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Exploring the UK's Doctrine of Humanitarian Intervention

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Abstract

UK governments have often claimed that humanitarian intervention – without the consent of the target state and if necessary without express UN Security Council authorization – is legally permissible in exceptional circumstances, a stance that is highly controversial. The UK's position is at odds with prevailing international legal doctrine, which is counterintuitive for a country that is generally committed to international law, the UN framework, and multilateralism. It is also in tension with normative developments related to human protection, such as the international 'Responsibility to Protect' principle, which established that coercive responses to human suffering must be authorized by the UN Security Council. This article explores the background to the UK's position on humanitarian intervention, and it argues that this reflects an element of continuity in the UK's foreign policy in historical perspective, as a legacy of global engagement and a sense of moral righteousness and duty. The article also considers whether the UK's position may be contributing to an evolution of the norms governing the use of force for human protection.

Keywords: Humanitarian intervention; UK foreign policy; Responsibility to Protect.

Introduction

Successive UK governments have claimed that military force across state borders aimed at ending egregious suffering – without the consent of the target state and if necessary without UN Security Council authorization – is legally permissible in exceptional circumstances, a stance that is both legally and politically controversial. Support for 'humanitarian intervention' is quite firmly established in political and foreign policy circles in the UK, across political parties, and in a number of key cases the country has participated in such operations. While other countries occasionally support or have sympathy towards this practice when it is aimed at relieving extreme suffering, the UK has been effectively alone in repeatedly presenting an explicit legal justification for military intervention aimed at human protection, outside the auspices of the UN Charter. Thus, the UK has not only sought to justify intervention aimed at ending atrocities in individual cases such as Kosovo, Iraq and Syria, it has also made the case for humanitarian intervention as a general legal norm in exceptional circumstances.

The UK's support for humanitarian intervention raises a number of questions and problems that will be addressed in this article. Firstly, the UK's position is at odds with prevailing international legal doctrine and practice, which is counterintuitive for a country that is generally committed to international law and the UN. This is, moreover, apparently a consciously controversial position on the part of successive UK governments. Alternative justifications could have been offered for military action in relevant cases – based upon an expanded conception of threats to international peace and security, for example – and yet the UK has chosen the more problematic 'humanitarian intervention' stance. Despite the shift in international

politics throughout the 20th Century towards a more conditional vision of state sovereignty in favour of human rights and human protection, this stance remains controversial in a state-centric international order.

Secondly, the UK's position seems to be in tension with normative developments related to international human protection. The international 'Responsibility to Protect' (R2P) principle was established as an official UN framework for responding to grave humanitarian suffering in 2005, following its introduction as a concept in 2001 by the International Commission on Intervention and State Sovereignty.[1] The 2005 R2P principle explicitly established that any coercive response to suffering must be authorized by the UN Security Council, and it is widely assumed – or hoped – that this implied the end of humanitarian intervention outside UN auspices as a defensible idea.[2] The UK claims that a failure on the part of the Security Council to respond to terrible suffering in line with the R2P principle provides legitimacy for humanitarian action outside the UN, but this is against almost all political and legal opinion on the subject.

The article argues that the UK's apparently counterintuitive commitment to humanitarian intervention can be explained in a number of ways. Primarily, this reflects a thread of continuity in the UK's foreign policy in long historical perspective. The duty to prevent or end atrocities can be found embedded in British political culture for two centuries, at least as a rhetorical theme, as a legacy of global engagement (including colonialism), a sense of moral righteousness, and an expression of military prowess. Thus, even with the relative decline of the UK's hard power in the post-Second World War era, assertive righteousness in foreign policy has remained a part of the UK mindset, and a commitment to humanitarian intervention is one expression of that. This historical context also explains why the UK's commitment to humanitarian intervention endures, despite it being at odds with traditional readings of international law, prevailing political norms, and initiatives such as the R2P principle. Moreover, it highlights linkages between domestic politics – including political debates and differences – and foreign policy, a field of analysis in International Relations that has received considerable attention in recent years.[3] The fact that the UK may not have a pristine record in terms of upholding human rights in its own foreign policy, and double standards are sometimes at play, does not alter its self-image as a state which has a moral responsibility to respond to egregious human rights abuses.

A further interpretation that is explored is whether the UK may be promoting a shift in customary international law *contra* the UN Charter in relation to the use of force for human protection. Alongside a limited number of other states – such as, at times, France and the US – the UK has *indirectly* called into question the UN Security Council's authority as the ultimate arbiter in responding to situations of egregious suffering. This possible normative shift – although not recognized by most

[1] International Commission on Intervention and State Sovereignty, The Responsibility to Protect.

[2] For example, Thakur, "The Responsibility to Protect at 15": Crossley, "Is R2P still controversial? Continuity and change in the debate on 'humanitarian intervention'".

[3] For example, see Fearon, "Domestic politics, foreign policy, and theories of international relations"; Bueno de Mesquita and Smith, "Domestic Explanations of International Relations."

international lawyers – has occurred against a broader strengthening of international human protection mechanisms and norms, which makes the Security Council's inability to respond to atrocities conspicuously problematic. Syria has been a defining case in this debate, where a series of vetoes have blocked decisive action, despite the scale of atrocities being perpetrated. This has arguably undermined the credibility of the Security Council as the guardian of R2P and opens the way to arguments in favour of humanitarian intervention without direct UN authorization. However, this has serious implications for the rules governing the use of armed force internationally, which is problematic for a country such as the UK given that it is so invested in a rules-based international order and multilateral collective action.

The first section of this article revisits the legal and political controversies related to humanitarian intervention, and considers how the R2P principle has contributed to debates and practice relating to human protection. The article then addresses the research problems identified above by exploring the UK's involvement in humanitarian intervention in historical perspective and in relation to recent cases, giving close attention to its justifications. The following section considers the implications of the UK's stance for the evolving humanitarian intervention debate.

The article draws upon official legal statements, political discourse – including parliamentary transcripts – and historical sources relevant to the UK's normative stance on humanitarian intervention since its emergence in the 19th Century. By exploring a topic at the interface between international law and politics, the article seeks to make a contribution to debates in both fields.

Revisiting humanitarian intervention

Humanitarian intervention has been debated for many years, and a number of questions are perennially associated with this subject.[4] How should the norm of non-intervention be balanced against the human rights of individuals in grave peril? Should some form of force be used, across state borders, to prevent or stop widespread and terrible human suffering, without the consent of the state in which abuses are taking place? Under what legal, political or moral authority? Since the emergence of the modern state system there has been a tension between individual justice and international order based upon the sovereign state system. From the time of Grotius there has been some support for military intervention in exceptional humanitarian circumstances.[5] Yet early legal scholars – such as Samuel Pufendorf and Emmerich de Vattel – argued that there is no legal case for intervention into the affairs of other states, and this became loosely settled into the customary law and

[4] Klose ed., *The Emergence of Humanitarian Intervention. Ideas and Practice from the Nineteenth Century to the Present*; Chesterman, *Just war or just peace? Humanitarian intervention and international law*; Simms and Trim eds., *Humanitarian Intervention: A History*; Wheeler, *Saving Strangers. Humanitarian Intervention in International Society*; Holzgrefe and Keohane eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Some of the background discussion in this article draws upon Newman, "Humanitarian Intervention, Legality and Legitimacy," and Newman, "R2P: Implications for World Order."

[5] Jahn, "Humanitarian intervention–What's in a name?"; Chesterman, *Just war or just peace? Humanitarian intervention and international law*.

practice of the Westphalian order.[6] Nevertheless, throughout the 19th and early 20th Century cases of conspicuous human rights abuse generated debate about the merits of 'interfering' into the domestic affairs of other states in the interests of humanitarian necessity.[7] As a result, a challenge against the idea of inviolable sovereignty emerged in this period, promoted by international legal scholars, political leaders, and non-governmental actors. In broader context, initiatives such as the International Committee of the Red Cross (ICRC), the Geneva Convention of 1864, and the Mixed Commissions for the Abolition of the Slave Trade reflected a growing political and moral case for international humanitarian action.[8] In historical perspective, until 1945, there remained some support for an exceptional norm of humanitarian intervention.[9]

The near universal adoption of the UN Charter in 1945 was a milestone in these debates, since it codified the legal rules governing the use of force in a way which denied the norm of unilateral humanitarian intervention. Article 2(4) states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state". This article, in conjunction with Article 2(7) and the enforcement Articles of Chapter VII, established that armed force is only permitted in self-defence, in collective self-defence, and under UN Security Council authorization to address aggression and threats to international peace and security. Under a strict reading of the Charter, human rights abuses which are deemed to be essentially a domestic matter, and which therefore do not threaten international peace and security, are not grounds for coercive collective action under UN auspices, and even less so by states or groups of states acting outside the UN framework.

In the post-war era UN members considered if exceptions to this general prohibition of the use of force might be permissible on humanitarian grounds, and such an exception was ruled out in a number of landmark agreements, such as General Assembly Resolution 2131(20) of 1965 on 'The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations', Resolution 2625(25) of 1970, and Resolution 103(36) in 1981. The latter resolution was on the "inadmissibility of intervention and interference in the internal affairs of States", stressing "the duty of a State to refrain from the exploitation and deformation of human rights issues as a means of interference in the internal affairs of States". The 2000 Declaration of the South Summit of the Group of 77 (comprising some 130 countries) stated that "We reject the so-called "right" of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law".[10]

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[6] Recchia and Welsh, eds., *Just and Unjust Military Intervention. European Thinkers from Vitoria to Mill*; Devetak, "Between Kant and Pufendorf: humanitarian intervention, statist anti-cosmopolitanism and critical international theory."

[7] Segesser, "Humanitarian intervention and the issue of state sovereignty in the discourse of legal experts between the 1830s and the First World War," in Klose ed., *The Emergence of Humanitarian Intervention*.

[8] Barnett, *Empire of Humanity: A History of Humanitarianism*.

[9] Rodogno, *Against massacre: humanitarian interventions in the Ottoman Empire, 1815-1914*; Bass, *Freedom's Battle: the origins of humanitarian intervention*; Simms and Trim eds., *Humanitarian Intervention: A History*; Klose ed., *The Emergence of Humanitarian Intervention*; Chesterman, *Just war or just peace?*

[10] G77, Declaration of the South Summit, para. 54.

Security Council Resolution 1674 (2006), which dealt with the protection of civilians in armed conflict, gives no support to the idea of humanitarian intervention without UN authorisation, and reaffirmed international commitment to the UN Charter with respect to "political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States".

When international legal proceedings have engaged with the claim of humanitarian intervention, the norm has been rejected (for example, the Nicaragua case of 1986, in relation to the US intervention in that country[11]). It would seem difficult, therefore, to claim that a new customary law of humanitarian intervention has emerged since 1945, since the rules governing the use of force in line with the UN Charter have been repeatedly and consistency reiterated by states since then.

There were cases during the Cold War when states used military force which could have been defended on exceptional humanitarian grounds. The Indian intervention into East Pakistan in 1971 which confronted Pakistan's crackdown of the independence movement and facilitated the creation of Bangladesh, Tanzania's intervention into Uganda in 1978-79 which toppled the Idi Amin regime, and the Vietnamese intervention into Cambodia in 1978-9 which toppled the Khmer Rouge regime, are often cited in this respect.[12] These cases can be interpreted in two ways with respect to their significance for a possible norm of humanitarian intervention. On the one hand, the intervening states – whatever their true motivations for intervention – did not stress a humanitarian case for the use of armed force, which suggests that they did not believe that such a claim would be legally persuasive. On the other hand, international criticism of these interventions is generally regarded as being muted, which implies there was some sympathy for these interventions given the terrible human rights abuses that were occurring in East Pakistan, Uganda and Cambodia.

During the Cold War the primacy of the norms of self-determination and sovereignty allowed little space for discussion of humanitarian intervention in the UN, even though in broader context the international human rights movement was making great progress, reflected in the establishment of a number of landmark human rights agreements. Nevertheless, a number of arguments in support of the norm of humanitarian intervention endured. Firstly, there was a moral claim that egregious human rights abuse should not be tolerated, even if intervention was in tension with legal norms such as state sovereignty.[13] There was therefore some acceptance of the principle that grave humanitarian suffering should be addressed within the framework of the United Nations, even without the consent of the target territory. Secondly, there is the argument – which explicitly emerged after the end of the Cold War – that severe human rights abuses are a threat to international peace and security and thus not confined to an individual state. In such a situation, the UN Security Council may authorize the use of military force under Chapter VII. There has arguably been a broadening of the Security Council's interpretation of 'threats to international peace and security' in this way. However, humanitarian intervention outside UN

[11] International Court of Justice, *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.
[12] Wheeler, *Saving Strangers. Humanitarian Intervention in International Society*; Holzgrefe and Keohane eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*.
[13] Mapel, "Military Intervention and Rights"; Nardin, "The Moral Basis of Humanitarian Intervention."

authorization has little support as a norm.

In recent decades a selective norm of humanitarian intervention from the 'international security' perspective has emerged. The Security Council issued resolutions in relation to Iraq, Somalia, Yugoslavia, Haiti, Rwanda and East Timor that made some link between human rights and international peace and security under Chapter VII authority. But the 1999 NATO intervention in response to abuses in Kosovo defined the dilemmas inherent in humanitarian intervention without UN authorisation.[14] It was arguably the first time in the modern international era that a group of states, acting without explicit UN authority, defended a breach of sovereignty primarily on humanitarian grounds.[15] Some states – such as China, India and Russia – were outrightly and vocally opposed. Many others were uneasy at the failure to work through the UN but accepted that the suffering in Kosovo had to be addressed. As a broader challenge, this highlighted a fundamental tension between order (or legality) and human protection in the international system. In 1999 UN Secretary-General Kofi Annan pointed to a 'developing international norm in favour of intervention to protect civilians from wholesale slaughter and suffering and violence'.[16] He recalled the failure of the Security Council to act in Rwanda and Kosovo, and challenged the member states of the UN to 'find common ground in upholding the principles of the Charter, and acting in defence of our common humanity'. In his Millennium Report to the General Assembly a year later, he restated the problem: 'If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?'[17] As Devetak has observed, this historical period reflected a renewed debate between statist and cosmopolitan visions of international order and justice.[18]

The Responsibility to Protect (R2P) principle emerged as the response to this question, aimed at establishing consensus on when and how the international community could legitimately prevent or stop grave human rights abuses. Following the work of the International Commission on Intervention and State Sovereignty, the 2005 UN Summit Outcome established that individual states have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and to prevent such crimes, including their incitement. It stipulated that the international community should encourage and help states to exercise this responsibility and support the UN in establishing an early warning capability. The agreement indicated that the international community, through the UN, also has the responsibility to help to protect populations from these atrocities where national authorities are manifestly failing to protect their populations.[19] The R2P agreement emphasised the prevention of atrocities, in the context of the UN Charter and Security Council authority. According to this, R2P is 'firmly anchored in well-established

[14] Newman and Visoka, "Kosovo 20 Years On: Implications For International Order."
[15] Wheeler, "Humanitarian intervention after Kosovo: emergent norm, moral duty or the coming anarchy?" 113.
[16] Annan, Secretary-General's Annual Report to the United Nations.
[17] Annan, Millennium Report.
[18] Devetak, "Between Kant and Pufendorf."
[19] UN Summit Outcome Document, para. 139.

principles of international law', including the bedrock of state sovereignty and – except in the most exceptional circumstances – non-interference.[20]

It is widely believed that the R2P principle directly addressed and resolved the 'dilemma' of humanitarian intervention by essentially confirming that there is no such norm, if there ever was.[21] Thus, whilst humanitarian intervention was highly controversial, the R2P principle brought a legitimate and credible framework through which egregious human rights abuse could be addressed by the international community. For most observers, the question of whether humanitarian intervention outside UN auspices is legally permissible was finally put to rest: it was and is not legal, and instead R2P forms the new consensus.[22] According to this, the use of force must be approved by the UN Security Council. From this perspective the R2P principle acts as a brake upon military intervention for human protection, since it demands that any such coercion is undertaken through the UN. Whilst this puts R2P at the mercy of the Security Council and the risk of inaction, that was considered to be the cost of gaining political consensus amongst UN member states. Although some international lawyers have argued that there has been a shift (back) towards an exceptional norm of humanitarian intervention,[23] the broader legal consensus is against any such shift.[24]

The UK's continued embrace of humanitarian intervention

Against this background, the UK's stance in support of humanitarian intervention outside the auspices of the UN is puzzling for a country that claims to be invested in a rules-based international system, and one that has been active in support of R2P.

In the post-Cold War era the humanitarian intervention 'doctrine' was invoked in the military intervention into Northern Iraq in 1991 – in which the UK played a key role – to protect Kurdish communities following the Iraq war. A more defining moment for the UK's expression of humanitarian intervention was the Kosovo crisis, which was also a watershed moment for human protection generally. In 1998 the UK shared a memorandum with NATO allies in which it made the case for armed force "on the grounds of overwhelming humanitarian necessity".[25] In a keynote speech, Prime Minister Blair presented his 'Doctrine of the International Community', a moral vision that demanded that terrible suffering must be prevented or stopped in a new era of democracy, liberalism and global interdependence.[26] The Kosovo intervention – which occurred without UN approval – was just, he claimed, because it was "based

[20] UN Secretary-General, "Implementing the responsibility to protect: Report of the Secretary-General," para.3.
[21] Ralph, "Mainstreaming the responsibility to protect in UK strategy"; Luck, "Sovereignty, Choice, and the Responsibility to Protect"; Thakur and Weiss, "R2P: From Idea to Norm – and Action."
[22] Ibid.
[23] Koh, "Humanitarian Intervention: Time for Better Law."
[24] Henderson, "The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government"; Akande, "The Legality of the UK's Air Strikes on the Assad Government in Syria."
[25] Roberts, "NATO's 'Humanitarian War' over Kosovo"; Greenwood, "Humanitarian intervention: the case of Kosovo."
[26] Blair, "Doctrine of the International Community."

not on any territorial ambitions but on values" in an era where "the principle of non-interference must be qualified in important respects". As a part of this vision there was the need for a "reconsideration of the role, workings and decision-making process of the UN, and in particular the UN Security Council", implying that a dysfunctional Security Council provides a pretext for action without UN support. Blair argued that if responsible states were sure of their cause, if they had exhausted all diplomatic options, and if there were viable military options, then a case for intervention could be made. Although Blair did not seek to reconcile this with the UN Charter or international law, other supporters of this position have attempted to do so.[27]

The broader context for this position, particularly amongst the liberal internationalist elites which were transcendent in the immediate post-Cold War era, was the claim that the evolving international order was shifting in favour of human rights and human protection, and therefore towards a more conditional notion of state sovereignty – or even a redefinition of sovereignty.[28] A number of governmental and independent policy initiatives in Western countries explored this theme through the challenge of humanitarian intervention, underpinned by a conviction that human solidarity in the face of egregious suffering demanded new ways of thinking about human protection, even if the primary institutions of international order would remain in place.[29] The UK's position, at the time of Blair and on occasions since then, has situated the country's liberal interventionist narrative, and sometimes its policy, at the edge of the legal and political boundaries of this contested normative shift in international politics, and beyond established legal and political opinion.

In 2013 the UK Government issued a keynote legal rationale for proposed military action, this time in Syria. It stated, "If action in the Security Council is blocked, the UK would still be permitted under international law to take exceptional measures in order to alleviate the scale of the overwhelming humanitarian catastrophe in Syria by deterring and disrupting the further use of chemical weapons by the Syrian regime. Such a legal basis is available, under the doctrine of humanitarian intervention".[30]

In November 2018 the UK Government restated and developed its position on humanitarian intervention without UN authorisation, which it asserted is "consistent with international law" if the following three conditions are met:

[27] Symons, quoted in Letter to the Committee Specialist from the Parliamentary Relations and Devolution Department, FCO; Greenwood, "International law and the NATO intervention in Kosovo"; Alexander, "NATO's intervention in Kosovo: The legal case for violating Yugoslavia's national sovereignty in the absence of Security Council approval."

[28] Annan, "Two concepts of sovereignty."

[29] International Commission on Intervention and State Sovereignty. Ottawa: International Development Research Centre, December 2001; Advisory Committee on Issues of Public International Law and the Advisory Council on International Affairs (Netherlands); Danish Institute of International Affairs, 1999; Independent International Commission on Kosovo. For an analysis of these reports see Newman, *A Crisis of Global Institutions? Multilateralism and International Security*, chapter 4.

[30] UK Government, Chemical Weapon Use by Syrian Regime - UK Government Legal Position.

> "(i) There is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
> (ii) It must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
> (iii) The proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose)."[31]

In this statement, the UK Government claimed that humanitarian intervention would only be considered "where there is no other legal basis for the use of force, such as self-defence, a Chapter VII UN Security Council resolution authorising force or host-state consent", thus explicitly asserting the legality of military force without UN approval. Indeed, the 2018 statement claimed that "The consequence of advocating *against* humanitarian intervention is that it would be unlawful to take action to save lives where the UN Security Council is blocked from acting. That is the inevitable logical consequence of the view that international law does not permit targeted military intervention in situations of extreme humanitarian distress".[32] This implies that the UK would not be legally barred from humanitarian intervention if the Security Council is unable or unwilling to effectively respond to terrible human suffering.

The cross-party Foreign Affairs Committee report on 'Global Britain: The Responsibility to Protect and Humanitarian Intervention' agreed that "It is an abuse of the moral responsibility entrusted to the permanent Security Council members to block action sought to prevent or alleviate suffering from mass atrocities".[33] In this, the UK is suggesting that rather than military force undertaken outside UN auspices being a threat to the authority of the Security Council, it is actually the Security Council's failure to respond to grave humanitarian abuse which undermines its authority. From this perspective, if a permanent member of the Security Council "wield their veto through narrow self-interest" then there are grounds to circumvent the council in exceptional circumstances.[34] The case for action against Syria was associated with the use of chemical weapons, so caution is necessary in terms of generalizing from this case, but as the UK government's narrative demonstrates, humanitarian intervention was not specifically linked to weapons of mass destruction in the UK's doctrine.

These claims sit awkwardly alongside the UN Charter. In 2017 the Attorney General gave a speech in which he reaffirmed the UK's support for the norm of humanitarian intervention whilst simultaneously "advocating, celebrating and participating in a rules-based international order".[35] The Foreign Affairs Committee, in supporting the government's stance on humanitarian intervention, concluded that "it seems unlikely

[31] UK Government, "Global Britain: The Responsibility to Protect and Humanitarian Intervention: Government response to the Committee's Twelfth Report."
[32] Ibid.
[33] Foreign Affairs Committee, "Global Britain: The Responsibility to Protect and Humanitarian Intervention."
[34] Ibid., para. 6.
[35] Attorney General, speech at the International Institute for Strategic Studies.

the creators of the UN Charter would have expected that the prohibition on the use of force would be applied in a way that prevented states from protecting civilian populations and stopping mass atrocities…The absence of humanitarian intervention as a final recourse could result in the paralysis of the international system and a failure to act, resulting in grave consequences for civilian populations."[36] Yet this exact question was debated by state representatives in the decades following the establishment of the UN Charter and the balance of legal and political opinion was indeed that military force outside the UN framework aimed at humanitarian protection was and is illegal. It is possible that the UK believes that there is a customary international law in support of humanitarian intervention, reflected in state practice, yet this case is not explicitly made. As a justification for military action against Syria in 2018, the claims by the UK government have been challenged as "significantly flawed" from a legal perspective.[37]

The UK government's commitment to defending a *doctrine* of humanitarian intervention – rather than surreptitiously undertaking such action on a case by case basis – is equally remarkable. As discussed above, the scope of international peace and security has evolved since the establishment of the UN Charter. The case can and has been made that serious and widespread human rights abuse – often involving forced migration across borders and the spread of conflict – constitutes a threat to international security. Indeed, the Security Council has consistently made such a link in the post-Cold War era. From this perspective, serious human rights abuse cannot be regarded as a domestic matter, and thus coercive action may be permissible in line with Chapter VII of the UN Charter. Even without a Security Council resolution in support of military action, the UK government would be on stronger legal ground in making a case for intervention from this perspective since it is generally accepted that threats to international stability have evolved in this way. Yet the UK government has not always made such a case, and its three conditions for humanitarian intervention to be legal – extreme humanitarian distress, last resort, and proportionality of force – do not include a requirement that a threat to international security is present before humanitarian intervention can be permissible.

Similarly, in the case of Syria, the UK might have attempted to invoke the principle of collective self-defence – in defence of NATO ally Turkey – or even self-defence, given that chemical weapons were involved. Arguably, the use of such weapons are a threat to international peace and security, even if the Chemical Weapons Convention does not itself permit military action against their use. But these arguments were not made, in favour of the contested claim to humanitarian intervention as a norm. Thus, there could have been less contentious legal claims to justify armed force outside the UN framework, so it is therefore significant that the UK government framed its actions in 2018, and before, within the 'norm' of humanitarian intervention.

Most states – as consistently reflected in key General Assembly resolutions and debates – are against a norm of humanitarian intervention if it is outside UN auspices.

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[36] Foreign Affairs Committee, "Global Britain: The Responsibility to Protect and Humanitarian Intervention."

[37] Akande, "The Legality of the UK's Air Strikes on the Assad Government in Syria"; Henderson, "The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government."

A limited number of states have supported military action outside UN authorisation – for example, NATO members in relation to Kosovo – but have nevertheless not sought to claim a general principle of humanitarian intervention. For example, in the discussion at the International Court of Justice on the 'Legality of the Use of Force (by NATO in Yugoslavia)' no countries except the UK and Belgium explicitly invoked a doctrine of humanitarian intervention,[38] even though this was for many European countries the closest one could get to a justifiable intervention outside UN auspices. This, again, makes the UK's emphasis upon a doctrine or norm of humanitarian intervention remarkable.

The UK government's interpretation of R2P and its relationship with humanitarian intervention is no less remarkable. In its response to a Defence Committee enquiry on 'Intervention: Why, When and How?', the Government indicated that "Nothing has changed with regard to the basis for the Government's position, which predates 2000… the legal basis of humanitarian intervention and the concept of the responsibility to protect are not the same thing".[39] According to this,

> [T]he 'Responsibility to Protect'…does not address the question of unilateral State action in the face of an overwhelming humanitarian catastrophe to which the Security Council has not responded. Rather, the 'Responsibility to Protect' is aimed at making sure that the Security Council does take action.

In addition to the government's legal advice – which has come during both Labour and Conservative governments – parliamentary debates also reflect this commitment to humanitarian intervention. In a House of Commons debate on Syria in response to the use of chemical weapons against civilians in 2013, Prime Minister Cameron stated that "The very best route to follow is to have a chapter VII resolution, take it to the UN Security Council, have it passed and then think about taking action…However, it cannot be the case that that is the only way to have a legal basis for action...We could have a situation where a country's Government were literally annihilating half the people in that country, but because of one veto on the Security Council we would be hampered in taking any action".[40] Precisely the same arguments were presented when UK military action in Syria was debated in the House of Commons in 2018.[41] In advocating military action during this debate, Richard Ottaway also illustrated the importance of British leadership in responding to humanitarian crises: "Britain is a leading member of NATO, it is chair of the G8 and it has a permanent seat on the UN Security Council. This gives us huge diplomatic clout, but with the benefits come responsibilities, and this is just the moment when we must ask ourselves what those responsibilities are. We can behave like a minor nation with no real international responsibilities and put our head in the sand, or we can live up to the expectations that the world community has of us".

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[38] International Court of Justice, Case Concerning Legality of Use of Force (Yugoslavia v. Belgium) Preliminary Objections of the Kingdom of Belgium; International Court of Justice, Case Concerning Legality of Use of Force (Yugoslavia v. United Kingdom) Preliminary Objections of the United Kingdom.

[39] UK Government, "Intervention: Why, When and How? – Defence Committee – Government Response."

[40] House of Commons debate: Syria and the Use of Chemical Weapons (2013).

[41] House of Commons debate: Syria (2018).

This view is reflected across parliament, as debates in both chambers illustrate (although the Foreign and Commonwealth Office has occasionally offered a different reading of international law[42]). For example, in a 2015 House of Lords debate on R2P, Baroness Cooper stated that "the international law principle of absolute state sovereignty and the primacy of the state should not prevent intervention" in the face of grave humanitarian distress.[43] Lord Desai suggested that R2P was "an admission of a massive failure by the United Nations" to act in response to atrocities, since it effectively removed the obligation to act when the Security Council was divided.[44] He suggested that "Something has to be done to reform the United Nations to improve its ability to intervene", and the overall tone of the debate was that until that happens, the Security Council does not have the legitimacy to veto action in the worst, exceptional circumstances. Thus, according to Lord Attlee, there was the "need to find some way in which the international community can sanction an intervention without being vetoed by one or two states which still seem to be comfortable with tolerating crimes against humanity".[45]

Through this interpretation, if the Security Council does not respond to egregious human suffering due to deadlock, it has failed to act in line with R2P, any veto invoked is illegitimate, and thus recourse to the norm of humanitarian intervention becomes a legitimate and lawful basis for unilateral military action.

This seems squarely at odds with the wording of R2P in the World Summit Outcome document, the Secretary-General's report on 'Timely and Decisive Response', and many years of debate within the UN.[46] A keynote report of the UN Secretary-General observed that "the responsibility to protect does not alter, indeed it reinforces, the legal obligations of Member States to refrain from the use of force except in conformity with the Charter."[47] In the annual General Assembly sessions on the R2P most – especially non-Western – countries consistently stress the importance of state sovereignty, the UN Charter, and the role of the Security Council in authorising any use of armed force.[48] Even amongst those countries which might be considered more interventionist, there is no record of statements in favour of a norm of humanitarian intervention. As Ralph notes, the UK's position on humanitarian intervention "damages the political consensus underpinning R2P" and thus contradicts its claim that it is promoting a shared understanding of that principle.[49]

The UK's position on R2P is closer in this respect to the 2001 International Commission on Intervention and State Sovereignty report. This echoes customary legal principles of just war in determining when intervention for human protection might be legitimate: just cause, right intention, last resort, proportionate means, and reasonable prospects of success. That report, while stressing that the Security Council must remain the principal actor – and the 'right authority' – in the authorisation of

[42] Holbrook, "Humanitarian Intervention," 140-41.
[43] House of Lords debate: the Responsibility to Protect (2015).
[44] Ibid.
[45] Ibid. See in particular the statement by Lord Alderdice.
[46] UN, World Summit Outcome, para. 139; UN Secretary-General, "Implementing the responsibility to protect."
[47] UN Secretary-General, "Implementing the responsibility to protect," 5.
[48] Newman, "R2P: Implications for World Order."
[49] Ralph, "Mainstreaming the responsibility to protect in UK strategy," 5.

military force for human protection, stated that "if the Security Council fails to discharge its responsibility in conscience-shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations."[50] However, the version of the R2P that was endorsed by the UN in 2005 explicitly links R2P to Security Council approval in any coercive action, and the 2005 framework is a better reflection of international law in practice and doctrine. A great deal of legal opinion also rejects the idea of a customary law of humanitarian intervention.[51]

In line with its doctrine, the UK has been involved in humanitarian intervention – without explicit Security Council approval – in support of safe havens in northern Iraq in 1991, no fly zones in southern Iraq in 1992, the NATO intervention in Kosovo in 1999, and in response to the use of chemical weapons in Syria in 2018. The government signalled an intention to use military force in Syria in 2013, but this was not undertaken after a House of Commons vote went against the proposed military action. The number of cases where the UK has intervened militarily as a part of UN authorized peace support operations or protection missions – including the 2011 Libya intervention – is far larger. The Libya intervention was authorised by the UN Security Council and so falls outside the definition of humanitarian intervention used in this paper, but it is relevant since the UK played an active role in mobilising support for the intervention and therefore typifies the UK's general tendency to be involved in these types of operations.

Historical continuity in the UK's commitment to humanitarian intervention

The UK's position in support of a contested legal norm of humanitarian intervention is, at face value, counterintuitive. It seems to be in tension with the country's commitment to, and investment in, a rules-based international order, and specifically the primacy of the UN Security Council – in which the UK enjoys a privileged permanent position. The arguments against weakening the rules governing the use of armed force are compelling,[52] and Russia's reference to the Kosovo intervention in justifying its own 'humanitarian' operations in its neighbourhood are instructive in this regard. The position is also problematic in terms of the UK's desire to be a normative leader in human rights, and specifically in terms of addressing atrocities, given that most countries reject any norm of humanitarian intervention, and it is generally agreed that humanitarian intervention is damaging to the R2P principle. In addition, this position risks antagonizing powerful resurgent states – such as China and India – as well as a large number of countries around the world which are hostile to any erosion of state sovereignty, and with whom the UK will need to (re)engage with in a transitional international order. The UK's position is also out of step with most of its NATO allies, which do not promote a norm of humanitarian intervention even if they are sympathetic to interventions in cases such as Kosovo and Syria.

[50] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," 53.
[51] Akande, "The Legality of the UK's Air Strikes on the Assad Government in Syria"; Rodley, "Humanitarian intervention"; Gray, *International Law and the Use of Force*; O'Meara, "Should International Law Recognize a Right of Humanitarian Intervention?"
[52] O'Meara, "Should International Law Recognize a Right of Humanitarian Intervention?"

However, the UK's stance on humanitarian intervention reflects a strong thread of continuity in long historical perspective – a belief in a "historical tradition of always standing against mass murder by dictators and tyrants".[53] This provides a compelling explanation for this position. This section will demonstrate how the legacy of the UK's 'global role' continues to manifest itself in its support for this contested principle, as an example of historical path dependency and an internalized self-identity on the part of Britain that endures despite changing circumstances. Debates within the UK about its support for humanitarian intervention also illustrate the linkages between domestic politics and foreign policy. The section will begin by illustrating the UK's long historical commitment to humanitarian intervention, at least as a declaratory theme.

The 19th Century was an important era in which Britain's selective commitment to humanitarian intervention emerged, in the context of the country's global power and imperial reach. Indeed, the emergence of humanitarian intervention as a contested norm in this period was in large part the result of British policies and practices.[54] In this period Britain's wealth, power and global engagement led to self-perceived moral and humanitarian responsibility, and also a sense of global leadership.[55] Two longstanding subjects defined this period and shaped Britain's association with humanitarian intervention in the 19th Century: its military involvement in combatting the slave trade following the Abolition Act of 1807, and its position towards the atrocities being committed in the Ottoman empire.

Britain's challenge to the slave trade in the 19th Century provides an illustration of the country's sense of humanitarian duty, righteousness and Christian values, all reflected in the anti-slavery movement which was deeply ingrained within the liberal elite. Although there is a conspicuous contradiction between this mindset and the colonial policies of Britain, the imperial mindset was in part a perverse civilizing mission and the campaign to confront slavery was at the heart of this mission.[56] From the 18th century, with the rise of the evangelical movement, the abolitionist movement was a major force in British politics and was significantly influenced by public opinion, driving a broader moral and humanitarian momentum in foreign policy.[57]

Following the Abolition Act of 1807 Britain's military intervention in West Africa aimed to combat the slave trade and promote the country's position against this practice.[58] In a 1816 operation in Algiers against white slavery Löwenheim observes that Britain engaged in "relatively costly humanitarian intervention" against the Barbary pirates out of a desire to preserve moral credibility and prestige.[59] The military action to stop the trade in white slaves did not, Löwenheim claims, bring any notable material benefit to Britain, and no British citizens were the victims of slavery

[53] Halfon, MP, House of Commons debate, Syria and the Use of Chemical Weapons.
[54] Rodogno, *Against Massacre*; Bass, *Freedom's Battle*.
[55] Furley, "The Humanitarian Impact."
[56] Kielstra, *The Politics of Slave Trade Suppression in Britain and France, 1814-48*; Miers, *Britain and the ending of the Slave Trade*; Coupland, *The British Anti-slavery Movement*.
[57] Klose, "Enforcing abolition. The entanglement of civil society action, humanitarian norm-setting, and military intervention"; Furley, "The Humanitarian Impact."
[58] Klose, "Enforcing abolition," 96.
[59] Löwenheim, "'Do ourselves credit and render a lasting service to mankind': British moral prestige, humanitarian intervention, and the Barbary pirates," 23.

in this case, so it cannot be explained either by political pressure or economic interests.[60] Nor can it be explained by a desire to expand influence or defend narrow interests. Foreign Secretary Castleregh thus described the military intervention as a "war of justice and humanity".[61] Kaufmann and Pape claim that the long military campaign against the slave trade in the 19th Century was the "most expensive international moral effort in modern world history", involving the loss of life of many thousands of navy personnel.[62] Naturally, it was not moral altruism alone which drove this commitment of resources. Nevertheless, amongst the mixed motives at play, there was a desire to promote a norm of abolition; at the 1814 Congress of Vienna, the British delegation made this a key objective.[63] Ultimately, an international ban on the slave trade was achieved under British leadership, its willingness to unilaterally enforce its position on this was significant, and Britain's willingness to use military force to combat the slave trade was a driving force for the humanitarian intervention norm.

Throughout the 19th Century and into the first decades of the 20th Century the Ottoman empire's actions in the unstable Balkans and in Greece and its attempts to stamp out independence movements – the 'Eastern Question' – was an ongoing and prominent feature of political debate in the UK. Amongst the various geopolitical issues at stake in this case, it provides another important illustration of the emergence of the UK's humanitarian movement, including some support for humanitarian intervention. It also demonstrates how the subject was ingrained into the public vision of what Britain's global role should be. The cases of Greece and Bulgaria under Ottoman rule illustrate this amply. As early as 1822 the Ottoman attack on the Greek island of Chios during the Greek war of independence caused outrage in Britain, and British assistance to support Greek insurgents in 1827 against Ottoman rule was an early illustration of its emerging humanitarian assertiveness.[64]

In the 1870s a debate over the suffering in the Balkans provided a defining illustration of a movement in favour of humanitarian intervention on moral grounds.[65] Whilst Britain's engagement with the 'Eastern Question' reflected a mix of motivations – including great power rivalry with Russia – public concern at the persecution of Christians in the Ottoman Empire was a key feature of the period and had a tangible impact upon policy.[66] The Ottoman repression against independence movements – the 'Bulgarian atrocities' – was closely followed by the British media, and frequently taken up in parliamentary debates. Whilst Prime Minister Disraeli took a more realist, detached view of the abuse, the liberal leader Gladstone epitomized the moral revulsion felt towards the human rights abuse, a stance which attracted considerable support. Bass, for example, argues that the public support for humanitarianism – a moral concern to care for the welfare of others irrespective of national interest – was a factor in bringing the Liberals back to power in 1880, following Gladstone's vocal

[60] See also Klose "Enforcing abolition," 111-14
[61] Quoted in Klose "Enforcing abolition," 114.
[62] Kaufmann and Pape, "Explaining costly international moral action: Britain's sixty-year campaign against the Atlantic slave trade," 633.
[63] Miers, *Britain and the ending of the Slave Trade*.
[64] Heraclides and Dialla, *Humanitarian intervention in the long nineteenth century*.
[65] Rodogno, *Against Massacre*; Bass, *Freedom's Battle*; Heraclides and Dialla, *Humanitarian intervention in the long nineteenth century*.
[66] Millman, *Britain and the Eastern Question 1875-1878*.

stance in favour of interventionism.[67] Gladstone's short book, 'Bulgarian Horrors and the Question of the East', stimulated a liberal movement in favour of intervention in support of the Bulgarians, inspired by public figures such as Lord George Gordon Byron and John Stuart Mill.[68] Indeed, the latter's article, 'A Few Words on Non-Intervention', perfectly encapsulates the liberal superiority, righteousness and privilege of 19th Century Britain, a mindset which underpinned its assumption that it had the moral right to use force to promote civilization and confront 'barbarians'.[69] It also demonstrated that the UK – in terms of legal and political opinion – saw itself at the forefront of debates about the 'civilized' response to such atrocities.[70]

Ultimately, the UK did not undertake military humanitarian intervention in such cases – beyond the assistance provided to the Greeks in the 1820s – because such action was not aligned with important geo-political and economic interests.[71] In this sense, Disraeli's realism – rather than Gladstone's liberal internationalism – characterized the period. Nevertheless, this period demonstrates that the threat or use of force for humanitarian purposes – in particular, in defence of persecuted Christians – was firmly ingrained into the British political establishment, and a reflection of moral superiority and imperial responsibility. Importantly, in these debates, it was perceived UK national interests which obstructed humanitarian intervention, not a commitment to Westphalian norms of sovereignty and territorial integrity. Indeed, Geyer states that "British-style 'humanitarian intervention' was a destabilizing element in a Westphalian architecture that put a premium on stability".[72] Naturally, the 'civilized' countries such as Britain "reserved the principle of non-intervention in relation to themselves, while ascertaining the right themselves to intervene on behalf of others".[73] Nevertheless, this illustrates the self-proclaimed and internalised sense of moral responsibility as a great power in defence of humanitarianism, something that is reflected in a survey of parliamentary debates over a long historical period.[74]

Historians who have studied the emergence of Britain's humanitarian practices in the 19th Century agree that public opinion in support of humanitarian intervention in

[67] Bass, *Freedom's Battle*, 236-37
[68] Gladstone, *Bulgarian Horrors and the Question of the East*.
[69] Mill, "A Few Words on Non-Intervention."
[70] Heraclides and Dialla, *Humanitarian intervention in the long nineteenth century*.
[71] Finnemore, "Constructing Norms of Humanitarian Intervention."
[72] Geyer, "Humanitarianism and human rights. A troubled rapport," 45.
[73] Geyer, "Humanitarianism and human rights," 43.
[74] For example, House of Commons debates and questions recorded in Hansard on: Denmark And Germany—Alleged Prussian Atrocities, 5 July 1864; Uruguay—Atrocities In Monte Video, 26 February 1875; The Reported Atrocities in Bulgaria, 7 August 1876; Turkey—The Atrocities in Bulgaria, 12 February 1877; Russia and Turkey—Alleged Russian Atrocities, 12 July 1877; Turkey—Atrocities in Roumelia, 11 July 1878; The Armenian Atrocities, 22 April 1895; Kurdish Atrocities in Armenia, 16 June 1899; Alleged Atrocities in Transvaal Mines, 1 March 1906; Atrocities in The Congo State, 17 May 1906; Putumayo Atrocities, 19 July 1912; War in Balkans, 14 July 1913; German Atrocities, (Belgium), 28 February 1918; Poland (Atrocities On Jews), 2 July 1919; Bolshevik Atrocities, 20 November 1919; Hungary (Atrocities), 12 February 1920; Atrocities (Red Guards), 15 April 1920; Smyrna (Alleged Atrocities), 25 May 1922; Asia Minor, 29 May 1922; and Near East (Atrocities), 31 May 1922.

certain cases was a key driving force.[75] This demonstrates that Britain's instinct to intervene militarily was not only a narrow elite impulse, but something deeper in the country's society. As a function of *Pax Britannica* and empire, and the racist paternalism that was often a part of this, the humanitarian impulse was morally questionable. Yet, the sense of righteousness, superiority and responsibility sometimes resulted in action – including humanitarian intervention – that went beyond immediate material gain. Rodogno thus claims that "Nineteenth-century humanitarian interventions shared with the civilizing mission the firm belief in the superiority of European mentality, religious beliefs, and political systems, and the certainty of military and technological domination."[76] Britain's humanitarianism was highly selective and hypocritical, given the abuses inherent in Britain's colonial presence around the world and its relationship with tyrannies when this aligned with its interests. However, the point is not that Britain's humanitarian interventions reflected a selfless, consistent worldview – they obviously did not – but rather that such interventions were guided by a sense of 'moral' responsibility and an entitlement and capacity to act. This also provides an antecedent which helps to explain the UK's position in the 21st Century.

These historical continuities find resonance in post-colonial studies and critical readings of history and law, which situate humanitarian intervention as "a central problem of our times" due to the inequalities in power and hegemonic abuses that it exposes.[77] From this perspective, the idea that humanitarian intervention is a progressive practice should be vigorously challenged, given that it threatens the key norm – state sovereignty – that provides some measure of protection against external aggression for poor, weak countries in the global south.[78]

The UK's humanitarian leadership in historical perspective can also be seen in its role in the League of Nations mandate system.[79] Moreover, Britain was militarily involved in all of the 'plebiscite peacekeeping' operations between 1920 and 1935.[80] The British reaction to Belgium's abuses in the Congo – despite Britain being an imperial country itself – is a further illustration of the UK's humanitarian tradition and its sense of moral superiority.[81] The position of the UK is, of course, selective and not consistent, and there are examples when governments resisted calls to intervene (for example, in the early 1990s in relation to Bosnia). From a post-colonial standpoint and from a critical standpoint more broadly, this position is highly problematic, and the double standards of the UK's interventionism are all the more conspicuous in

[75] Kielstra, *The Politics of Slave Trade Suppression in Britain and France, 1814-48*; Millman, *Britain and the Eastern Question 1875-1878*; Furley, "The Humanitarian Impact"; Rodogno, *Against Massacre*; Bass, *Freedom's Battle*.
[76] Rodogno, *Against Massacre*, 14.
[77] Chimni, "A New Humanitarian Council for Humanitarian Interventions?"
[78] Ayoob, "Humanitarian Intervention and State Sovereignty"; Anghie, "The evolution of international law: colonial and postcolonial realities"; Chimni, "First Harrell-Bond lecture: Globalization, humanitarianism and the erosion of refugee protection."
[79] Haas, "The reconciliation of conflicting colonial policy aims: acceptance of the League of Nations mandate system."
[80] MacQueen, "Cold War peacekeeping versus humanitarian intervention. Beyond the Hammarskjöldian model," 234.
[81] Pavlakis, "The development of British overseas humanitarianism and the Congo reform campaign."

historical perspective.[82] Nevertheless, there is sufficient evidence in discourse, and sometimes practice, to support the existence of this tradition.

Humanitarian intervention: A (re)emerging norm of customary international law?

The UK's stance on humanitarian intervention raises the question of whether a rule of customary international law permitting military action for human protection purposes outside UN auspices has (re)emerged which trumps the UN Charter. As a general rule, as illustrated above, there is little evidence that Article 2(4) should be interpreted in a way that allows exceptions, and ample evidence that such a shift has not occurred. The UN Charter prohibition of the use of armed force has been tested and reaffirmed by states many times since 1945. As Akande has observed, an emerging rule of customary international law cannot displace the prohibition of the use of force found in the Charter, which is a peremptory norm in a binding treaty.[83] This subject therefore speaks to the grey area of 'illegal but legitimate' action in international politics in the interests of exceptional humanitarian need. There is evidence of international acceptance for such a position. During the 1999 Kosovo intervention the attempt by Russia, Belarus and India to secure a Security Council resolution aimed at halting the intervention was defeated by 12 votes. After the conflict, a Security Council resolution (1244) to create the UN Interim Administration Mission in Kosovo offered some retrospective legitimization for the campaign. Following the 2018 airstrikes by the US, UK and France against Syrian forces – also undertaken without Security Council authorization – Russia introduced a resolution condemning the intervention, and this was defeated by 8 votes in the Security Council, with a further 4 abstentions. A French proposal for Security Council members to refrain from using the veto when deliberating genocide has not gained significant traction, but it again points to some desire to modify the practices of the UN in relation to egregious human rights abuse.

The actions of the UK – and equally important, its legal pronouncements – might be seen as a conscious effort to promote a shift in favour of exceptional humanitarian intervention. There is certainly evidence that other states are sympathetic. French President Francois Hollande stated that "international law must evolve with the times. It cannot be a pretext for allowing large-scale massacres to be perpetrated".[84] US President Obama, in response to chemical weapons use in 2013 in Syria, stated that "I'm comfortable going forward without the approval of a United Nations Security Council that, so far, has been completely paralyzed and unwilling to hold Assad accountable".[85] This shift points to a division between liberal, western states, and others – including the resurgent and rising powers – which have a more conservative, Westphalian reading of sovereignty.[86] It also reflects a belief that the UN Security Council, in particular when stymied by the veto, is out of step with broader developments in human rights and the protection of civilians, pointing to an

[82] Anghie, "Finding the peripheries: sovereignty and colonialism in nineteenth-century international law."
[83] Akande, "The Legality of the UK's Air Strikes on the Assad Government in Syria."
[84] Hollande, "21st Ambassadors' Conference' Speech."
[85] Obama, comments to the media.
[86] Newman and Zala, "Rising Powers and Order Contestation: Disaggregating the Normative from the Representational."

exceptional principle of humanitarian intervention which harks back to a pre-1945 customary law era.

Aside from Syria, Security Council practice has reflected a greater willingness to endorse military intervention for human protection since the 1990s, and therefore the key problem is not an inability of the UN to evolve, but rather the use of the veto. According to this view, decades of progress – reflected in international human rights instruments and UN practice – should not be obstructed by the veto of a small number of states. For this reason, some international lawyers have argued that there has been an evolution of customary international law, and if this is obstructed by the persistent vetoes of one or two Security Council members, then new practices must emerge, and the rules governing the use of force may need to be revisited.[87] The UK's doctrine of humanitarian intervention lends weight to this perspective. Ku and Scharf have observed that the international community, generally, raised few objections to the 'illegal' use of military force against Syria aimed at human protection, and this is indicative of a growing sympathy for humanitarian intervention.[88] Similarly, others have suggested that "What we may be witnessing is the slow and rather painful birth of a nascent right in customary international law allowing States to act forcefully to put an end to the use of particularly repugnant weaponry against a civilian population, or perhaps even one countenancing forceful State responses to other egregious forms of terrorizing and massacring civilian populations in other countries".[89] From this perspective, according to Koh, a "simplistic absolutist" stance against humanitarian intervention in any circumstances does not reflect post-Second World War practice.[90] However, it would seem to be a stretch to interpret this as support for a broader norm of humanitarian intervention, given the specific circumstances of the Syria case – most importantly, the use of chemical weapons. Whilst Scharf argues that the strikes against Syria were a 'Grotian moment'[91] – a fundamentally important shift towards humanitarian intervention, in which the UK's *opinio juris* is pioneering – O'Meara is equally adamant that there is no new customary law to support this.[92]

Conclusion

In a UK parliamentary debate on Syria in 2018 a member of parliament observed "a long-standing and noble tradition" of humanitarian intervention by Britain.[93] This sense of 'tradition' – underpinned by Britain's military prowess and its moral leadership – was reflected in all of the recent relevant parliamentary debates on this subject and echoes discourse going back to the 19th Century.[94] Although there is not unanimous support for humanitarian intervention in British political circles, it is a broad tradition which transcends party divisions. As this article has demonstrated, this

[87] Koh, "Humanitarian Intervention: Time for Better Law."
[88] Ku, "Almost Everyone Agrees that the U.S. Strikes Against Syria are Illegal, Except for Most Governments"; Scharf, "Striking a Grotian Movement: How the Syrian Airstrikes Changed International Law Relating to Humanitarian Intervention."
[89] Schmitt and Ford, "The Use of Force in Response to Syrian Chemical Attacks: Emergence of a New Norm?"
[90] Koh, "Humanitarian Intervention: Time for Better Law," 287.
[91] Scharf, "Striking a Grotian Movement," 589.
[92] O'Meara, "Should International Law Recognize a Right of Humanitarian Intervention?"
[93] Gapes, MP, House of Commons debate on Syria (2018).
[94] See Hansard sources in endnote no.74.

reflects a thread of continuity conditioned by national self-image in historical perspective, and is an illustration of how national self-identity can play a role in shaping foreign policy.[95] Simultaneously, the historical record demonstrates an element of ambivalence in terms of commitment to humanitarianism in policy terms, which raises doubts about the role that empathy plays in shaping action.

Britain's stance in support of humanitarian intervention has a number of implications. Firstly, it might be seen as a positive force in support of humanitarian action, against a dysfunctional Security Council which can be undermined by the vetoes of permanent members. Although many countries are explicitly opposed to action outside the UN framework, a significant number of countries are quietly sympathetic to humanitarian intervention in extreme circumstances. By presenting a doctrine of humanitarian intervention the UK is provoking an important legal and political debate on how to respond to egregious human rights abuse in the absence of UN action. Whilst other countries – such as the US and France – have in recent years undertaken military action for human protection purposes outside the UN framework, the UK has effectively been alone in arguing in favour of a legal doctrine and openly challenging the Security Council's primacy. In this sense, the UK may be at the forefront of a political and legal shift. R2P essentially failed in Syria; if the UN cannot respond to future atrocities at this scale, states and groups of states will act outside the UN's auspices.

Koh has argued that the current ambiguity is unsatisfactory, and "this is a lawmaking moment".[96] In this sense the UK might be regarded as a "norm entrepreneur",[97] although it is debatable as to whether this description is fully appropriate. Certainly, the UK's doctrine of humanitarian intervention – given that it is conveyed through formal legal opinions – makes a substantive contribution in favour of the use of military force for human protection purposes outside UN auspices. However, it is questionable whether this has been a clear objective of UK governments – where one might expect the active promotion of international normative change[98] – or whether its legal opinions and the political statements made in the UK parliament are primarily delivered for a domestic audience. An alternative explanation is that the UK, keen to uphold its image as a legitimate defender of human rights, seeks to bolster its legitimacy by framing its approach to humanitarian intervention with reference to international law. Nevertheless, even if a new customary norm of humanitarian intervention is unlikely, the UK's position is laying bare the inadequacies of the Security Council in cases such as Syria, and this supports initiatives to improve the rules of procedure within the UN for responding to serious human rights abuses.

Secondly, humanitarian intervention has implications – which may be seen either as negative or progressive – for the rules regulating the use of force in international

[95] For example, Hopf and Allan eds., *Making Identity Count. Building a National Identity Database*; Kubálková, ed. *Foreign policy in a constructed world*.
[96] Koh, "Humanitarian Intervention: Time for Better Law"; Bratberg, "Ideas, tradition and norm entrepreneurs: retracing guiding principles of foreign policy in Blair and Chirac's speeches on Iraq."
[97] Henderson, "The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government."
[98] Payne, "Persuasion, frames and norm construction."

relations, and arguably for the rules-based order and multilateralism in general. Despite the active debate on the subject, the balance of opinion amongst international lawyers and state representatives is that humanitarian intervention is illegal, and that there is no shift away from the UN Charter towards a new customary international law. Therefore, action in favour of humanitarian intervention undermines the credibility of the UN Security Council and provides a pretext for unilateral action by other states. Russia's references to 'humanitarian intervention' and the precedent of Kosovo in connection with its military operations in its sphere of influence are the most obvious illustration of this.

Third, the doctrine of humanitarian intervention is problematic for R2P. This principle was agreed to resolve the dilemmas and controversies of humanitarian intervention and to establish a framework through which the international community can legitimately prevent or stop grave human rights abuses. If the Security Council is circumvented, even in exceptional circumstances, it would raise broader doubts about the role of the Security Council as the primary authority to address such abuses. This would risk a reversion to the unregulated and selective practices of humanitarian intervention, exactly the situation that R2P was meant to supplant.

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