emptive militarism, the foreign policy shift has permitted the United States to reject those international laws, including the Geneva Convention, which it sees as not coinciding with its realist efforts to secure its national security. From the latest war in Iraq to the assassination of suspected terrorists in various countries throughout the

world, and from the detainment of hundreds of foreign prisoners currently held incommunicado as 'unlawful combatants' to the questionable methods of interrogation used by American intelligence officers, it is clear that America's amendment to the *jus ad bellum* doctrine has, at least through its lens of realist ethics, legitimised its actions.

A Utilitarian Versus Realist Ethic

In evaluating the pre-emptive strategy of the United States from an ethical perspective, it is obvious that it emerges from one of strict realist ethics that identifies utility with a view of the United States which is narrow but whose interests are broad. In this way, utility for the American people and for the security of the nation itself is restricted to theories of citizenship and dichotomous relationships based on 'us' and 'them' scenarios. The concern is regarding utility maximisation for whom and the necessity to ensure that the American people are kept safe from terror – at all costs. Of course, by definition, utilitarian ethics concentrate on distributing the greatest good to the greatest number of people, which the Bush administration claims it is attempting to do by attacking terrorism at its roots, and encouraging free market economies and democratic reforms in many corners of the world. However, it cannot be denied that it is within a context of a strict realist ethic that America transformed the ancient doctrine of *jus ad bellum* so as to allow for pre-emptive war without the explicit traditional prescriptive conditionalities. The major motivator behind the establishment of the policy was always a focus on consequences; realism and utilitarianism are both consequentialist doctrines, concerned with outcomes. In this way, a tension emerges between a strict realism

concerned with national security and a utilitarianism that concentrates its evaluation within a framework of considering overall utility levels of outcomes. It is within the context of this tension that the Bush administration has rooted its new foreign policy and it is a coloured lens of utilitarian necessity that conceals a realist truth and legitimates the pre-emptive, unilateral and often immoral actions of the United States.

There can be no denying of the fact that the *National Security Strategy* and its larger foreign policy objectives are meant to protect American security by maintaining United States hegemony over all nations in a permanent way – no one should have any military weapon that surpasses theirs. Essentially, they rely on a utilitarian view that only they have been ordained to have the most lethal weapons and no one else. Ironically, the National Security Strategy undermines the sovereignty of the United States by disrespecting the sovereignty of other nations. Indeed, the America's assumed moral leadership of the world is not a result of a democratic process; it is not even an ethical one. This 'leadership' is rather one that arises from its military might, its economic muscle and its preparation to use such utilitarian justified but strictly realist actions as pre-emptive war itself.

However, in examining the use of utilitarian ethics to justify pre-emptive war and other such actions, it is not difficult to uncover the strictly realist truth that lies below the surface. True utilitarianism works to benefits the largest number of people through such methods as human rights, a system of laws, and liberty in general. However, the trouble with liberty is that it cannot just be for *us* and not for *them*, or for now and not for later. One cannot fight a war defending values that the war measures themselves flout. "Even if

popular prejudices initially support the preposition that there is a definable *other* against whom the state may legitimately deploy extreme measures, the *other* is ultimately never capable of precise definition and identification in practice" (Morgan: 193). In the words of Mark Kingwell: "We should always remember that it's not such a long step from the complacent mantra of today's lengthy security lines – 'If you've done nothing wrong, you have nothing to worry about' – to the collective surveillance programs and state-rewarded snitching of Orwell's imagination." In the end, the original utilitarian justification of pre-emptive warfare actually proves itself to be false because it is the unregulated character of this new style of pre-emptive war that undermines the values and the ethics that are the very foundation of a human rights- and law-based society. Ironically, the ultimate and true utilitarian objection to pre-emptive action and such a transformation to the ancient *jus ad bellum* doctrine, therefore, is that it corrosively de-legitimises the state.

Conclusion

Since the terrorist attacks of September 11, the United States began its war on terror by attacking Afghanistan to end the reign of the terror-supporting Taliban regime and disperse the al-Qaeda terror network. As this paper has show, a number of threats actions prior to September 11 and finally the World Trade Centre attacks themselves justified as *jus ad bellum* America's invasion of Afghanistan. The clearly imminent threat was established by prior acts and America had just cause to act in self-defence. After the war in Afghanistan, in June 2002, President Bush first released the new direction of the

United States' National Security Strategy which was eventually published in September 2002. In this document was a revelation that would have tremendous implications for how the international community of states interact with each other. America explicitly stated that it was prepared to use pre-emptive warfare without necessarily requiring the traditional signs of imminent threats such as armies, navies or air forces. The Bush administration based this decision on the current security threats to the United States, namely rogue states, and terrorist networks who were prepared to use weapons of mass destruction. The most serious repercussion emerging from this shift in foreign policy was that this new Bush doctrine undermines the ancient *jus ad bellum* which regulated and prescribed when and where a 'just war' could take place. However, in the Bush doctrine there is neither an inherent limit nor an inherent rationale in its potential range of application. This, of course, introduces the world community to new and unpredictable dangers that undermine state sovereignty by masking strictly realist policies in a shroud of utility maximisation.

Indeed, it is ironic that the United States attempts to strengthen its own security and reassure its sovereignty by undermining the security and sovereignty of other states. Faced with these truths, the ethic of the realist action to increase security cannot but reverse itself and, ultimately, the rational utilitarian objection to pre-emptive war is that it corrosively de-legitimises the state.

The United States' transformation of the ancient *jus ad bellum* doctrine undermines stability in foreign policy options and threatens to engulf the global community in a shadow of Hobbesian unpredictability. Through an evaluation of the

actions taken by the United States since adopting its new foreign policy supposedly based in a utilitarian ethic, this paper has demonstrated the dangers of repealing the traditional prescriptions included in the ancient doctrine. From undermining international security and the system of international laws to introducing an anarchic age where one nation can decide which of its contemporaries is in need of regime change directed from abroad, to reject the ancient doctrine with its restrictive measures and essential limitations is to invite chaos into the global community of nation-states. To ignore the implications and consequences of such a transformation would endanger the co-operative structure of the contemporary global order. Indeed, the self-interested objectives of strict realists are alive and well, creating false dichotomies of 'us' and 'them' and 'good' and 'evil' and reinforcing fears surrounding foreign cultures. Perhaps what is most dangerous about this ethic is that it is not clearly self-evident; it masks itself in notions of traditional utilitarian necessity and justifies all actions on those grounds. Only by revealing the realist truth behind the Bush doctrine can the global community take a stand against the actions that continue to undermine the international system of laws that work to protect human security. The alternative is a world of nations exposed to anarchy and terror: a place where human security once again slips out of our hands, back into the abyss of humanity's inhumanity to man.

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Is there a Responsibility to Protect?
An Ethical Evaluation of *The Responsibility to Protect.*

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The article critically analyzes the International Commission on Intervention and State Sovereignty (ICISS) report, *The Responsibility to Protect*. Three key aspects of the ICISS's case are reviewed: its discussion of the concept of the sovereignty, its justification for using force to achieve humanitarian objectives, and its use of Just War theory as a guide for applying the responsibility to protect to everyday practice. It is concluded, that while a responsibility to protect may exist, Just War theory does little to help the ICISS's case, and instead erodes its moral authority by forcing to justify the unequal application of its ideas.

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In a world of genocide and endless bloody civil wars, where each side seems to be in competition with the other to commit progressively more shocking and horrific atrocities, the notion of international rights to protect citizens from violence and genocide may seem very appealing. However, when one moves beyond theoretical ideas of rights to prevent suffering and violence in the world, to the messy reality of putting these ideas into practice, the debate becomes much less clear, and possibly much less appealing. Things become even more complicated if the argument is taken one step further to a discussion of international obligations, or responsibilities, to intervene to halt and prevent humanitarian emergencies.

Obviously, this type of discourse has massive implications for the international community and the future of international relations. Therefore, it is crucial that a full understanding of the ethical implications of a responsibility to protect be undertaken before the idea develops further in international relations.

This paper will examine the notion of a responsibility to protect by critically reviewing the International Commission on Intervention and State Sovereignty's (ICISS) 2001 report "The Responsibility to Protect", a fundamental document in the push for this new responsibility. The paper will focus on three key points in the ICISS report. First, its discussion of the concept of sovereignty and how a responsibility to protect develops out of this view of sovereignty. Second, its justifications for using force for humanitarian purposes and finally its use of Just War theory as a guide to how to act on the responsibility to protect. Each of these three key points will be followed by a discussion of their ethical implications and challenges.

The paper argues that the ICISS is able to make a fairly convincing case, which is backed by a significant portion of literature, that international obligations and responsibilities exist for humanitarian protection and that these responsibilities can, in specific cases, override the right of

sovereignty. The report is also able to provide some response to those who challenge the idea that force can be used for humanitarian purposes. However, the fundamental weakness of the ICISS report is its use of Just War Theory to guide how the responsibility to protect should be exercised. This discussion introduces a double standard into the responsibility to protect and critically undermines the ICISS's case. What is more, by setting up the UN as the ultimate authority for providing legitimacy for any humanitarian intervention, there is no need for the ICISS to even resort to discussions of Just War theory.

Sovereignty and a Responsibility to Protect

ICISS's conception of sovereignty is essential to its claim that a responsibility to protect exists in the international realm. By appealing to the UN Charter and international agreements on human rights, the ICISS (2001) argues that the right of sovereignty comes with a responsibility to protect and, if a government is unable or unwilling to exercise that responsibility, it is passed to the international community. It is this view of sovereignty that allows that ICISS to move from a justification for a right of humanitarian intervention to justification for a responsibility to protect.

According to the ICISS the first limits of sovereignty and source of international responsibility comes from the UN charter. The Commission argues that simply by signing the UN charter a member state is acknowledging and accepting a form of sovereignty that includes responsibilities, "from sovereignty as control to sovereignty as responsibility in both internal functions and external duties" (2.14). Thus, membership in the UN, according to the ICISS, requires the acceptance of some limitations of sovereignty. States become responsible for their actions to the international community through the UN (ICISS, 2001).

The Commission argues that one of the key responsibilities that comes from the UN charter is in Article 1.3, where all member states are called upon to promote and encourage the respect of "human rights and fundamental freedoms" for all peoples (2.16). The two later international covenants on civil-political and socio-economic rights further strength this responsibility (ICISS, 2001: 2.16). While, the wording of the UN charter does clearly imply a certain limit on sovereignty and some degree of accountability to the international community, there have been many notorious examples since the creation of the UN of states turning a blind eye to these responsibilities. Thus, clearly ICISS needs to offer more justification for its claim of a responsibility to protect to be convincing.

In an attempt to strengthen its case, ICISS appeals to emerging practice in international relations, and the growing recognition that the concept of sovereignty implies both rights and responsibilities. The Commission admits that this growing recognition is by no means absolute, however, "customary international law, growing state and regional organization practice as well as Security Council precedent suggest an emerging guiding principle – which in the Commission's view could properly be termed 'the responsibility to protect'" (2.24). This view of an emerging international norm of sovereignty as responsibility is also articulated in the personal works of some of the members of the Commission.

Evans and Sahnoun (2002), writing in *Foreign Affairs*, argue that despite strong recognition of the right of state sovereignty enshrined in the charter and agreements of the UN, international practice demonstrates that the right sovereignty has its limits and comes with important responsibilities. They suggest that these responsibilities are both external, "to respect the sovereignty of other states" and internal "to respect the dignity and basic rights of all the

people within the state" (p. 102). Evans and Sahnoun claim that this view of sovereignty can be "regarded as a de facto emerging norm: the responsibility to protect" (p. 102).

Thakur (2002) argues that the idea of a responsibility is intrinsic in the concept of sovereignty, again pointing to the UN charter and covenant on the respect of human rights, the practice of the Security Council and emerging practice in international relations, all to support his claim. Indeed, it is not just proponents of the ICISS who suggest that states and citizens have international duties and responsibilities that extend beyond state boundaries and limit the protection offered by the right of state sovereignty. Many authors in recent years have suggested that these types of duties or responsibilities exist (e.g. Chesterman, 2002; Reichberg and Syse, 2002; Wheeler, 2001; Miller, 2000; Wheeler 2000; Azzam, 1997; and Booth, 1994). While the ICISS is quite explicit that it is arguing for a responsibility to protect and not a duty to act in the face of humanitarian emergencies, because it feels that the discussion of responsibilities rather than duties is more enabling (2.28 –2.33), this distinction seems less important than the fact that a great body of literature exists in international relations suggesting that states have obligations to the citizens of other states, which transcend the right of sovereignty.

Of course it would be extremely misleading to suggest that this view of sovereignty as responsibility is unanimously accepted in the international community. Indeed, despite the ICISS's suggestion of an emerging international norm of responsibility, there are still several powerful international players who reject the idea. In interstate relations, these views are most commonly associated with Russia and China. However, many smaller states have also expressed their concern that any erosion or change in the traditional concept of sovereignty, could be used as a tool by the powerful Western states to impose their will on weaker developing states (Atack, 2002).

Indeed, Koskenniemi (2002) is very concerned about the growing trend in what he refers to as the "moralisation" of international law in support of humanitarian interventions. He argues that trying to couch moral arguments in legal terms in the support of humanitarian interventions risks making law a tool of the powerful and blinding the international community to other forms of injustice. As Koskenniemi puts it, while the attempt to extend international law to cover humanitarian crises is understandable, the danger is that it "enlists political energies to support causes dictated by the hegemonic powers and is unresponsive to the violence and injustice that sustain the global everyday" (p.160). Thus, according to this view, the discourse of humanitarian interventions and that of a responsibility to protect is driven by Western interests and blinds the world to more glaring injustices that exist in everyday experiences. This sentiment is also reflected in Wheeler's (2000) observation that, "the West's conception of humanitarian intervention is so ideologically biased that the 'silent genocide' of death through poverty and malnutrition is rendered natural and inevitable" (p.308). Therefore, proponents of the responsibility to protect need to be aware that despite the altruistic and universalistic language they use to justify their position, their agenda may be driven by certain interests that allow them to see some injustices and responsibilities, while blinding them to others.

Koskenniemi is also wary of the use of moral arguments to justify humanitarian interventions because they restrict the ability to effectively debate the issue by moving the debate from public discussion into the privacy of individual consciences (p.174). He points out how in the Kosovo intervention this moral language allowed the Serbs to be categorised as immoral, "against whom no measures were excessive" (p.174). Thus, the use of moral language in the debates around humanitarian interventions can restrict the area of discussion and be used to justify acts that could never otherwise be tolerated. In fairness to the ICISS, its argument for a

responsibility to protect is based much more on legal responsibilities rather than moral ones. However, Koskenniemi concerns are still important, and help bring to light other interests and factors that might be involved in the discussion.

Other challenges to the ICISS's view of sovereignty and responsibility come from those with a more traditional view of the concept of sovereignty as essential to the maintenance of international peace and stability. Those who support this more traditional view of sovereignty use a utilitarian justification for why state sovereignty must not be violated. While proponents of the traditional version of sovereignty do not condone human rights violations, they argue that violating the right of state sovereignty to launch a humanitarian intervention undermines the whole international system, thereby threatening international peace and security (Atack, 2002). Thus, the end result of humanitarian interventions, even those motivated by strictly altruistic motives, is to put international peace and stability at risk.

The question is how much of a challenge do these alternative perspectives offer to the ICISS and its view of sovereignty and responsibility? As already mentioned, Koskenniemi's concerns about the use of moral language in the justification of humanitarian interventions act as an important caution to anyone attempting to suggest that international duties or responsibilities exist. However, while his concerns are valid, there is nothing in them that directly challenges the ICISS's view especially considering that it appeals more to legal responsibilities than moral ones (although obviously there is a moral component to their arguments). As for the objection that failing to respect the right of state sovereignty threatens international peace and stability, here too the challenge is not insurmountable.

The ICISS is very clear in its support for the right of sovereignty, however as it and its members point out, international practice and law make it clear that this right is not absolute

(Evans and Sahnoun, 2002: Thakur, 2002; ICISS 2001; ICISS 2001b). Since 1990 several humanitarian interventions have been launched with UN Security Council approval, underscoring that states do seem to recognise that in certain circumstances humanitarian concerns trump the right of sovereignty. Of course some might say, that while international precedence may support the right of states to intervene in the internal affair of another states, that is a far cry from a responsibility of one state to the citizens of another state. Here again, as discussed previously the ICISS and several other authors do fairly convincingly make the claim that some level of responsibility both in the UN charter and covenants, and in international law exists between citizens and their governments in one state and the citizens of another. The controversy around the issue of responsibility is not so much that it exists (which is obviously not without it contentions) but what the responsibility means for the international community and how it should be applied in everyday practice. This is not to say that the idea of a responsibility to protect is unproblematic, but only that for the purposes of this paper, it is the application of this responsibility that is of most concern. Thus, it is here that this paper will focus. However, before turning to a discussion of how to apply a responsibility to protect to the practice of international relations the paper will first discuss a more fundamental issue, can military force really be used to achieve humanitarian goals?

Bombs and Human Rights: the Use of Force and Humanitarian Intervention

Despite the ICISS report's focus on the use of force, the use of force is only one aspect of the responsibility to protect. The responsibility to protect is made up of three sub responsibilities, the responsibility to prevent, responsibility to react (which can involved the use of force), and the responsibility to rebuild. What is clear from these responsibilities, and is further clarified in the report is that military action is only part of the responsibility to protect.

The ICISS is very strong on the fact that the most important aspect of the responsibility to protect is prevention. Throughout the report the ICISS argues that the international community has not done enough to prevent humanitarian emergencies and must do more. However, what happens when prevention fails and humanitarian emergencies occur? Here the ICISS says, that under specific conditions, force can be used. The next section of this paper will discuss the conditions that the ICISS argues must be followed for the use of force to be legitimate in humanitarian interventions. For the moment what is important is that the Commission argues that the use of force can be legitimate in humanitarian interventions.

There are those who reject the notion that military force can be used to achieve humanitarian objectives. These groups, who Atack (2002) refers as anti-militarists or pacifists, contend that the use of military force for any reason will always have non-humanitarian outcomes and that appealing to the use of force as a solution to humanitarian crises justifies military solutions to international problems. A strong Kantian perspective can be seen in this view, arguing that the use of force, which will inevitably result in the loss of human lives cannot be justified even if it is done to save more lives, because human being are ends in themselves and thus cannot be subjected to calculations of sacrificing lives for a greater good (Atack, 2002).

This view is similar to the views expressed by Hutchings (2000) in her discussion of feminist ethics and the "ethic of care". As she describes, feminist ethics strongly oppose any conception of political violence as being necessary, arguing that even claiming the right to use force as a last resort, creates a system in which the use of force can be used as a last resort (p.124). Thus, in a similar way that Koskenniemi claims the use of moral language to justify humanitarian interventions excludes other ways of looking at the problem, so to does Hutchings

criticisms suggests that arguments in favour of using force, exclude alternative solutions. As Atack describes:

> the danger is that the renewed emphasis on military responses to conflict epitomized by the doctrine of armed humanitarian intervention will preclude such non-violent, or at least non-military, approaches to dealing with conflict, and may in fact entrench the cycles of confrontation and violence that give rise to it. (p.290)

Even scholars like Booth and Wheeler, who do not reject the use of force in the pursuit of humanitarian goals, warn of its dangers and problems. Booth (1994), who is the most sceptical of the two about the use of force, argues that military force is a "blunt instrument" which its advocates seem to forget has been shown throughout history to be very difficult to apply successfully to complex situations like humanitarian interventions (p.67). Wheeler (2000), who takes a fairly liberal approach to justifying humanitarian interventions, objects to how the use of force has tended to be applied to interventions. He argues that in Kosovo, Somalia and in several other interventions, the intervening forces were far too willing to hide behind their military might and use force from a safe distance, reducing the risk of casualties to their own forces, while substantially increasing to suffering experienced by the population they were suppose to be rescuing (p.301-310). Wheeler argues that when this occurs the legitimacy of the intervention should be put under serious question (p.309).

So, it is clear that using the military in complex situations like humanitarian emergencies has obvious problems and challenges. Further, by the time an emergency has gotten to the point where military action can be discussed, a whole range of preventative options has been missed. Indeed, it is quite possible that by accepting the legitimacy of the use of force for humanitarian purposes the international community is leaving itself a way out for its failure to address humanitarian problems sooner before a crisis develops. This approach may prevent the international community from looking for other, non-violent, solutions to humanitarian crises

that are difficult and require a greater commitment of resources than moving in, bombing and leaving. However, do these problems completely exclude the use of force as an option for dealing with humanitarian emergencies? Is the world, which lacks any universal legal authority, really suppose to be able to solve all of its problems without force, when stable democratic Western states are not able to solve all of their domestic problems without using force, or the threat of force through police and security services?

When the question is framed that way, it seems rather utopian and even irresponsible to completely exclude the use for force from humanitarian emergencies. However, as this section has shown the problem is not that simple. Police forces are able to act effectively in democratic states because of the legitimacy of the state that they work for, no such legitimacy exists in the international realm and in the absence of legitimacy in the domestic context, police forces become tools of repression and power instead of upholders of the law and justice. Of course it would be difficult to imagine that anyone in the domestic context would want to completely remove the state's ability to use force from all circumstances because the result would be chaos. Thus, although it has its problems, it seems unreasonable and even irresponsible to completely reject the legitimacy of the use of force in humanitarian emergencies. The question then is how should this force be used in order to maintain its legitimacy, and how does the use of force fit with the responsibility to protect?

The Responsibility to Protect in Practice

In order to legitimately act on the responsibility to protect and use force in an appropriate manner in cases of humanitarian emergencies, the ICISS argues that six criteria, taken from Just War theory must be met: just cause, right intention, reasonable prospects, proportional means, right authority and last resort. The ICISS appeals to Just War theory because they feel that given

the "broad international agreement on the need, in exceptional cases of human risk, for coercive military action across borders" it is important to define the conditions that make an "exceptional" case "so as to maximize the chances of consensus being reached in any given case" (4.14). Thus, for the ICISS, Just War theory is really just a tool for building consensus around action in the international community.

The Commission provides two criteria for a just cause to use force for humanitarian protection, "large scale loss of life" and large scale 'ethnic cleansing'" either of which may be actually conducted by the state or is allowed to occur because the state cannot or will not act to stop it (4.19). The ICISS goes into some detail, referring to the Geneva Convention and other protocols as examples of what can be considered just cause to use military force under the responsibility to protect. The remaining five conditions of Just War theory are used by the ICISS as "precautionary principles" to the just cause condition, of these this paper will focus on the three most controversial: right authority, right intention and reasonable prospects.

Under the condition of right authority the ICISS is adamant that right authority to authorize an intervention rests with the UN, and specifically the Security Council,

> there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it is (p. XII).

The Commission acknowledges that the Security Council has its problems and admits that there could be situations when even in the absence of Security Council approval an intervention might be launched that is viewed as legitimate by the international community (6.38-6.40). However, it does not see this potential situation as a justification for launching an intervention without the approval of the UN, but rather it uses this case as a warning to the Council that its failure to act in a situation where action is required would seriously undermine the credibility of both the

Council and the UN as a whole (6.40). Thus, for the ICISS there are simply no alternatives to the UN.

When it comes to the intentions of those seeking to launch an intervention, the ICISS is equally clear. The primary intention of any purposed intervention for humanitarian protection must be to end or prevent a humanitarian emergency (4.33). The Commission does accept that intervening parties may have other, self-interested motives for intervening; in fact it argues that preventing humanitarian crises is in the self-interest of all states. The ICISS also acknowledges that the costs and risks of an intervention "may in fact make it politically imperative" for intervening parties to have more than simply altruistic motives, but the primary motive for an intervention must be humanitarian (4.35).

The problem is that determining which motives are actually driving an intervention is not easy, and may in fact be impossible to figure out until after an intervention has been completed. The Commission tries to address this concern by suggesting two ways of testing right intention: determine the extent to which the people the intervention is suppose to help actually support the intervention, or if other countries in the region support the intervention (4.34). However, even if it were possible to accurately judge the support of a people in a humanitarian crisis for an intervention, how are they going to be better able to judge the intentions of intervening force than the international community? And, even if this test were successful, it would only show that one of the motives of the intervening force was to stop a crises, there would be no way to know if it was the primary motive. As for seeking the opinion of neighbouring states, this tests ignores the fact that neighbouring states will have there own interests in what happens in the region that will have nothing to do with what is best for the people in crisis. It also ignores the fact that some of the worst humanitarian crises since the end of Cold War, such as those in

Rwanda and Congo, had regional states involved supporting various factions and aggravating the conflict. Thus, the opinion of regional states cannot be enough to ensure that intervention is launched with right intentions.

It is perhaps because of this difficulty that Wheeler (2000), in his appeal to Just War theory in humanitarian interventions, leaves out the criteria of right intention, instead focussing on the "humanitarian outcome" of an intervention (p.52). Wheeler takes an almost utilitarian approach to using force in humanitarian interventions, arguing that, "even if an intervention is motivated by non-humanitarian reasons, it can still count as humanitarian provided that the motives, and the means employed, do not undermine a positive humanitarian outcome" (p.38). This is obviously a very different approach than that of the ICISS, and may be perhaps a bit shocking. Under this view, it might have been possible to classify the American invasion of Iraq as humanitarian, even though the primary objective of the war is to eliminate Iraqi weapons of mass destruction. Of course the continuing suffering and violence in the country call into question the extent to which the US approach has not undermined a positive humanitarian outcome. None the less, the point is that under Wheeler's approach an intervention launched even with obviously non-altruistic motives can be considered a legitimate humanitarian intervention provide it achieves a positive humanitarian outcome. Wheeler's approach is obviously not without its problems, for example in most cases the humanitarian legitimacy of an intervention would have to be judged after the fact which is not that much help in deciding which interventions to support or stop. However, his approach does offer a direct challenge to the ICISS's conviction that humanitarian motives must be the primary motive for an intervention, especially given the difficulty in accurately determining which motives are actually driving an intervention.

The final precautionary principle the ICISS applies to interventions is a reasonable prospect of success, meaning, "military intervention is not justified if actual protection cannot be achieved" (4.41). On the surface this criteria seems perfectly reasonable and even commonsensical. After all, what rational state or group of states would launch an intervention for humanitarian purposes that they felt had no realistic chance of succeeding? However, there is a fundamental problem with this criterion when taken in conjunction with the ICISS's claim that a responsibility to protect exists in the international world. The Commission states, "application of this precautionary principle would on purely utilitarian grounds, be likely to preclude military action against any one of the five permanent members of the Security Council…. the same is true for other major powers who are not permanent members" (4.42). While the ICISS and its members may claim that this exclusion of major powers from the use force is not a double standard (ICISS, 2001: 4.42; and Thakur, 2002, 333), the application of this principle can result in nothing less than exactly that, a double standard.

When it comes to actually using the responsibility to protect in practice the application of this principle means that the world's most powerful states will always be above the law. Further, given that it is generally the most powerful states that provide the bulk of forces for humanitarian interventions, major powers will be free to use the responsibility to protect to intervene in the affairs of others, while no one is able to act on their failures to protect their citizens. The application of this principle to present circumstances means that two of the most pressing cases in the world where national governments have been unable, or unwilling to exercise their responsibility to protect their citizens, Chechnya and Tibet are excluded from interventions. How can there be a legitimate international obligation to protect people who are not protected by their own governments when such flagrant violations are allowed to pass?

So is this paper suggesting that states should be obliged to launch interventions against vastly superior military forces when the only possible outcome can be more suffering, just to consistently uphold a principle? Of course not, the ICISS is right to conclude that, under their criteria an intervention could never be launched against a permanent member of the Security Council, but it's not because of the principle of reasonable prospects. Action against any permanent member of the Security Council will not happen because the ICISS requires that the Security Council approve all interventions, where the five permanent members have a veto. Thus, the result of placing the UN as the ultimate authority for launching an intervention, is that no intervention, military or otherwise will ever be launched against a permanent member, no matter how gravely that state is failing to fulfill its responsibility to protect its own people, because they will veto any such action.

The reality is, despite any potential merits of appealing to Just War theory in order to facilitate consensus around an intervention, by setting up the UN as the ultimate source of legitimacy for an intervention, there is no need for the ICISS to use Just War theory. Doing so, as demonstrated above, only serves to weaken the persuasiveness of its case for a responsibility to protect by forcing it to try and justify a dangerous double standard in its ideas. If the UN is the legitimizing source for the humanitarian interventions than Just War theory is irrelevant. Even if the Security Council approved an intervention that did not meet one of the conditions of Just War theory, would the ICISS suggest that this intervention was illegitimate? No, it could not, because it has already made the UN the only source of true legitimacy for launching humanitarian interventions. So then, why bother with Just War theory at all?

A great deal of literature on the subject of humanitarian intervention uses Just War theory to some degree while making a case for the merits and legitimacy of humanitarian interventions

(e.g. Holliday, 2003; Reichberg & Syse, 2002; and Spiermann, 2002). However, this literature does not focus on the UN as the absolute about the authority for launching an intervention. Further, there are also those in the academic community who question the legitimacy of using Just War theory, which Booth (1994) argues can be used to "justify anything" (p.68). The question of the merits of Just War theory aside, the point is that using it is completely unnecessary for the ICISS, and only undermines its credibility by putting it in a situation where it must argue in favour of an unequal application of the responsibility to protect. So what does all this mean for the ICISS and the responsibility to protect?

Conclusions and Implications

Wheeler (2001) argues that the fundamental problem preventing the international community from doing a better job of stopping and preventing humanitarian crises is not sovereignty, or problems in the organisation of the UN and the Security Council, but a lack of will on the part of nations from accepting the necessary costs and risks of intervening to save the lives of others (p.126). Even cases when states do get involved, as was the case in Somali and Kosovo, Wheeler (2000) argues that "the desire to protect soldiers' lives leads to unacceptable levels of violence being inflicted on civilians" (p.308).

This paper has shown that ICISS report on the *Responsibility to Protect* has its difficulties, particularly in its use of Just War theory as a tool to develop consensus around interventions. However, despite these difficulties, the fundamental achievement of the Commission has been to draw attention to vast array of international agreements and precedence that underline the obligations that transcend national borders for the protection of human rights and prevention of human suffering. Whether or not one accepts that these obligations are strong enough to constitute a responsibility is open for debate, as how they should be applied.

However, what is not debatable is these obligations do exist. Equally clear is the fact that there are limits to the protection offered by sovereignty. No state is free to do whatever it wishes inside its own borders. The fact that the international community has been unwilling to act consistently on these obligations, or has chosen to put more focus on some rather than others, does not make those obligations any less real. It is only by recognising these responsibilities and debating them as the ICISS did in its report that there can be any hope of overcoming the lack of will that Wheeler has identified is plaguing the protection of human rights and preventing an end to human suffering around the globe.

Thus, despite its weaknesses the ICISS has achieved a crucial task of putting the issue of the responsibility to protect front and centre on the internationals agenda. It has clearly laid out the international obligations that exist for human protection and has called on states to act. Whether or not the international community responds to its call is yet to be seen, but regardless of the outcome our obligations, although their full extent may be debatable, are undeniable.

Indeed there is hope that attitudes towards humanitarian intervention may be changing, and that states are perhaps finding the will to fully commit themselves to interventions in a manner that truly respects the humanitarian principles they are suppose to be protecting. Wheeler and Dunne (2001) in their discussion of the Australian led intervention in East Timor, argue the Australian government acted to protect the East Timorese (although arguably very belatedly) despite the fact that action directly threaten their own national interests in terms of economic relations with Indonesia. Further, unlike the NATO intervention in Kosovo, the Australian intervention did not try to "bomb" the East Timorese their human rights from afar so as to protect their soldiers. Instead, Wheeler and Dunne argue the Australians put their troops on the ground were the risk of military casualties was highest, but the risk of civilian casualties was

lowest. Thus, the Australian government acted against its own national interest to protect people in another country and did it fully willing to risk the loss of soldiers' lives rather than risk more civilian deaths.

What does this example mean for the responsibility to protect? It shows that countries can act on their international obligations, even when it involves a substantial risk to their of interests and the lives of their troops. The only question now is, will it continue?

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