CONFLICT RESOLUTION AND HUMANITARIAN INTERVENTION IN RESPONSE TO GENOCIDE

Keynote Address by Hon Gareth Evans AO QC, President of the International Crisis Group and Co-Chair of the International Commission on Intervention and State Sovereignty, *International Peace Foundation Dialogues Towards a Culture of Peace*, Asian Institute of Technology, Bangkok, 9 February 2004

_____
_____

I feel enormously privileged to have been invited to join the extraordinarily distinguished group of international figures participating in this lecture and dialogue series. It is an honour both for me personally and the organisation I head, the International Crisis Group, which - with over ninety full time staff and the financial backing of, among others, twenty governments around the world - is working in some forty different conflict or crisis areas to prevent and resolve deadly conflict wherever it occurs.

Our goals are very much those of the International Peace Foundation, and I warmly thank the Foundation and its Chairman, Uwe Morawetz, for the invitation to be with you.

The Changing Nature of Conflict

When the Charter of the United Nations was debated and adopted in San Francisco in 1945 the overwhelming preoccupation of the 50 nations there present was with conflict between states. The central task was to build a system of collective defences against the centuries old problem of states waging aggressive war: expanding their territory by force, expanding the reach of their own sovereign authority by destroying the sovereignty of others.

The horror of two successive catastrophic world wars, and the utter failure of the League of Nations to prevent the second, was fresh in everyone's mind. Collective security meant the protection of states against each other. Security was overwhelmingly about *state* security, not *human* security as we have come recently to understand it: the crucial problem to address was what states might do to each other, not what they might do, or allow to be done, to their own people.

Looking out on the world as we now find it nearly sixty years later, it is possible to say that this central motivating dream of the UN founders has indeed been realised - at least in the sense that in not a single case since the end of World War II has a state's sovereignty been extinguished by force. For most of that period, true, overall stability was maintained not by the strength of the United Nations system, but by the balance of terror of the Cold War; many violent individual cross-border conflicts continued to erupt; there were many ugly examples of cross-border hegemony being exercised by the major Cold War

players, not least in Eastern Europe; and several cases – e.g. Indonesia in East Timor - of regional powers annexing by force remnants of colonial territory in their neighbourhoods.

But since the end of the Cold War the trend has continued toward a world free of the centuries old scourge of wars between states, with a number of changes in the international system working to reinforce rather than undermine this trend.[1]

First, the end of the Cold War removed a major source of ideological and great power conflict, and liberated the UN to play the global security role that the organisation's founders intended, as became immediately apparent with the response to Iraq's invasion of Kuwait in 1991.

Secondly, global democratisation has been accompanied by a decline in hyper-nationalism and 'bellicisme' (the ideology that saw virtue and nobility in war) and a greater willingness to end wars through negotiated peace agreements rather than outright victory. Once seen as an acceptable instrument of statecraft, resort to war in the 21st century is now universally proscribed except in self-defence, or with the authorisation of the UN Security Council: to this extent at least, the notion of a 'culture of peace', which it is the purpose of this lecture series to promote, is indeed gaining ground.

Thirdly, there appears to be a growing – though not universally accepted – global norm that favours mediation rather than force as a means of resolving international conflicts. Because interstate wars are, by definition, threats to international peace and security they are more likely to be addressed by the Security Council than civil wars. Mediation is more likely to be attempted in interstate wars than civil wars and is more likely to succeed in the former case.

There are at least two other important factors reducing the incidence of interstate wars. One is the doubling of the number of relatively inclusive democracies in the world in the last 20 years: this is significant for global security because established democracies (most likely because of the force of domestic opinion) almost never go to war against each other. The second is ever-growing economic interdependence, which increases the costs of going to war for the parties to the conflict and decreases the benefits: it is almost always cheaper to buy raw materials than to use force to seize them in an open global trading system.

But all that said, the risk of countries going to war with each other certainly cannot be excluded, in a variety of readily imaginable contexts: unresolved territorial claims (e.g. Ethiopia/Eritrea); strikes against the real or perceived nuclear, biological or chemical weapons capability of 'rogue' states (as with the

---

[1] These changes are identified in the December 2003 report to the World Economic Forum Global Governance Initiative by the Peace and Security Expert Group: Gareth Evans (Chair), Ellen Laipson, Andrew Mack, Jane Nelson, Mohamed Sahnoun and Ramesh Thakur (publication forthcoming).

US-led Coalition's war on Iraq); strikes against states seen as supporting/hosting terrorists (as with the US invasion of Afghanistan, justified by the 'self-defence' article of the UN Charter); unilateral interventions to effect regime change in states seen as putting others at risk; an escalation of existing conflicts over scarce resources, most likely water; attacks to gain access to resources (a major motive for the involvement of some neighbours in the war in the Congo); and maybe even violent fallout following a major breakdown in the international trading system, with states moved to adopt ' beggar-thy-neigbour' policies.

So, in relation to wars between states, there will still be plenty of work to do for those of us in the conflict prevention and resolution business, like my International Crisis Group. And there is still plenty of need for the wider international community, acting collectively, to define and accept constraints on the behaviour of those with the inclination to act unilaterally and preemptively - and with the power to turn that inclination into action. We will not be well served if wars of naked territory-expanding aggression become a thing of the past - only to replaced in the future by wars fought for almost as self-serving reasons but sought to be justified by an ever-widening interpretation of what is embraced by self-defence or 'threats to international peace and security'.

This is one of the many critical global security issues that will need to be addressed over the next few months by the UN Secretary-General's High Level Panel on Threats, Challenge and Change, chaired by Thailand's enormously distinguished and respected former Prime Minister Anand Panyarachun, under whom I have the pleasure of serving.

While some work remains to be done on war between states, even more work needs to be one on the question of conflict and mass violence *within* states. This occupied far less of the attention of the UN's founding fathers six decades ago, but has proved to be a far bigger and more intractable problem. For most of previous history, interstate wars had been much bigger killers than civil wars, but after the Second World War that was no longer the case. As the number of interstate conflicts declined in the post-War years, the number of internal conflicts accelerated dramatically, accounting for well over 90 per cent of all conflicts, and with a death toll by the early 1990s of hundreds of thousands every year.

More troubling than even these raw figures were some of the horrifying realities lying behind them, in particular the re-emergence of the ugliest of all forms of inhuman behaviour, ethnic cleansing and outright genocide. The nightmare that the world thought long behind it with the end of the Nazi Holocaust, and finally buried with the end of the Cambodian genocide in the mid 1970s, had to be relived all over again in the 1990s with the series of horrors in the Balkans, and above all in Rwanda where some 800,000 men, women and children were slaughtered in a few weeks, overwhelmingly for no other reason than their ethnic identity - not for what they did but for who they were.

There is some good news to report on the civil war front, just as there is with wars between states. Contrary to most perceptions, there has in fact been, since the early 1990s, a significant continuing decline in both the number of such wars and the number of people being killed in them. By the turn of the new century armed conflicts had declined by a third to a half (depending on which definitions one adopts), and by 2002 the death toll was down to 30,000.[2]

There seem to be two primary causes for this decline[3]. First, the end of East-West hostilities stopped the flow of resources to warring parties in proxy wars in the developing world and to authoritarian regimes of left and right. And secondly, there has been an extraordinary upsurge in conflict management and prevention activities by the UN (given new freedom, with the end of the Cold War, to play an active security role), the World Bank, donor states, NATO, NGOs and other international actors. There is certainly at least a prima facie case that the much-maligned UN – despite inappropriate mandates, inadequate resources, lack of political commitment by key players and many other problems – has made a real difference in reducing the risk of war.

More specifically, the last decade has seen a greatly increased reliance on preventive diplomacy and peacemaking initiatives with a consequent dramatic increase in negotiated peace agreements. There has been an equally dramatic increase in complex peace operations, mostly run by the UN - that have helped stop armed conflicts and prevent their recurrence. Greater Security Council willingness to authorise the use of force has helped deter aggression and sustain peace agreements. There has been an increased willingness to challenge the 'culture of impunity' – demonstrated by the proliferation of transitional justice mechanisms - including peace and reconciliation commissions. And there has been a greater emphasis on designing development policies that address the underlying causes of political violence, including economic inequities and poor governance.

The Unresolved Problem of 'Humanitarian Intervention'

What is not such good news – and this is the theme on which I want to concentrate in the remainder of this address - is that, whatever the positive developments we have witnessed in recent years, we cannot be sure, human nature being what it is, that we will not be confronted, sooner or later, by another Rwanda or another Srbrenica: some conscience-shocking case of mass violence, or threatened violence, occurring within the borders of a sovereign state. And, even more disconcertingly, we cannot be sure that when it does happen the international community will react any more enthusiastically, or any more effectively, than it did during the 1990s – when its responses to the mass

---

[2] The trends referred to here are documented in the first annual *Human Security Report*, to be published by OUP early in 2004, produced by the University of British Columbia Human Security Centre, directed by Andrew Mack.

[3] The following analysis is drawn from the WEF Peace and Security Expert Group report, op cit.

starvation in Somalia, the genocides in Bosnia and Rwanda, and the threatened new genocide in Kosovo ranged from the pathetic to the lamentable.

The basic problem is that we are still a long way away from reaching consensus about what kind of international intervention is justified, and when, in these situations.   Many calls for armed intervention – so called 'humanitarian intervention' (or in more acceptable phraseology for many, 'intervention for human protection purposes') - have been made over the last decade, some of them answered and some of them ignored. But there continues to be much disagreement as to whether there *is* any right of intervention at all, how and when any intervention should be undertaken, and under whose authority.

At the heart of the disagreement is the silence on the subject of the UN Charter. The founders of the UN, preoccupied as they were with countering aggressive war, enshrined as the basic norms of international relations the principle of the equality of sovereign states (Article 2.1) and their non-intervention in each other's domestic affairs (Article 2.7). These principles have proved wonderfully attractive to the legions of new states who have joined the UN in the decades since – increasing its numbers from 51 to the present 191 as the tide of decolonisation and post-Cold War state fragmentation proceeded. Sovereignty hard won is sovereignty not lightly conceded, and it is not surprising that for many of the new states an extreme interpretation of Article 2, seen as immunising them from almost any external scrutiny at all, has become something of an article of faith.

 At the same time the UN founders were conscious of the catastrophic human rights violations of the preceding years – above all the Nazi genocide – and this did generate a new momentum for the better protection by international law of individual human rights. At least a toehold of recognition was gained for human rights in the terms of the Charter itself, and standards were spelled out more comprehensively in the Universal Declaration of Human Rights and the subsequently negotiated Conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights, not to mention the very specifically focused Genocide Convention.

But the limits on state sovereignty implied by human rights standards were not set out in the Charter nearly as clearly as the principle of sovereignty itself. And so the tension at the heart of the Charter – between state security and human security, between state rights and human rights - remained essentially unresolved. The criminality involved in the government of a state attacking and invading another was amply recognised, and mechanisms to deal with it amply provided.

However, in relation to the criminality of a government perpetrating or acquiescing in large-scale killings of its own people, those who wrote the Charter gave no guidance at all. The Security Council can, if it chooses, characterise these essentially internal situations as amounting to a 'threat to *international* peace security', and as such use its authority under the Charter to authorise

enforcement measures, but there is an obvious element of artificiality and discomfort involved in doing this which makes the achievement of consensus extremely difficult.

All this meant a protracted debate during the 1990s on the 'humanitarian intervention' issue. Military intervention in response to gross human rights violations was controversial both when it happened – with varying degrees of effectiveness - as in Somalia, Bosnia and Kosovo – and when it failed to happen, as in Rwanda. When UN Secretary-General Kofi Annan challenged member states in 1999, and again in 2000, to forge a new consensus on the issues of principle and process involved, the debate which followed was a paralyzing stalemate. Defenders of intervention and defenders of state sovereignty dug themselves deeper into their respective trenches, unable to find any useful common ground.

Then came 9/11 and with it international policy attention, which had been consumed for a decade with the humitarian intervention issue, turned to a different set of problems centred around the question of self-defence against threats from others. How far could a state go in capturing and punishing terrorists? When was it permissible to engage in preemptive, or preventive, attacks against states supporting terrorism, or acquiring weapons of mass destruction, or both? The big issue was no longer about the right or duty to intervene to protect other people inside their own country, but the more traditional one of the right to intervene to protect the *intervener's* people from a perceived threat.

But the 'humanitarian intervention' issue never really went away, and it burst back into prominence in mid-2003 in the context of the U.S.-led invasion of Iraq. As weapons of mass destruction failed to turn up, and the evidence of Saddam Hussein's links with terrorists failed to get any stronger, defenders of the war were forced back to supporting it on straightfoward humanitarian intervention grounds: Saddam's gross mistreatment of his own people, which reached genocidal levels in his use of chemical weapons against Kurds in the late 80s and his massacre of southern Shiites in the early 90s.

Opponents of the Iraq war have responded by saying this was not the real motive for intervention at the time, and cannot credibly be claimed as such after the event. Moreover, they say, if it had been the real motive, it wasn't good enough to justify going to war when all other relevant considerations were taken into account. So, with opinion as heated and divided as ever, it has become necessary all over again to untangle the issues involved.

It has to be said that this is a debate which has so far very largely bypassed Asia. None of the cases of intervention for human protection purposes, in the 1990s or subsequently, involved Asia. The case of East Timor, often cited in this context, is not really one of coercive intervention at all, since Indonesia ultimately gave its

consent to the use of military force (albeit under considerable international pressure).

There were two big cases in Asia before the 1990s that are sometimes cited as early precursors of humanitarian intervention: India's invasion of East Pakistan in 1971 (in the context of West Pakistan's brutal suppression of Bengalis), and Vietnam's invasion of Cambodia in 1978 (in the context of the Khmer Rouge's genocidal brutality toward its own people). But neither of these cases were actually argued for in these terms at all. India and Vietnam each claimed that national self-defence was involved (with Vietnam being unwilling to even concede that it had its own troops in the country!), and in the General Assembly and Security Council almost everyone else condemned the interventions as indefensible intrusions on state sovereignty.[4]

Around Asia, perhaps more than anywhere else in the world except Latin America, there certainly seems to be a visceral discomfort with the whole idea of intervening in what goes on inside other countries. There is great caution about accepting outside involvement even at the softest end of the spectrum, involving mediation and facilitation: for example India's neuralgia about any form of international assistance in Kashmir, Indonesia's renewed hostility to external mediation in Aceh, and Myanmar's deep reluctance to allow any substantive role for UN special envoy Razali Ismail or anyone else (although there have been Asian counter-examples, including Norway's continuing role in Sri Lanka and the whole Cambodian peace process in the late 80s and early 90s). That caution turns to acute anxiety when any suggestion is made of coercive intervention in the form of sanctions and the like; and to really extreme concern when the intervention in issue involves full scale military force.

Maybe all this is just part of a larger phenomenon of Asian states being, in Robert Cooper's terminology, still 'modern' rather than 'post-modern' in character, driven by nationalism and the traditional concept of sovereignty that goes with it, rather than being prepared, in a changing global environment, as the member states of the European Union have been, to accept a significant degree of mutual interference in internal affairs. [5] This is certainly the way in which former Korean Foreign Minister Han Sung-Joo sees it, recently writing that:

> East Asian states are still working within the interstate system and remain preoccupied with the traditional negative-sum game of regional hegemony, balance of power, and national rivalries… opt[ing] for unilateralism or bilateralism rather than multilateralism, and … nationalism rather than internationalism.[6]

---

[4] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Supplementary Volume*, Essay 4, 'Interventions Before 1990', pp. 49-68: see www.iciss-ciise.gc.ca for the full text of both Report and Supplementary Volume.
[5] Robert Cooper, *The Breaking of Nations,* London, 2003, p. 174
[6] Han Sung-Joo (ed), *Coping with 9-11,* Japan Centre for International Exchange, 2003, p.2.

Maybe it is just a matter of the tone being set on these matters by the largest states in the region, each of whom has at least one running-sore domestic problem engaging intense international interest, and a deep unwillingness to allow any question of intervention to gain a foothold – even at a theoretical or abstract level: think of the salience of Tibet and Xinjiang for China, Kashmir for India, and Aceh for Indonesia.

Whatever the prevailing climate of opinion on these matters around Asia, whatever its cause, and whatever the absence of major recent examples as compared with elsewhere, it simply cannot be assumed that this region will be forever immune from having to deal in its own domain with the 'sovereignty versus intervention' issue. It is not difficult to imagine any one of a number of situations arising where large numbers of people are put at extreme risk by the actions or failure to act of their government. It could, to take just a handful of fairly obvious examples, be in Nepal, caught up now in an ugly new cycle of violence; or in Sri Lanka, if the peace process falls apart; or in Myanmar, if repression becomes intolerable; or in Central Asia, if there is a renewed outbreak of civil war in Tajikistan, or an explosive reaction against the repressive regime in Uzbekistan; or in North Korea, if there is massive starvation again and the regime is manifestly ill-equipped to handle it.

So what *are* the principles that should govern our responses, as a regional community and a broader international community, if and when these kind of situations come along? *Can* states in Asia – or anywhere else – do what they like to their own citizens within their own borders? When internal catastrophe looms because of state action, inaction or incapacity, do sovereign rights yield to some larger international responsibility to protect, ultimately by military action? Who decides, according to what principles? And who should act?

A Principled Answer: The Responsibility to Protect

The most substantial effort so far to identify the relevant principles, and build an international consensus around them, has been the work of the International Commission on Intervention and State Sovereignty (ICISS), which I had the privilege of co-chairing. This was a Canadian government-sponsored response to the challenge made to the international community by the UN Secretary-General to which I have already referred, and the Commission presented its report, *The Responsibility to Protect*, to him in December 2001.[7]

Though initially submerged – like the humanitarian intervention debate more generally - by the separate issues thrown up by 11 September 2001 and its aftermath, the report has been finding a steadily growing international audience:

---

[7] Op.cit..The Commission's members were Gareth Evans and Mohamed Sahnoun (co-chairs), Gisele Cote-Harper, Lee Hamilton, Michael Ignatieff, Vladimir Lukin, Klaus Naumann, Cyril Ramaphosa, Fidel Ramos, Cornelio Sommaruga, Eduardo Stein and Ramesh Thakur. It consulted comprehensively over a full year, meeting in Asia and Africa as well as North America and Europe, and holding roundtables and other consultations in Latin America, the Middle East, Russia and China.

it has been warmly endorsed by the Secretary General, informally debated by the Security Council, widely discussed by General Assembly delegations, the subject of innumerable conferences and roundtables, and will no doubt be closely considered by the High-Level UN panel chaired by Khun Anand.

The Commission made, I think it is fair to say, four main contributions to the international policy debate.

The first, and perhaps ultimately the politically most useful, was to invent a new way of talking about the whole issue of humanitarian intervention. We sought to turn the whole weary debate about the 'right to intervene' on its head, and to recharacterise it not as an argument about any 'right' at all, but rather about a 'responsibility' – one to protect people at grave risk – with the relevant perspective being not that of the prospective interveners but, more appropriately, those needing support. This new language has been helpful already in taking some of the heat and emotion out of the policy debate, requiring the actors to change their lines, and think afresh about what are the real issues are. Our hope - and so far our experience - is that entrenched opponents will find new ground on which to more constructively engage, just as proved to be the case between developers and environmentalists after the Brundtland Commission introduced the concept of 'sustainable development'.

The second contribution of the Commission, perhaps most conceptually significant, was to come up with a new way of talking about sovereignty: argued that its essence should now be seen not as *control* but as *responsibility.* The UN Charter's explicit language emphasises the respect owed to state sovereignty in its traditional Westphalian sense, but actual state practice has evolved in the nearly 60 years since the Charter was signed: the new focus on human rights and, more recently, on human security, emphasises the *limits* of sovereignty.

We spelt out the implications of that change by arguing that sovereignty implies responsibilities as well as rights: to *be* sovereign means that "the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare"; that "the national political authorities are responsible to the citizens internally and to the international community through the UN".

The starting point is that an individual state has the primary responsibility to protect the individuals within it. But that's not the finishing point: where the state fails in that responsibility, a secondary responsibility falls on the international community acting through the U.N. As we put it, "Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect." The key point, and it is one very respectful of the concern about protecting the concept of sovereignty that one hears about so much in this part of the world - is that the responsibility to protect lies on *both* the state and on the international community as a whole.

The third contribution of the Commission was to make it clear that the 'responsibility to protect' was about much more than intervention, and in particular military intervention.
It extends to a whole continuum of obligations:

❑ *the responsibility to prevent*: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk;

❑ *the responsibility to react*: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and

❑ *the responsibility to rebuild*: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

Of these three dimensions to the responsibility to protect, the Commission made very clear its view that *prevention* was the single most important: we spent a lot of time spelling out preventive strategies, both long term and short term – political and diplomatic strategies, legal and constitutional strategies, economic development strategies, and military strategies (like security sector reform) falling short of the actual use of force. It also made clear that, as a matter of principle, the exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

But that said, the question of military action remains the central one in the debate. Whatever else it encompasses, the responsibility to protect implies above all else a responsibility to *react* - where necessary coercively, and in extreme cases with military coercion - to situations of compelling need for human protection. So the fourth contribution of the Commission was to come up with some *guidelines* for when military action is appropriate, six of them in fact.

(1) *Just Cause*: is the harm threatened sufficiently clear and serious to justify going to war? We set the bar for military intervention deliberately high, and tight, excluding many kinds of unconscionable behaviour (eg imprisonment and torture of political opponents, overthrow of a democratically elected government) that would certainly *other* forms of coercive response, (eg targeted sanctions):

"There must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:
A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state

neglect or inability to act, or a failed state situation; or

B. large scale 'ethnic deansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."

For the invasion of Iraq in 2003, which is now being vigorously argued to be a suitable case for 'responsibility to protect' intervention as the other rationales in terms of WMD and terrorism drop away, the threshold test cuts both ways. It would certainly have been satisfied a decade or more ago (when the West was indifferent or worse to the plight of the Kurds and southern Shiites), but much less obviously so in recent years. Would it be right now to intervene against Robert Mugabe in Zimbabwe because the threshold test was satisfied not now, but in the 1980s when the Matabeleland massacres occurred?This is perhaps where the second test helps out.

(2) *Right Intention*: is the primary purpose of the proposed military action to halt or avert the threat in question, whatever other motives may be in play?

In the case of Iraq, it is probably fair to say that this test was satisfied in the case of the UK, where Tony Blair has long been passionate about the monstrous behaviour of Saddam towards Iraq's own people. In the case of the US, the jury would I think have a harder time: taking into account the many different considerations that seem to have motivated the various key players at critical stages, is it really possible to argue that the *primary* purpose of this intervention was to halt or avert human suffering? In the case of the third Coalition member, Australia, perhaps there was some other motive than following the leader (and earning, as someone unkindly said, some more 'Frequent Fighter Points') – but I've been out of the country four years now and I'm afraid it has escaped me…

(3) *Last Resort*: has every non-military option for the prevention or peaceful resolution of the crisis been explored, with reasonable grounds for believing lesser measures will not succeed?

For Iraq, the answer to this depends essentially on which rationale for intervention you regard as most important. If it was the issue of possession of weapons of mass destruction, manifestly this criterion was not satisfied. But if you accept Saddam's tyranny over his own people as sufficient justification, then perhaps it was.

(4) *Proportional Means*: is the scale, duration and intensity of the planned military action the minimum necessary to secure the defined human protection objective?

In the case of Iraq, the question has to be asked whether some 3,500 civilian deaths and 10,000 military deaths – assuming that those guesstimates are at least roughly accurate – were an appropriate trade for the end of Saddam Hussein's capacity to persecute.

(5) *Reasonable Prospects*: is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

In the case of Iraq last year, the 'reasonable prospects' criterion is one of the hardest for defenders of the war to meet. We cannot finally answer it until we know how long Iraq's post-war misery will last, whether it is going to become a democracy or a theocracy, whether the war has really concentrated the minds of other dictators, and just how many new recruits have been gained by al-Qaeda and its offshoots and affiliates and imitators around the world. But the outlook on most of these fronts is just as bad now, or even worse, than it was before the war.

The 'balance of consequences' test is, and should be, a very important constraint. Apart from anything else, it effectively rules out military action against any one of the five permanent members of the Security Council – e.g. against Russia over Chechnya, or against China over some imaginable course of events in Xinjiang - even if all other conditions for intervention were to be met. The same is true for other major powers– which is why Indonesia's permission was required for the East Timor intervention, and why an Aceh intervention can be effectively ruled out. External intervention would simply trigger a much larger conflict, multiplying the human catastrophe involved. All this raises the familiar question of double standards, to which the only answer can be this: the reality that interventions may not be able to be mounted in every case where there is justification for doing so, is no reason for them not to be mounted in any case.

(6) *Right Authority*: is the military action lawful as a matter of international law?

This was the hardest issue for ICISS commission to wrestle with – and will be for the Anand Panel.

The argument is compelling that, when it comes to authorising any kind of military intervention, immediate self-defence apart, the United Nations, and in particular the Security Council, should be the first port of call. There is and can be no better answer to the question of who decides whether the criteria are satisfied. But the difficult question – starkly raised by Kosovo, and now by Iraq – is whether it should be the *last* port of call, in the event that the Security Council cannot or will not make a decision, or makes what seems to be the wrong decision.

What if the Security Council fails to discharge its own responsibility to protect in a conscience-shocking situation crying out for action, as I for one would argue was the case with Kosovo? A real question arises as to which of two evils is the worse: the damage to international order if the Security Council is bypassed, or in the damage to that order if human beings are slaughtered while the Security Council stands by.

The ICISS Commission's response to this dilemma was to give a clear *political* message: if an individual state or ad hoc coalition steps in, fully observes and respects all the necessary threshold and precautionary criteria, intervenes successfully, and is seen to have done so by world public opinion, then this is likely to have enduringly serious consequences for the stature and credibility of the UN itself. That is pretty much what happened with the U.S. and NATO intervention in Kosovo, and the UN cannot afford to drop the ball too many times on that scale.

There is another side to this credibility argument which arose in the context of the invasion of Iraq in 2003, where world opinion was manifestly not in favour of the intervention: here the French and others were able to claim, with some effectiveness, that the credibility of the UN would have been put more at risk if the Security Council had gone along for the ride rather than resisting, as it did, the US pressure.

While the overall concept of the 'responsibility to protect' has gained considerable traction - the 'no more Rwandas' battle cry is one to which just about everyone is now paying lipservice, and we will hear more of it as the 10th anniversary of the Rwandan genocide approaches later this year. - it will be a long haul to gain general acceptance in principle of the relevance and utility of all six criteria, and an even longer haul to have them systematically applied in practice in every case.

Efforts have already been made within the Security Council and the General Assembly, led by the Canadian government and supported by the Secretary-General, to win at least informal acceptance of the criteria, and these efforts will continue. And I hope and expect they will get attention from the SG's new High Level Panel.

The alternative to making a serious effort to enforce the international rules we have, and to supplement them with further principled guidelines and criteria, is to abandon the field to those who are more comfortable with the ad hoc exercise of power - who don't really want to be limited by rules and principles, who feel constrained by international process, who see multilateral cooperation in very narrowly self-interested terms.

But a world that appeals to people like this is not, I think, one in which most people in the world – in Asia or anywhere else – really want to live.