

Opening Statement

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(Check against delivery)

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Thesis

My thesis will be that protecting civilians in armed conflict is morally necessary, physically possible and militarily smart.

Introduction

I will try, briefly, to set the stage for others more knowledgeable than I am.

We decided to begin the conference with a kind of information session on International Humanitarian law and UN resolutions and actions,

with our discussions led by people with considerable expertise and experience in the subject.

In my own experience, at least, while all of us have a general knowledge of these issues, many of us, including me, do not have a detailed grasp of them.

Then we propose to discuss the more particular issue of protecting civilians in the Middle East.

Pauline has spoken to you about the purposes of this conference.

They are pretty straightforward, undoubtedly important and possibly achievable;

What we do achieve depends on you, the participants.

We are not here to try to launch a private peace process; we will leave that to the statesmen and women who at least appear to be trying, again.

If despite the odds, current efforts succeed, they will make what we do here redundant,

But no one would complain.

In the meantime, we are better advised to persevere here to try to make a small, but positive, contribution to the effort to improve how civilians are treated.

We are not here to judge whether the reasons given by the warring parties for a given conflict are just or whether the resort to force is legal.

Every person in this room will have an opinion, in all probability a strong one, and in many cases a valid one, which will inevitably colour our discussions.

But resolving those issues is beyond our capacity, and our mandate, and arguing over them here would risk our missing the opportunity to make a modest but worthwhile contribution.

Rather, I hope you will agree that inasmuch as conflicts do happen, the UN Charter notwithstanding, and that civilians are victimized, customary international law notwithstanding,

Our purpose in coming to Istanbul should be to see whether we can, cooperatively,

- address ourselves constructively to the task of promoting the protection of civilians caught up in conflict
 - and limiting their suffering,
 - whatever side they are on
 - and whichever side history might one day find was justified in whichever fight.

In technical terms, our primary purpose is to talk about *Jus in Bello*, rather than *Jus ad Bello*,

that is not whether one side or another is right or wrong to go to war

but how it treats civilians in that war, or conflict.

We have no illusions about how difficult matters have become in the Middle East.

Not even the most blue-eyed outsider would sail confidently into the treacherous tides, rip-tides and undercurrents of Middle Eastern waters.

But two facts motivate us to risk bringing people together to discuss these issues.

1. **Hardly** a day goes by in the Middle East when the day before does not seem like a better time to do something than the day after—to see the light at the end of this tunnel, it often feels that you have to look backwards.
2. **Never** a day goes by in the Middle East when civilians are not killed and maimed and otherwise abused.

And we presume that you have agreed to take time out from your busy lives to come here because you, also, think it's worth a try to see whether we cannot make a contribution to protecting civilians.

A Bit of History

Depressing as current circumstances can be, it is not as though humanity has learned nothing from the gruesome experiences of the past.

There has been progress—plenty in fact—even though we have learned history's lessons imperfectly and slowly—and suffer from a kind of collective legal amnesia when the shooting starts.

From the beginning of warfare to the advent of contemporary humanitarian law, over 500 cartels, codes, covenants, treaties and other texts have been written to try to regulate hostilities.

About four millennia ago, Hammurabi, one of the earlier law-givers, is said to have said that he established his “Code” “to prevent the strong from oppressing the weak.”

The Bible and the Koran, also, advocate respect for the adversary in conflict.

In the 13th Century, when the Arabs ruled Spain, the *Viqayet* was written and contains a code of war.

Following the Christian reformation, the Dutchman Grotius in 1625 laid the basis for international humanitarian law, including the Theory of Just war, including *jus in bello*, (justice in the conduct of war) which we are talking most about here.

More contemporary international humanitarian law dates from the middle of the 19th Century when the original Geneva Convention laid out written rules of universal scope to protect the victims of conflict.

Then came the Hague Conventions, to limit warfare to attacks on objectives relevant to military outcomes, attempting to make the civilian population immune from attack.

The First World War illustrated why advances in humanitarian law were urgently needed

- 10 million people died, with the ratio of soldiers to civilians of 10:1—

Following the war, the use of poisonous gas was outlawed,

- a prohibition that has, with a small number of notable exceptions, notably by Saddam Hussein against Kurds, been widely respected.

But with the advance of other killing technology and of democratization of the military, the number of dead in the Second World War climbed to as high as 60 million people.

- the soldier-civilian ratio was 1:1

More recently, in conflicts in the Eighties and Nineties, civilians have become targets of choice in war

- and the soldier-civilian ratio has at times reached almost 1:10.

If we do not learn the lessons of history, to paraphrase Santayana, we will be condemned to repeat them, but not as farce, rather as tragedy.

Fortunately, we have learned from the past—just not well enough, yet.

In light of the experience in World War II, notably the use of nuclear weapons in Hiroshima and Nagasaki, and the carpet-bombing of British and German cities—about which there is an emotional controversy brewing in Canada regarding our role—

the international community has made several enormous strides forward, at least normatively.

To name only some of the most prominent steps.

- The UN Charter, which outlaws war, except in explicitly limited circumstances
- The Genocide Convention
- The Four Geneva Conventions of 1949 and their two “Additional” 1977 Protocols, which strengthened the protections for victims of conflict
- The Non-Proliferation Treaty
- The Biological and Toxin Weapons Convention
- The Chemical Weapons Convention
- The Convention against Torture
- The Convention on the Rights of the Child
- The UN Tribunals and the International Criminal Court

The Geneva Conventions and Protocols

The four Geneva Conventions of 1949 and their Additional Protocols of 1977, contain almost 600 articles and are the main instruments of International Humanitarian law.

The 1949 Conventions have been ratified by 191 countries, including all the governments of the people in this room, including the Palestinian Authority.

Article 3, common to all four of the conventions, is a kind of mini-treaty and represents the minimum standard with which belligerents, including non-state belligerents, must comply

Additional Protocol I of 1977, relating to the protection of civilians in the time of war (between states) has been ratified by 161 states, and the Palestinian Authority, but not Israel, the US, Turkey and Iran.

Additional Protocol II of 1977, relating to the protection of victims in non-international armed conflicts, has been ratified by 156 countries, not including Israel, Turkey, Iran and the United States, although it was signed by the latter two, i.e., Iran and the US.

According to the ICRC, there are seven fundamental rules which are the basis of the Geneva Conventions and the Additional Protocols.

The following are excerpts.

1. The lives and moral and physical integrity of persons hors de combat and those who do not take a direct part in hostilities must be respected.
2. It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.
3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment.
4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and religious convictions.
5. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.
6. Employing weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering is prohibited.
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilians and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

Given the difficulty in modern warfare in distinguishing between combatant and non-combatant, observing these rules is easier said than done.

The UN and the Protection of Civilians

My personal acquaintance with this issue began in the late 90's, in the wake of the genocide in Rwanda and the slaughter in Srebrenica, when Canada began to promote our human security agenda.

That resulted in, among other things, the Ottawa Landmines Convention, the International Criminal Court and the Responsibility to Protect (R2P).

Since the tragic events of the Nineties,

above all Rwanda, but also Bosnia, especially Srebrenica
the UN has made civilian protection a central focus of its work, with greater and lesser success.

Hansjeorg Strohmeier will discuss this emphasis in greater detail.

I will confine my comments to the Responsibility to Protect (R2P), which is a related idea.

In 1999, Secretary-General Kofi Annan posed the question of how,

if humanitarian intervention was an unacceptable assault on sovereignty,
the world should respond to brutal inhumanity perpetrated by a state on its own citizens.

The Canadian Government, led by then Foreign Affairs Minister Lloyd Axworthy, appointed an independent commission, led by Gareth Evans and Mohammed Sahnoun, to answer Kofi Annan's question.

The commission did so by shifting thinking in two ways:

1. by reminding states that sovereignty was about responsibilities as well as rights, notably the responsibility of a state to protect its citizens, and
2. by asserting that in cases where a sovereign could not or would not protect its citizens, or was itself perpetrating evil on its citizens, the responsibility to protect them shifted temporarily to the international community.

The bar for actual was set very high;

- the effective trigger is war crimes, crimes against humanity and genocide.

In practice, the Responsibility to Protect means the international community reacting effectively in situations where genocide, ethnic cleansing, war crimes and crimes against humanity are currently occurring or imminent.

But it also means preventing situations, not yet at that conscience-shocking stage but capable of reaching it, from deteriorating into widespread destruction.

And it means rebuilding societies shattered by such catastrophes to ensure they do not recur.

The action required by R2P is overwhelmingly, preventive: building state capacity, remedying grievances and ensuring the rule of law.

But if prevention fails, R2P foresees whatever measures-- economic, political, diplomatic, legal, security, or in the last resort military -- become necessary to stop mass atrocities from occurring.

Ambassadors of less powerful UN member countries feared that R2P could become a license for too much intervention

Others, mostly world-weary UN hands, feared there would be too little.

“Selling” R2P was difficult at the UN, especially in the wake of the Iraq war and the belated attempt by the US to evoke R2P to justify it.

But there is nothing so powerful as an idea whose time has come.

The Responsibility to Protect doctrine was adopted at the UN Millennium Summit in September 2005 and endorsed by the Security Council in April 2006.

Still there is much yet to do if Responsibility to Protect is to proceed from resolution to norm to law.

There is some “buyer’s remorse” at the UN on this question and some governments would go backward if they could.

They fear that R2P

is only about military intervention,

or is about the protection of everyone from everything, e.g., climate change

or is about responding to any and all human rights abuses,

or requires intervention in every case of widespread abuse.

In fact, there are prudential criteria, derived in significant part from Grotius, that must be met before the R2P is triggered,

not least whether intervention could be expected to make things better or worse for the affected civilians.

A Look Ahead

The idea of protecting civilians is often regarded cynically, even patronizingly.

Some believe that it is more of a feel-good strategy than a do-good strategy.

That it is all very well for people far removed from a conflict to offer moral precepts,

that in the real world all these laws and rules and norms are just so many pious wishes.

That the strong will do what they can and the weak will suffer what they must, as has always been the case.

It is true that the international law and law enforcement are much less developed than their domestic counterparts are.

There is no international policeman to enforce the law as there is within most societies, although there is a developing international justice system.

But, if such “realism” were all there was to it, things would be bleak, indeed.

It would, also, be a terrible commentary on humanity.

But that is not all there is to it.

There has been progress in many ways, some directly relevant, some indirectly relevant, and some surprising.

For one thing, there are more UN forces abroad—more than 100,000-- responding to complex emergencies than ever before.

That's new.

The first mandate to protect civilians was issued by the UN Security Council in 1999 to the UN force in Sierra Leone.

And UN military missions are routinely being given civilian protection mandates, now, notably the new UN force in Sudan.

That's new

Also, in 1999, the international community, in this case led by NATO, stopped the ethnic cleansing of Muslim Kosovars and drove the Serbs out of Kosovo.

In 2001, the UN force brought the murderous, mutilating rampages of the RUF to an end in Sierra Leone.

Subsequently, Milosevic and his fellow perpetrators have come to face justice in the Hague.

The RUF's chief backer and instigator, Charles Taylor of Liberia, is before an international court for his crimes

His counterpart in the jungles of northern Uganda, Joseph Kony, head of the Lord's Resistance Army, is trying to negotiate immunity from the International Criminal Court.

And senior Sudanese, also, are facing indictments from the ICC and are trying to avoid prosecution.

All that is new.

There is a very encouraging development in another area entirely--

- the US Army/Marine Corps Counter Insurgency Field Manual of 2007, commissioned by none other than General David Petraeus

The Field Manual directs US forces in counterinsurgency warfare to make securing the civilian, rather than destroying the enemy, their top priority.

Civilian protection becomes part of the counterinsurgency mission, in fact, it becomes the priority part.

That is very new

The Manual recognizes that in much modern warfare, the real battle is for civilian support—where the physical battle is being waged and where the political battle is being waged--both.

In this light, killing civilians can no longer be seen as just “collateral damage”,

nor can such harm be easily explained away as unintended.

Civilian casualties create enemies, and generally create them faster than they can be killed, in the pragmatism of military calculus.

There is also the larger **strategic calculation**.

The destruction of civilians is no longer regarded by humanity as the price of war.

Countries that fail to distinguish between civilian objects and military objectives will likely find themselves progressively isolated.

It remains to be seen how effective this new US military approach will prove.

For one thing, it is prescribed for counter-insurgency conflicts only

For another, it creates greater risk for the soldiers, when every other effort serves the opposite purpose.

For another it runs counter to the Powell doctrine, which still has saliency.

Nevertheless, it constitutes a major innovation in military thinking that is bound to have resonance beyond the US army and marines and, indeed, beyond the US military

And, according to the US military leadership, at least, it fully embraces the Geneva Conventions.

To my non-military mind, at least, a big step in the right direction.

None of this yet constitutes a sea-change in the conduct of international relations, but it does represent progress and does give reasons for optimism.

And it does begin to answer the cynics and those resigned to a humanity that cannot learn from the moral and military mistakes of its past.

Conclusion

My conclusion from all of this is as I stated at the beginning.

Protecting civilians in armed conflict is morally necessary, physically possible and militarily smart.

The job for the next couple of days is to determine what can be done to advance the protection of people in the Middle East.