



The Saskatchewan Institute of Public Policy

Public Policy Paper Series

Toward a New Paradigm for
Humanitarian Intervention

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April 2007

Public Policy Paper 50

\$5.00; ISBN# 978-0-7731-0605-5



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PUBLIC POLICY PAPER #50

APRIL 2007

ABSTRACT

The current debate over humanitarian intervention is characterized by the twofold tension between the UN Charter restrictions on the use of force and more permissive customary norms, on the one hand, and competing claims of national sovereignty and human rights protection, on the other. This paper proposes a new paradigm for humanitarian intervention that builds upon the concept of the "Responsibility to Protect" articulated by the Canadian inspired International Commission on Intervention and State Sovereignty, and recommends the extension of this principle to a multidimensional strategy for codifying humanitarian intervention in international law. At the heart of this codification proposal is a call for Canada to employ its diplomatic expertise to facilitate the negotiation of an International Convention on the Right and Responsibility of Humanitarian Intervention that would move the international community a considerable distance toward harmonizing international humanitarian law and the UN Charter system.

Humanitarian intervention is widely recognized as one of the most important and complex issues facing the international community in the post-Cold War era. As Canadians are well aware, the humanitarian catastrophes of the 1990s in Rwanda and Bosnia, and the interventions in Kurdistan, Somalia, Haiti, Timor-Leste, and Kosovo, not only placed humanitarian intervention in the forefront of major international issues, these events also frequently exposed the underlying tension between the humanitarian moral impulses emerging with globalization, on the one hand, and the legal basis of the international security regime, on the other. The current debate over the international community's response to the crisis in Darfur suggests that the issue of humanitarian intervention has continuing relevance in the post-9/11 period as well.

Indeed, in some respects the international community displays an even more heightened sensitivity to humanitarian issues today than it did in the years immediately following the end of the Cold War. Dramatic coverage of crises in distant lands, once dubbed the "CNN effect", has now proliferated beyond a handful of select cable outlets in the affluent West to include alternative media sources and emerging media in the developing world. The public in much of the world, transformed by the events in Rwanda and the Balkans, closely follows the ongoing prosecutions of suspected war criminals by international tribunals in Rwanda, Sierra Leone, and at the Hague, even as media savvy human rights groups such as the New York-based *Save Darfur Campaign* bring the politics of humanitarian intervention to a new level by running provocative television ads in prime time during the recent mid-term elections in the United States.

While there is little doubt that humanitarian intervention will continue to be a salient issue in international relations, as a matter of policy and international law the international community remains divided over the issue. The inability of the international community to reach consensus on a matter of such global concern can be explained by the twofold tension between the United Nations (UN) Charter prohibitions on the use of force and the emergence of more permissive state practice, on the one hand, and the competing claims of national sovereignty and human rights protection, on the other. The central policy challenge for the future of humanitarian intervention lies in remedying the internal conflict within the prevailing paradigm of international order between the principles of legalism and humanitarianism. Shaped by the experience of international aggression in the Second World War, the United Nations Charter emphasizes the sovereign equality of states, the principle of non-intervention, and the almost exclusive restriction of the international use of force to actions sanctioned by the Security Council. However, in the wake of the humanitarian crises of the 1990s the world has heard growing demands to end the "culture of impunity" by recognizing an international obligation to protect human rights that in severe cases overcomes deference to sovereignty and non-intervention. The tension between international law and humanitarian principles arguably climaxed with the North Atlantic Treaty Organization (NATO) military intervention without Security Council approval in Kosovo in 1999, which constituted an action even many of its most ardent supporters admitted was "illegal but legitimate" (IICK: 4).

In the years since the Kosovo operation there have been several efforts to bridge the conceptual chasm between a legal order based on sovereignty and non-intervention and the growing demand that human rights protection be afforded a more central role

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among the organizing principles of the international system. Arguably the most distinguished of such efforts was the Canadian inspired *International Commission on Intervention and State Sovereignty* (ICISS), which issued its much anticipated report in December 2001. The ICISS Report was an immense achievement and an important first stage in the process of building a new international consensus on humanitarian intervention by shifting the paradigm of international law from one based on sovereignty to one based on the legal and moral “Responsibility to Protect”. It sought to balance human rights protection or “human security” with the international rule of law by articulating informal guidelines or criteria for humanitarian intervention and suggesting a number of proposals for institutional reform of the charter system. Significantly, the ICISS discouraged any serious effort to codify the principles of human security through charter amendment or a multilateral treaty viewing these ideas as premature given the current state of the debate.

This policy paper recommends that Canada build upon, but in an important sense move beyond, the findings of the ICISS by working with all the diplomatic means available to it to set the moral principle of humanitarian intervention further on the road of legal codification than the commission was prepared to recommend. Recent progress towards codification of the principles of human security suggests that the ICISS underestimated its own impact on the development of global attitudes towards human rights protection. With the UN General Assembly’s *World Summit Outcome Document* of September 2005 and the adoption of Security Council Resolution 1674 on “The Protection of Civilians in Armed Conflicts” in April 2006, the international community made its first historic steps toward legal recognition of the responsibility to protect. This paper proposes to deepen and extend the process of codification by establishing a new paradigm for humanitarian intervention that would further harmonize international humanitarian law and the UN Charter system.

As such, this paper recommends a multidimensional strategy for codifying the principles of humanitarian intervention that includes the drafting of a UN General Assembly Resolution affirming the responsibility to protect to supplement Security Council Resolution 1674, as well as several amendments to the UN Charter that would emphasize the Security Council’s role in protecting human rights. However, the centerpiece of this codification process involves the negotiation of an *International Convention on the Right and Responsibility of Humanitarian Intervention* that would transform international human rights law by integrating such seminal instruments as the Genocide Convention of 1948, Common Article 3 of the Geneva Conventions of 1949, and Protocol II of the Geneva Conventions of 1977 firmly into the security regime of the charter system. This convention would be unlike previous human rights treaties because it would pay particular attention to the need to establish reliable oversight and enforcement mechanisms for global human rights protection, and thus in crucial respects more closely resembles the *Non-Proliferation of Nuclear Weapons Treaty* of 1968 than most of the human rights instruments with which we are familiar. Only an extensive program of codification can bridge the chasm between the charter and evolving state practice, as well as provide a meaningful basis for stabilizing international consensus around one of the most vital humanitarian issues of our time. The policy this paper proposes is admittedly ambitious, but it is feasible and it is a project uniquely suited to Canada’s diplomatic expertise and international reputation.

This paper is composed of five sections. Section one examines the nature of the problem in the current debate about humanitarian intervention by exploring the origins and development of the prevailing paradigm of international law. The second

section considers the achievements and limits of the ICISS Report and suggests expanding on the report by initiating an integrated strategy for the progressive codification of the right and responsibility of humanitarian intervention. Section three explains the paper's primary assumptions about the value of codification and presents the main features of a policy the core of which is a multilateral treaty that would condition sovereignty on state behavior and incorporate the cornerstones of international human rights law into the use of force regime of the charter system. The fourth section explores the politics of humanitarian intervention and argues that the prospects for comprehensive codification are realistic, especially if the broader international community is involved in treaty negotiations based on constructive engagement. The final section considers Canada's role as a potential catalyst and facilitator of this paradigm shift in international humanitarian law.

This policy paper recommends that Canada build upon, but in an important sense move beyond, the findings of the ICISS by working with all the diplomatic means available to it to set the moral principle of humanitarian intervention further on the road of legal codification than the commission was prepared to recommend.

The current debate over the ethics and legality of humanitarian intervention reflects the divided nature of international society, which simultaneously embodies often conflicting fundamental assumptions about international rule of law and humanitarianism. The genesis of this condition can be traced back at least as far as the origins of the United Nations (UN) itself. Born in the ashes of the Second World War, the UN made maintenance of international peace and security its primary objective. To the framers of the UN Charter, the lessons of the interwar period required that the criminalisation of aggression form the heart of the new international order. As such, the charter established the principle of the “sovereign equality of all its members” as the paramount legal expression of the moral principle of non-aggression (Art. 2.1). From this emphasis on national sovereignty and political independence logically flowed the general norm of non-intervention that formed the basis of international law in 1945, and was reaffirmed by later International Court of Justice decisions as well as several General Assembly Resolutions widely supported by developing nations only recently emerged from decolonization and understandably sensitive to the normative value of political independence and territorial integrity.¹ Within the charter framework itself the principle of non-intervention is most clearly evident in the legal prohibition on the international use of force in matters of “domestic jurisdiction” (Art. 2.7), and the restriction of the use of force to actions sanctioned by the Security Council or in self-defense (Arts. 2.4, 51).

The most important institutional manifestation of the charter use of force regime is, of course, the central role of the Security Council in maintaining “international peace and security” (Art. 24.1). Chapter 7 of the charter reserves to the Security Council the primary responsibility for responding to threats to peace and international aggression (Arts. 39, 42). However, the original intent of the charter framers was so clearly directed to limiting and controlling the international use of force that the charter placed legal limits such as the “domestic jurisdiction” provision in Article 2.7 even on the power of the council itself. In addition, the veto power enjoyed by the five permanent members of the council was designed to impose an important structural limitation on the use of force as it implicitly recognized that any meaningful system of international security would need to affirm the central role of the great powers. Thus, not only did the charter system stress the legal and moral primacy of sovereignty and non-aggression, it also incorporated the norm of non-intervention into the decision-making processes and institutions devised to regulate the use of force in the post-war international order.

From the beginning, protection of human rights was always understood to be a second order good in the *raison d’être* of the United Nations (Farer 1991: 190-1, Glennon 2001: 6). The articulation of a new humanitarian imperative in the post-war

¹ See, for example, the influential ICJ decision in *Nicaragua* (1986) and the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*, U.N. GAOR, 20th Sess., Res/2131 (1965), *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, U.N. GAOR, 25th Sess., Res/2625 (1970) and *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, U.N. GAOR 36th Sess., Res/103 Annex (1981).

period had its source in the horrors of the Second World War revealed so graphically in the war crimes trials in Nuremberg and Tokyo in 1946. The UN incorporated this new understanding of “crimes against humanity” in the 1948 Universal Declaration of Human Rights, which identified certain acts that “outraged the conscience of mankind” as beyond the pale of civilized nations. In the first wave of human rights instruments such as the Genocide Convention of 1948 and the Geneva Conventions of 1949, the international community declared its intention to establish minimal standards for treatment of civilians and combatants in times of war. However, in the original charter system human rights protection clearly held secondary status in relation to the primary goal of prohibiting intervention and international conflict. Not surprisingly, the Genocide and Geneva Conventions possessed no reliable enforcement or dispute resolution mechanisms, and thus generally assumed the role of aspirational, as opposed to functionally operational, statements of commitment to human rights.

In crucial respects, the largely hortatory character of the first wave human rights instruments reflected both the political and institutional reality of the post-war period. The rigid ideological powers blocs and constant threat of nuclear conflict between the superpowers during the Cold War practically guaranteed that human rights protection would never trump the geo-political realities of a deeply divided planet. Within the UN system the emphasis on peace and stability found institutional expression in the assignment of human rights issues to the General Assembly and the Economic and Social Council (ECOSOC), institutions that legally have little or no control over the use of force. The institutional separation of the security and human rights functions of the UN was emblematic of the hierarchical order of goods, and to a lesser extent the divided mind, built into the charter system as originally conceived.

The current debate about humanitarian intervention derives from the challenges that confronted the international community at the end of the Cold War. Largely freed from the fear that intervention in humanitarian crises would lead to strategic conflict, the international community felt heightened expectations about the importance of human rights protection. Moreover, the new political reality of “failed states” and ethnic conflict left in the wake of the Cold War presented the international community with ample opportunity to translate humanitarian principles into active intervention to stop massive human rights abuses.² Much as the horrors of ethnic cleansing and genocide in Bosnia and Rwanda challenged the international community’s commitment to the moral primacy of non-intervention, so too did the emergence of failed states lead many to question whether the deference to sovereignty enshrined in Articles 2.4 and 2.7 of the charter made sense anymore in the many post-Cold War conflicts in which the lack of a recognizable government was precisely the source of the problem (Tyagi 1995: 887).

The debate in the 1990s over interventions in Somalia, Bosnia, and Haiti exposed deep divisions in the international community that pitted supporters of humanitarian

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² As Scott (2004: 40) relates, the number of peacekeeping operations authorized by the UN between 1948 and 1987 was 13, from 1988-96 it climbed to 29.

intervention, typically among the developed nations, against its opponents, primarily in the developing world. However, this disagreement about the prevailing paradigm of international law arguably climaxed with the NATO military intervention in Kosovo in 1999. It was plainly illegal because it lacked Security Council authorization due to Russia's threat to veto any military action against its traditional ally Serbia. Yet many viewed it as legitimate because it stopped a massive program of ethnic cleansing and was supported by all nineteen democratic nations in NATO including Canada, as well as large parts of the Muslim world. To opponents of the operation it was a clear violation of the charter and a dangerous portent of more frequent and more aggressive interventions in the future. Among its supporters, however, Kosovo revealed growing frustration with a charter system rooted in the experiences of the Second World War and the Cold War, and increasingly unreflective of the new realities confronting the international community. With Kosovo the long simmering tension between the international community's commitment to the prohibition on the use of force, on the one hand, and global human rights protection, on the other, boiled over the constraints of the charter system.

The dispute over the ethics and legality of the Kosovo operation also encapsulated a decades-long debate among international legal scholars over the issue of humanitarian intervention. For their part, supporters of the Kosovo mission justified NATO's actions on several grounds. In rare cases it was argued that Kosovo was consistent with a close reading of the legal and moral principles of the charter (Mertus 2000; cf. Teson 1988: 134), but most supporters of a right of humanitarian intervention among legal scholars admitted that the Kosovo operation was in violation of the charter. However, they argued for a moral right of intervention, which can in certain circumstances override the legal prohibition against intervention (Caney 2005, Wheeler 2001; cf. Nardin and Slater 1986), and typically appealed to international support for the Kosovo mission as evidence of an evolving customary norm of intervention, custom being generally recognized as an important source of international law (Cassese 1999, Wheeler 2001, Scheffer 1992).³ Others maintained that state practice can legitimize intervention without Security Council approval, at least in the case of multilateral operations conducted by regional organizations such as NATO that bear some resemblance to the collective security provisions in Articles 52 and 53 of the charter (Glennon 2001: 199-204). Even if most legal scholars are wary to identify a "right" of humanitarian intervention in international law, many remain confident that there is an important customary norm emerging with legal or quasi-legal force.

Following Kosovo opponents of the presumptive "right of humanitarian intervention" argued that the very notion of such a right is contrary to the basic principle of consent underlying international law and a recipe for destroying the global security system that had more or less successfully preserved international peace for half a century (Jackson 2000, Coady 2005; cf. Franck and Ridley 1973).⁴ Others criticized

³ For the important role of customary practice in the development of international law, see Statute of the International Court of Justice (1945) Article 38.1, and the *Vienna Convention on the Law of Treaties* (1969) Articles 53 and 64.

⁴ In this context, it is worth noting that the large-scale human rights catastrophe began only after NATO took action to expel FRY forces from the province. This has led some to argue that the NATO military operation and the Rambouillet process that preceded it was essentially a *realpolitik* operation with the goal of removing or undermining Milosevic cloaked in the rhetoric of humanitarian idealism (Chomsky 1999: 81-103).

the inherent instability and even incoherence of a customary norm relating to international use of force and roundly excoriated what they took to be moral philosophy masquerading as international law (Hilpold 2001: 453, Orford 1999). Many developing nations, as well as permanent members of the Security Council including Russia and China, demanded that the international community reaffirm its commitment to sovereignty and non-intervention and voiced concern over the future possibility of politicized, neo-colonial interventions by the militarily dominant west. The post-Kosovo dispute between “charter purists” and “military humanists” threatened to produce an ever deepening schism in the international community as claims for an evolving norm of intervention promised to become ever more ambitious, while opposition to the legitimation of such a norm threatened to become increasingly intransigent. It is in this context that Canada assembled the *International Commission on Intervention and State Sovereignty*.

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In the aftermath of Kosovo, then Secretary-General Kofi Annan called upon the international community to build a new consensus on the issue of humanitarian intervention. He addressed the problem of the conflicted paradigm in international law in these terms: “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?”⁵ The Secretary-General’s appeal to the international community to articulate a vision of human rights protection that finds “common ground in upholding the principles of the Charter, and acting in defense of our common humanity” generated almost immediate responses from such venues as the *Independent International Commission on Kosovo* and the United Kingdom Select Committee on Foreign Affairs, which offered their own versions of the basis for international agreement on humanitarian intervention. However, arguably the most important contribution to the debate was the *International Commission on Intervention and State Sovereignty* (ICISS) established by the Government of Canada in September 2000. The explicit aim of the ICISS was to fashion the grounds for international consensus on humanitarian intervention by articulating a new definition of sovereignty emphasizing the role of human rights protection, or as the report termed it “human security”.

The ICISS Report of December 2001 is a remarkable document that highlights the moral, political, and legal challenges posed by intervention for humanitarian purposes in the changing international environment since the end of the Cold War. Its central claim is that the international community needs to rethink the implications of the modern doctrine of sovereignty and try to find a way to shift the terms of the debate from controversy over a “right of intervention” to a broad consensus on the “responsibility to protect” (ICISS: 19). According to the report, the responsibility to protect involves “the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation—but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states” (5-6). Only when the international community agrees to ground its relations on the principle of human rights protection can we declare with confidence that there will “never again be mass killings and ethnic cleansing”, and “no more Rwandas” (66).

The ICISS discovered the basis for this new humanitarian imperative in a number of sources including the moral obligations inherent in the concept of sovereignty, the Security Council’s responsibility under Article 24 of the charter to maintain “international peace and security”, the specific legal obligations placed on states by various human rights instruments, and perhaps most importantly post-Kosovo in the “developing practice of states, regional organizations, and the Security Council itself” (8). Thus, the report blended arguments drawn from both international law and state

⁵ See the Secretary-General’s “Address to the 54th Session of the General Assembly” in September 1999 and his “Millennium Report to the General Assembly” a year later.

practice and evolving custom in order to advance the central claim that in the event of massive human rights abuses “the principle of non-intervention yields to the international responsibility to protect” (7).

The majority of the report is devoted to formalizing the principles that should govern humanitarian intervention in the future. It is particularly conscious of the need to develop “consistent, credible, and enforceable” standards for just intervention including large-scale loss of life and large-scale ethnic cleansing, actual or apprehended. These threshold criteria would apply whether the proscribed actions were done with or without genocidal intent, and would operate even in the event of massive human suffering due to natural catastrophe (36). Humanitarian intervention would not, by these criteria, apply to human rights violations falling short of outright killing or ethnic cleansing such as systematic discrimination or political repression, and would not pertain to restoring democracy or to a nation’s efforts to rescue its own citizens from a conflict zone (37). Finally, the ICISS placed strong emphasis on the importance of preventive diplomacy, post-conflict reconstruction, and the creation of an early-warning monitoring system for incipient human rights crises.

The ICISS remained firmly wedded to the notion of the centrality of the Security Council in any viable security regime that could incorporate the responsibility to protect. While in this respect the ICISS remained charter-centric in approach, this did not prevent it from offering suggestions for improving the way the charter system currently operates. Perhaps its most dramatic reform proposal had to do with the difficult questions posed by the permanent member veto in the Security Council. One suggestion is that in a situation such as Kosovo in which the Security Council is hopelessly deadlocked by one or two permanent members, humanitarian intervention could be authorized by a two-thirds majority of an Emergency Special Session of the General Assembly under the “Uniting for Peace” formula loosely provided for in Articles 10 and 11 of the charter that provided the basis for UN operations in Korea, the Suez, and the Congo in the early Cold War period (47). Another striking proposal is that the permanent members of the Security Council adopt an informal code of conduct amounting to an agreement that on matters where its vital national interests were not claimed to be involved, a permanent member “would not use its veto to obstruct the passage of what would otherwise be a majority resolution” (51). While neither of these proposals fully addresses the deep structural problems dividing the charter use of force regime and international humanitarian law, they do serve as provocative suggestions of alternative means to approach issues of humanitarian intervention on an *ad hoc* basis.

Where the ICISS shows considerably less ambition, however, is with respect to the question of codification of humanitarian intervention. The report concludes that any immediate move towards an extensive program of codification is “premature” and most likely unhelpful (69). As such, it discouraged efforts to amend the charter or negotiate a multilateral treaty on humanitarian intervention. Rather the report recommends the considerably more limited aim of preparing a draft declaratory General Assembly Resolution embodying the responsibility to protect, and then devising a set of guidelines relating to intervention for internal use by the Security Council in its deliberations (69-70). While not excluding the possibility that further codification of humanitarian intervention may be possible once consensus has emerged around the idea of the responsibility to protect, the report generally avoids detailing what form such codification could or should take.

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The ICISS report is a great achievement of which Canadians may be rightfully proud. It provides a valuable articulation of the humanitarian principles around which the international community can conceivably coalesce in the coming years. In addition, its emphasis on preventive diplomacy and post-conflict resolution has proven prescient in a world traumatized by the events in post-invasion Iraq, and clearly foreshadowed recent moves at the UN to establish a “Peacebuilding Commission”.⁶ Moreover, the report’s practical proposals such as “constructive abstention” in use of the Security Council veto are now part of the broader global debate about Security Council reform.

However, one serious flaw in the report is its underestimation of the desirability and feasibility of codifying the principles of humanitarian intervention. While recognizing the need to fashion international consensus around the responsibility to protect, this paper submits that the ICISS was arguably too dependent on the notion of an evolving customary norm, and thus ignored the benefits accruing from efforts to negotiate a concrete legal regime that recognizes both humanitarian principles and the doctrine of consent. In crucial respects the ICISS operated within the conceptual confines of the prevailing paradigm of international law with many of the same internal tensions and conflicts that have haunted the international community for well over a decade. What is needed is a bolder effort to formalize and institutionalize changes in the use of force regime that will further harmonize the charter and international humanitarian law. What is needed is to build upon, but in important respects move beyond, the ICISS Report.

This paper proposes that Canada take the lead in an international effort to codify the principles of humanitarian intervention in a multidimensional process that will result in a new paradigm for international law. It will argue that this project is ambitious, but not inconceivable or fantastic. The aim is to remove as much as possible the ambiguity and instability in the international community’s approach to humanitarian intervention by replacing reliance on custom and state practice with a renewed dedication to the value of written law. While defenders of the notion of an evolving customary norm of intervention are quick to observe that custom is the second source of international law, it may be useful to recall that by every standard the first source is treaties.⁷ Moreover, international human rights law is especially reliant on multilateral treaties and conventions (Freeman and van Ert 2004: 54-5). Thus, the centerpiece of this proposal is a new convention on humanitarian intervention that departs from the model of traditional human rights instruments by establishing oversight and enforcement mechanisms more akin to the non-proliferation and arms control regimes than the human rights treaties with which we are familiar. Incorporating international humanitarian law into the charter use of force system through a treaty promises both to put teeth in human rights instruments and to legalize the sub- or quasi-legal.

⁶ See General Assembly Resolution 60/180 (2005) *The Peacebuilding Commission*.

⁷ ICJ Statute (1945) Art. 38.1 identifies “international conventions” as the first source of international law and “international custom” as the second.

The aversion to ambitious codification demonstrated by the ICISS is by no means anomalous in the field of international law. Indeed, a considerable majority of legal scholars share a similar skepticism about the desirability and feasibility of codifying humanitarian intervention (Glennon 2001: 190, Stromseth 2003, Freeman and Van Ert 2004: 530, Nardin and Slater 1986: 92-5). Moreover, even among the small group who support codification, there is little agreement about the proper extent of such a program or the form codification ultimately can, or should, take (Burton 1996, Tyagi 1995, Hoffman 1996). Thus, for the sake of clarity, it is perhaps useful to lay out this paper's fundamental assumptions about the salutary effects of codification on international humanitarian law.

The primary normative assumption underlying this paper's proposal for codification relates to the importance of the subject of humanitarian intervention. As the ICISS discovered in its consultations and the recent adoption of Security Council Resolution 1674 seems to confirm, since the humanitarian disasters of the 1990s there is broad, if not universal, support for the idea that an international system based entirely on respect for sovereignty is no longer morally acceptable (Tyagi 1995: 887). Second, this proposal anticipates the many positive effects codification has on the legitimacy of international law, not least of which is the benefit of clarity and precision over the often amorphous nature of custom. The stabilizing effect of codification lies not only in the more stringent logical necessity of textual interpretation than in customary claims, but also in the element of negotiation and consent implicit in any meaningful effort at codification. As such, it is not surprising that one enduring goal of the UN embodied in the International Law Commission is the "progressive development and codification" of the principles of the UN as an important means to "secure their more effective application within the international community".⁸

The third fundamental assumption is that formalizing the practice of humanitarian intervention serves to curb potential abuse. This paper endorses the basic premise of the charter system that international use of force is too serious and potentially destructive a matter to leave entirely to ambiguous customs or the discretion of individual states or alliances. While custom can play an important role in signifying consent in domestic political arrangements and in some matters of international relations, the terrible conflicts of the twentieth century and the astonishing military technology of our own suggests that the benefits of custom are much weaker with respect to global human rights protection. The obvious danger underlying the argument for customary law is the tendency to collapse power and right, i.e. humanitarian intervention is justified if strong nations do it without facing sanction. The ultimate aim of this codification proposal is to stabilize consensus on intervention and in the process reestablish international consent on the use of force that has been badly strained by events since the end of the Cold War.

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⁸ *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, U.N.GAOR, 25th Sess., Res/2625 (1970).

This paper proposes that Canada and the broader international community build upon the momentum generated by the recent adoption of the responsibility to protect in the Security Council by pursuing a strategy for further codification in a graduated and modulated process involving three possible forms with varying degrees of difficulty and significance. The first step is to follow the ICISS recommendation to encourage the drafting of a General Assembly Resolution affirming the responsibility to protect. This form of codification is probably the easiest to attain because it only requires the support of a bare majority of states in the General Assembly. However, what it gains in terms of feasibility, the General Assembly Resolution loses in terms of effectiveness as an instrument of human rights protection (Burton 1996: 445-6). While General Assembly Resolutions are only statements of international opinion on an issue and are not legally binding, proposing this resolution could play an important role in assuaging the concerns of several nations that expressed reservations about supporting Security Council Resolution 1674 prior to consideration of the responsibility to protect in the full General Assembly. Moreover, historically these resolutions have often been a preparatory stage for later drafting of a multilateral treaty or international convention. For instance, the Genocide Convention and the *Non-Proliferation of Nuclear Weapons Treaty* both began their illustrious careers as humble General Assembly Resolutions.⁹

The second form of codification involves amending the UN Charter in order to incorporate some notion of humanitarian intervention into the responsibilities of the Security Council. Amending the charter goes far beyond the ICISS recommendation to draft guidelines for internal use in a semi-reformed Security Council. In this instance the ICISS caution about “premature” codification is partly warranted. Amending the charter is a very difficult process and has been done only very rarely since 1945.¹⁰ It requires a two-thirds majority in the General Assembly and agreement by all five of the permanent members of the Security Council (Art. 108). In effect a charter amendment proposal can be vetoed by a single nation. Thus, a charter amendment involving humanitarian intervention is probably feasible only after international support has solidified behind a workable legal regime that harmonizes international humanitarian law and the charter use of force system. While it may be premature to make direct efforts to amend the charter, the *Independent International Commission on Kosovo* (IICK) offers provocative suggestions as to how and with respect to which specific articles, the charter may be amended to enhance the role of human rights protection in the system of collective security.¹¹ At the very least, it is not too soon to begin reflecting on this possibility.

The centerpiece of this paper’s proposal involves the drafting of a multilateral treaty or *International Convention on the Right and Responsibility of Humanitarian Intervention*. The virtue of pursuing this policy is that, unlike charter amendment, treaties are not subject to veto power and have considerably more legal force, at least *in potentia*, than General Assembly Resolutions. However, we propose the negotiation of

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⁹ See *Declaration on the Crime of Genocide*, U.N. GAOR, 1st Sess. Res/96 (1946) and *Declaration on the Non-proliferation of Nuclear Weapons*, U.N. GAOR, 20th Sess. Res/2028 (1965).

¹⁰ The UN Charter was amended only five times in over 50 years (Burton 1996: 441-2).

¹¹ By way of amendment, the *Kosovo Report* recommends adding the phrase “ensuring respect for human rights” to the text of Articles 1, 24 and 39 that describe the function of the Security Council (IICK 2000: 196-7).

a treaty that differs markedly from traditional human rights instruments. In order to understand the transformational character of our proposal, it may be useful first to recall the basic features of international humanitarian law.

There are two fundamental pillars of international humanitarian law relating to the treatment of civilians in conflict. Perhaps most famously, the Genocide Convention of 1948 defines the crime of genocide as any effort or intention to destroy in whole or in part “a national, ethnical, racial or religious group”, and it lists five prohibited actions including large-scale killing, maiming, and prevention of births among a given group (Art. 2). The convention establishes the principle of universal jurisdiction and all parties to the agreement are obliged to extradite suspected *genocidaires* to face judgment in the state in which the act was committed or before an international tribunal (Arts. 6, 7). Strikingly, beyond this pledge of extradition there is no legal obligation on states to prevent or intervene to stop genocide in another country (Edwards 1981: 307; Lippmann 1998: 505). Any contracting party may, but is not obligated to, call upon “competent organs” such as the Security Council to consider appropriate measures to stop or prevent genocide, but these organs are under no obligation to act (Art. 8). There is no reliable oversight agency or clear enforcement mechanism built into the Genocide Convention. The tragic irony about complaints from some quarters that western leaders avoided using the term “genocide” to describe events in Rwanda in 1994 for fear of triggering an obligation to intervene is that legally speaking there was none. Despite its great symbolic importance in focusing international moral disapproval on severe human rights abuses, the Genocide Convention is in many respects a toothless tiger.

The other foundation of international humanitarian law is the Geneva Conventions of 1949 and the two Additional Protocols of 1977. With respect to the protection of civilians in conflict two provisions stand out. First, Common Article 3 of the 1949 Conventions states that in international conflict all “persons taking no active part in hostilities...shall in all circumstances be treated humanely” (Art. 3.1). This article also lists a number of acts that are prohibited with respect to such protected persons including extra-judicial executions, taking of hostages, murder, torture, and “outrages upon personal dignity” (Art. 3.1). Protocol II of 1977 builds upon Common Article 3 and applies its measure of minimal standards of treatment of civilians to conditions of intra-state or non-international conflict (esp. Arts. 1, 4). Common Article 3 and Protocol II are widely recognized as milestones in the long march of international human rights protection. Protocol II in particular stands as an important stage in the codification of international humanitarian law adapted to the present day realities of civil strife and guerilla warfare (Maogoto 2004: 113). In both treaties the international community recognized, however vaguely, certain rights the individual holds against the state, even one’s own state.

However, the limit of this claim of protected persons is obvious inasmuch as the Conventions emphasize desirable minimal standards of treatment rather than enforceable rules (Maogoto 2004: 128-9). From the beginning of the United Nations, the Geneva track of international humanitarian law was structurally detached from the New York track of Security Council control over the use of force. Thus, even as the international community comes to agreement in principle that massive human rights abuses constitute a direct violation of the spirit of the UN, there will be little progress on the issue of humanitarian intervention if New York and Geneva continue to form parallel universes.

The most pressing challenge facing the international community today with respect to the issue of humanitarian intervention is the need to integrate New York and Geneva, the security and humanitarian dimensions of the UN system. Security Council Resolution 1674 is a vital first step in this direction inasmuch as it affirms the council's intention to treat humanitarian crises as a serious security matter. Indeed the protection of civilians in armed conflict has been an item on the Security Council's agenda at least since 1999.¹² However, while these resolutions reflect an understanding of human rights protection that now includes potential intervention, they remain statements of principle subject to the discretion of the council members on an *ad hoc* basis. Despite the achievement in formal recognition of the responsibility to protect by the Security Council, the aim of establishing a legal regime for humanitarian intervention to which the broader international community has given explicit consent remains elusive.

We propose that this goal can be advanced through the negotiation of a multilateral treaty that has among its central planks the notion that sovereignty is conditional on state behavior and establishes a prominent role for the Security Council in human rights protection. In this respect, our proposal differs from Stanley Hoffman's controversial treaty proposal from 1996. Under Hoffman's plan collective humanitarian intervention into one treaty state could be authorized by a qualified majority of signatories (Hoffman 1996: 25). While this proposal had the virtue of doing an end-run around the sticky problem of the Security Council veto, it suffered from the fact that it more or less creates a separate international security system independent of the charter. In contrast, our proposal works to further integrate international humanitarian law into the charter system. Following the model of the *Non-Proliferation of Nuclear Weapons Treaty* of 1968 (NPT), this paper proposes a treaty whereby the signatories agree to oversight of their human rights protection performance including potentially intrusive inspections by the Office of the UN High Commission for Human Rights (UNHCHR) and the Special Advisor for the Prevention of Genocide (SAPG). They further agree to a process in which instances of serious human rights abuses may be referred by these agencies directly to the Security Council for consideration under Chapter 7 of the charter for intervention that could take the form of the creation of no-fly zones and safe areas, or the insertion of peacekeeping and military forces to end the slaughter of civilians. Only with the inclusion of these key provisions is it possible to establish the enforcement mechanisms manifestly lacking in traditional international human rights treaties.

Although it is not the intention of this policy paper to prejudge the treaty negotiation process, the main features of such a treaty would preferably include the following elements. First, the treaty should affirm the signatories' endorsement of the responsibility to protect articulated in a General Assembly Resolution to that effect. Second, the substantive provisions of the treaty should incorporate the fundamental

¹² See for example SC Res 1265 (1999), SC Res 1296 (2000), and SC Res 1366 (2001).

principles of the Genocide Convention, Common Article 3, and Protocol II into any definition of the kind of severe human rights abuses that would warrant intervention. The advantages of this approach are that it builds upon pre-existing standards of human rights protection already agreed to by a majority of states, and that the minimal standards in these instruments reduce the likelihood of overly politicized interventions for regime change or for human rights violations falling short of serious physical harm.¹³ The guidelines and threshold criteria for intervention would also be open for negotiation but could be expected to include many or most of those recommended by the ICISS, especially the emphasis on severity of harm, the insistence on multilateralism, clear and limited rules of engagement for intervening forces, and the prudential consideration of likelihood of success.

The third vital ingredient in this treaty is institutionalizing the oversight role of the UNHCHR and SAPG. Created as part of the UN's effort to adapt to the changing conditions of the post-Cold War era, these agencies are currently responsible to the General Assembly and the Secretary-General. This treaty would establish a direct relationship between the Security Council and two of the UN's premier human rights watchdogs. In effect, under this proposal they would play a similar role in a humanitarian intervention treaty to that played by the International Atomic Energy Agency (IAEA) in the non-proliferation regime. They would watch, inspect, and report on severe human rights abuses—and these reports would have weight. A logical corollary of this treaty would be the need to enhance the capabilities of these agencies.

Finally, one of the clear strengths of this treaty proposal is that it recognizes the broad international agreement that any workable law on humanitarian intervention must retain a central role for the Security Council (ICISS: 49). This treaty would still leave room for creative ideas to deal with the problem of the permanent member veto such as constructive abstention or the idea of a nine vote override of any veto by a single permanent member. Moreover, the possibility of incorporating some version of the General Assembly "Uniting for Peace" formula in the text of the treaty as a fall back position in extreme cases of intransigence by a single permanent member, while certainly controversial, should not be entirely removed from negotiations. What is clear, however, is that this treaty would confirm and strengthen the longstanding prohibition against unauthorized unilateral intervention. This treaty would try to preserve the stabilizing effects of the current system, even as it seeks to adapt it to the current reality of humanitarian possibilities.

One predictable criticism of this treaty idea is that it would have little effect because only states truly committed to human rights protection would ever sign it. While the politics of ratification is the subject of the following section, it may be useful now to offer a few direct responses to the self-selection problem. First, non-signatories would likely face considerable pressure by the international community to sign on to the treaty. That this is no hollow threat can be seen by the number of states who, albeit

¹³ Likewise, this treaty could clarify that violation of social, political, and economic rights such as those defined in the two 1966 Conventions do not constitute grounds for humanitarian intervention. See Scheffer (1992: 265) and Teson (1988: 15) for an extreme version of the right of humanitarian intervention that includes for purposes of regime change and overthrowing dictatorships.

reluctantly, signed on to the Genocide Convention, and even in the recent announcement by Sudan, no less, of its intention finally to sign Protocol II of the Geneva Conventions. Second, the treaty could include important incentives for states to sign on. Much as the Non-Proliferation Treaty includes a promise of assistance to non-nuclear weapons states for developing the peaceful use of nuclear energy, so too could this treaty tie a share of development aid and international assistance to a state's willingness to sign the convention on humanitarian intervention. While no international treaty can ever completely avoid the self-selection problem, the effect of this proposal would be far from nugatory.

Other common criticisms of the idea of codifying humanitarian intervention include the argument that treaty law is less flexible than customary norms, that codification would necessarily aim at the lowest common denominator, that a law on humanitarian intervention would invite abuse by providing additional justification for unwarranted interventions, and finally that the issue of humanitarian intervention is not ripe for codification (Stromseth 2003: 255-7). This paper finds these objections unpersuasive for several reasons.

First, the international input involved in the treaty negotiating process would provide for some measure of flexibility with regard to the working provisions for intervention. In addition, while there would be some restriction of the freedom of action available in the current *ad hoc* model, the Security Council would still play a crucial role in deliberating about the desirability and feasibility of intervention in specific circumstances. Second, while there is some truth that any treaty on humanitarian intervention would seek a common denominator, this is not in itself problematic since the concept of the responsibility to protect is not meant to be a formula for good government, but rather a statement of minimal standards of human rights protection. It is possible, however, that this treaty would have the effect of energizing the international human rights community, especially local human rights groups in states with a record of abuse, by institutionalizing the role of non-governmental organizations in reporting to, and working with, the UNHCHR (Ignatieff 2001: 30-7, Tyagi 1995: 908). In this sense, a treaty on humanitarian intervention could have a similar effect to what the Helsinki Accords had on human rights groups in the Soviet bloc in the last decade of the Cold War. It would be an internationally recognized standard of basic human rights guarantees to which endangered peoples may refer in relation to their own governments.

Third, treaty law on humanitarian intervention would reduce, rather than increase, the potential for abusive interventions. The international involvement in the negotiating process would have a stabilizing effect on customary practice and provide greater durability and legitimacy to interventions that meet strict criteria, and conversely would discourage or at least highlight unwarranted interventions. Is the issue of humanitarian intervention ripe for codification? Every major advance in the codification of international human rights has followed on the heels of some catastrophe. The Genocide and Geneva Conventions responded to World War II and the Holocaust (Lippmann 1998: 451-3), while Protocol II emerged from the terrible civil and colonial wars of the Cold War. In the aftermath of Rwanda, Bosnia, Congo, and now Darfur in the post-Cold War period, one shudders to think what more would be needed to produce ripeness for the issue of humanitarian intervention, if it is not already.

What are the prospects for concluding a convention on humanitarian intervention? As we have seen, the assumption of the ICISS and the majority of international law scholarship is that codification of the kind envisioned in this policy paper is unrealistic, or at the very least premature, as the highly-charged politics surrounding humanitarian intervention evident in the conflicting attitudes of the developed and developing world indicates that there is no genuine global consensus on the issue. This paper disagrees with this assessment and offers four reasons why the idea of an *International Convention on the Right and Responsibility of Humanitarian Intervention* is more than a mere thought experiment. These include the graduated and progressive character of the proposed codification effort, the changing attitudes globally towards humanitarian intervention since the end of the Cold War, the broad attractiveness of an inclusive treaty negotiating process, and the increased likelihood of establishing new international humanitarian law in the context of the larger pattern of UN reform proposals in recent years.

First, the degree of opposition to codifying humanitarian intervention is crucially dependent on both the degree of change to the existing security regime and with respect to substantive matters pertaining to the treaty itself. The consultative process established by the ICISS and IICK as well as broad support for Security Council Resolution 1674 indicates the willingness among many states, including developing nations, to discuss the matter seriously. The codification program proposed in this paper is a graduated and modulated process designed to move international human rights protection from symbolic gestures and hortatory appeals gradually toward instruments with more substantive legal bite. In each stage of the process there is ample time and fora to focus international attention and gather support by building trust and cooperation among nations with initially divergent positions on the issue.

The very gradualness of the codification program outlined in this paper assures the international community that the aim is to build consensus on an issue of shared concern, not to impose one set of values on others who are unconvinced of its merits. Moreover, the idea of progress advanced in this paper is not contingent on the success of the entire package of codification proposals. Given the present paucity of law on humanitarian intervention and the instability produced by the prevailing notion of an evolving customary norm, each stage of the process would be a signal achievement of its own. In the 1980s the idea of an International Criminal Court (ICC) must have looked utterly unrealistic, but the bloody conflicts of the post-Cold War period and the creation of international criminal tribunals for Rwanda and the former Yugoslavia arguably prepared the international community to take the bold step embodied in the 1998 Treaty of Rome that established the ICC.

Second, while critics of codification typically assume that opposition to this idea is static and deeply rooted, we suggest that global attitudes toward humanitarian intervention are more fluid than the critics believe, and have changed dramatically since the killing fields of Rwanda and Srebrenica. As the open debate on Security Council Resolution 1674 indicates, even long-standing critics of humanitarian intervention such as Russia and China no longer find it publicly defensible simply to dismiss the responsibility to protect. Traditional opposition to humanitarian intervention in the developing world grew out of a commitment to the general principle of non-intervention that had more to do with the context of the Cold War

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and decolonization than with intrinsic opposition to the idea of international human rights protection. However, in both the West and the developing world the effect of the humanitarian disasters of the 1990s has been a growing trend toward accountability for states and leaders guilty of war crimes and crimes against humanity, as can be seen in the cases of Slobodan Milosevic, Charles Taylor, Augusto Pinochet, and the *genocidaires* in Rwanda.

In the West in particular support for the military operation in Kosovo and the current controversy surrounding Darfur suggests heightened expectations about human rights protection among both governments and the public. While United States' support for further codification of the responsibility to protect is hardly guaranteed, rejection is likewise not inevitable. American endorsement of Security Council Resolution 1674 and the US role in focusing attention on the crisis in Darfur seem to indicate a willingness to engage the international community on the issue of humanitarian intervention. Whereas US opposition to the International Criminal Court and the landmines convention is rooted in concerns about current military doctrine and the potential legal liability of US military personnel, there is no obvious reason why these concerns would extend to a treaty on humanitarian intervention. Indeed, in the wake of the extended war in Iraq future American administrations may be more willing to establish a legal framework for multilateral interventions than in the years immediately following 9/11. At the very least, codification of humanitarian intervention would appear to be the logical extension of a moral sentiment toward the responsibility to protect among the American public that may prove hard to ignore in the future.

However, it is in the developing world that perhaps the most dramatic change of attitude has occurred in recent years. Kosovo raised serious concerns in the developing world that the logic of customary law facilitates aggressive and even neo-colonial interventions by the western powers, as can be seen by the harsh condemnation by many developing nations of the NATO operation unauthorized by the Security Council (Glennon 2001: 181-4). Moreover, in large parts of the developing world, the 2003 US-led invasion of Iraq and the unilateralist themes in the Bush National Security Strategy of 2002 has had the effect of further entrenching opposition to the principle of military interventions outside of the charter system. However, the legacy of Kosovo and Iraq is not an argument against codification *per se*, as these events appear to have brought some developing nations to the conclusion that they would welcome the opportunity to establish a legal foundation for humanitarian intervention that would place clear internationally recognized constraints on the practice and actually strengthen the commitment to the general principle of sovereign equality in the charter.

It would be a mistake to underestimate the profound impact that the genocide in Rwanda has had in changing African attitudes in particular toward humanitarian intervention. In addition to the sheer moral revulsion against the genocide, another legacy of Rwanda has been a growing sensitivity among African states to the transnational impact of severe humanitarian crises. Most Africans do not need to be reminded that the dissolution of Zaire and the horrific civil war in its successor state, the Congo, was a direct result of the overflow of the conflict in Rwanda. This awareness of the destabilizing effects of severe human rights abuses in one country producing chaos in an entire region lies behind much of central Africa's response to the current crisis in Darfur, which has already spread beyond Sudan and threatens to engulf neighboring Chad and the Central African Republic. In direct contradiction to the

conventional wisdom of opponents of humanitarian intervention, not only were African states such as Benin and Tanzania among the most vocal supporters of Security Council Resolution 1674, it is Nigeria and the majority Muslim nation of Senegal that are currently leading the call for a more robust international peacekeeping intervention in Darfur.¹⁴ Given the twin effects of Rwanda and Iraq, much of the developing world may be considerably more open to the idea of codifying and regularizing humanitarian intervention than it has ever been before.

Third, perhaps the most important factor in the changing politics of humanitarian intervention that contributes to the feasibility of codification is the negotiation process itself. Any serious effort to draft an international convention on the issue would need to engage the developing world and traditional skeptics such as Russia and China in a discursive process of negotiation. In any genuine treaty negotiation the developed and the developing world may find more common ground than is typically supposed. Indeed, the real fear of developing nations may not be towards the principle of codifying humanitarian intervention, but rather to being forced passively to accept western attempts to incorporate radical theories of popular sovereignty and moral forfeiture of sovereignty, so fashionable in international law circles, into a new understanding of “revolutionary legality” (Tyagi 1995: 887, Burton 1996: 434). Needless to say, the more extreme versions of the right of humanitarian intervention would probably not survive long in any international conference, nor perhaps should they. The sensitivities and concerns about humanitarian intervention in the developing world can and should be addressed, however such issues are quite possibly for the most part soluble in a forum such as a treaty negotiation process in which the developing world has meaningful access and input. Moreover, as full participants in the negotiation process, the governments of developing states are likely to feel a sense of ownership in the final legal product, and thus be more willing and able to sell it to their own publics.

Finally, the politics of humanitarian intervention must be understood in the broader context of the general spirit of UN reform in the post-Cold War era. This larger context includes wide international support for the notion of punishing human rights abusers and war criminals through the ICC and the various international criminal tribunals for Rwanda, Yugoslavia, and Sierra Leone. Moreover, the spirited debates in the international community about the future direction of Security Council reform suggest a climate of openness to change and innovation in which codification of humanitarian intervention is more likely to succeed than in times of retrenchment. Even longstanding but unrealized goals such as the establishment of a UN volunteer force and a genuine Military Staff Committee, practically impossible during the Cold War, may now be more feasible and could be integrated into a treaty on humanitarian intervention (Caney 2005: 252-3, Unterseher 2005: 152-56). In the spirit of our age, it is a mistake to believe that attitudes toward humanitarian intervention, or a host of

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¹⁴ See for instance “Sudan: Contaminating the Neighbours.” *The Economist*, November 11, 2006: 54; “Sudan open to limited UN in Darfur: Senegal President.” Serigne Adama Boye, *Canoe-Network—CNEWS*, November 14, 2006; and “Nigeria Leader Warns Africa about Strife in Darfur.” *New York Times*, October 11, 2006: 14.

other issues, have hardened beyond the point of reconciliation. Indeed, the striking thing today is that there is no single dominant orthodox view on humanitarian intervention. In a time of transition, the international community is confronted by possibilities that are both challenging and liberating. In the dynamic process of global transformation, the prejudices and privileges of the past are perhaps the very things we should least take for granted.

CONCLUSION: THE ROLE FOR CANADA

Canada's diplomatic expertise and international reputation as an innovator in the field of human rights protection mean that it is ideally suited to take a leadership role in codifying humanitarian intervention. Canada's experience in developing the idea of peacekeeping in the 1950s, and more recently its central role in creating the ICC and the International Convention on Landmines, the "Ottawa Convention", indicate that Canada has the special habit of helping to achieve the unlikely, if not impossible. Even many Canadians are probably unaware of our nation's important contribution to the successful negotiation of Additional Protocol II to the Geneva Conventions in 1977, a milestone in the development of international humanitarian law (Forsythe 1978: 278). Canada's unique role in the codification of humanitarian intervention lies in its capacity to be both a catalyst for change and its ability to play the facilitator role of a widely respected honest broker with impeccable internationalist and humanitarian credentials. International recognition of Canada's profound commitment to facing the great human rights challenges of our time can be seen in the appointment in recent years of Canadians to head the ICC and the Office of the UN High Commission for Human Rights. Canada's dedication to international human rights has been tested and proven in the crucible of ethnic cleansing and genocide in the 1990s, and can be seen in ample evidence in the work of the ICISS, which will undoubtedly be remembered as a proud moment in the history of Canadian foreign policy.

This policy paper has presented a proposal to build upon the work of the ICISS and to help deepen the international community's commitment to human rights protection for the most vulnerable victims of war and persecution. It calls upon the Canadian government to employ its diplomatic skills and global credibility to commit to do a number of things. First, Canada should propose or support the drafting of a General Assembly Resolution providing a declaratory statement of the international community's endorsement of the responsibility to protect. Second, Canada should submit a proposal to the Codification Division of the International Law Commission to begin the process of convening an international conference for negotiating a multilateral treaty establishing the legal foundation for the rights and responsibilities of humanitarian intervention. Canada should offer any support it can provide for the negotiation process by drawing on the immense intellectual and material resources of the country, especially in the various levels of government, the universities and colleges, the policy institutes, non-governmental organizations, and the media. Third, Canada can offer a draft proposal of general guidelines for humanitarian intervention based on the ICISS recommendations that can be adopted informally by the Security Council. Finally, Canada can develop a long-term strategy for mobilizing international support for amending the charter to include explicit statements about the UN and especially the Security Council's role in international human rights protection.

In the course of the long struggle to balance humanitarianism and the international rule of law, it is perhaps useful to recall Max Weber's sobering dictum that "Politics means slow, strong drilling through hard boards" requiring "both passion and a sense of judgment" (Weber 2004: 269). While the ultimate effects of our efforts to codify humanitarian intervention may not become apparent for a generation, the need for action is immediate. In an increasingly interconnected world it is hard to imagine a foreign policy issue with more relevance for Canada than humanitarian intervention. That is to say, an issue that speaks more directly to our interests and our values.

Canada's unique role in the codification of humanitarian intervention lies in its capacity to be both a catalyst for change and its ability to play the facilitator role of a widely respected honest broker with impeccable internationalist and humanitarian credentials.

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The author would like to thank the anonymous referees of the SIPP Public Policy Paper series for their comments on an earlier version of this article.

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