

R2P, HUMANITARIAN INTERVENTION AND INDEPENDENCE THE PROOF OF THE PUDDING IS IN THE EATING

*Mient Jan Faber**

Introduction

The discourse surrounding humanitarian intervention has inspired a wide variety of legal, political and ethical assessments. Various authors have attempted to impose their own take on the subject. In recent times, the Canadian-sponsored ICISS and its R2P report – discussed in more detail in this issue by Ciarán J. Burke and Thomas G. Weiss - have provided fresh food for thought. However, one area which has been repeatedly overlooked and neglected has been that of the practical, on the ground, *mise en oeuvre* of these lofty principles. In this article, I argue that the international community must, as John F. Kennedy once promised “turn good words into good deeds”. Principles, frameworks and models based on justice and ethics are all very well, but if lives are to be protected and human security is to be ensured, states must begin to make good on the promises contained in the 2005 World Outcome Document. As I sketch below, with the aid of my own first-hand personal experience, this has not been the case in the recent past.

The debate about humanitarian intervention has been overhauled by a debate on ‘The Responsibility to Protect (further: R2P)’. This shift in focus from ‘the right of humanitarian intervention’ to “the right of every man, woman and child threatened by the horror of mass violence to be protected”¹ is significant in as far as it signals a constraint on the tendency of states to military intervene in other countries, in order to enforce their policies under the pretext of humanitarian arguments. On the other hand it is meant to save the international attention for humanitarian urgencies by introducing a concept that does not totally exclude a role for the military, but seems to limit it mostly to the pre- and post-conflict situation in a failed state. The military should be mainly used for stabilisation purposes, trying to prevent the outbreak of violent conflict in a fragile state or the recurrence of violent conflict after an internal war.

Thomas G. Weiss and Gareth Evans² distinguish between prevention, reaction and rebuilding as different phases, with direct military intervention strictly used in reaction, never pro-active.³ In his book, Evans develops a

* *Professor in ‘Human Security in War Situations’, VU University Amsterdam, The Netherlands, and noted peace activist.*

¹ T.G. Weiss, *Humanitarian Intervention*, Cambridge: Polity Press 2007, p. x.

² G. Evans, *The responsibility to protect*, Washington D.C.: Brookings Institution Press 2008.

³ Weiss states that the responsibility to protect embraces three temporal phases. To prevent: “to address both the root causes and the direct causes of internal conflict and other man-made crises putting populations at risk”. To react: “to respond to situations of compelling human need with appropriate measures, which may include coercive measures

taxonomy of well-known instruments used (by the international community) to provide security to people under threat of mass violence. Of the three phases, prevention is considered the most important. The pretension of this 'new' approach is "ending mass atrocity crimes once and for all"⁴. The introduction of R2P was embraced by the UN in a surprisingly short period of time. Only four years after its introduction by the International Commission on Intervention and State Sovereignty (ICISS) in its 2001 report on the responsibility to protect, it was adopted at the 2005 UN World Summit⁵. Nevertheless there are doubts whether this R2P principle will really limit the suffering of people who are in desperate need of protection. Moreover, it is difficult to see why and how it could constrain foreign countries from militarily intervening when they find arguments to do so. Therefore, I will argue that R2P offers sometimes just another justification for military intervention despite the fact that the use of force is almost eliminated from the principle. After all, the proof of the pudding is in the eating.

I. The Eating: South-Ossetia and Abkhazia 1917-1994

Let us start 'the eating' with the most recent cases of South-Ossetia and Abkhazia. They deal with war-prone, irreconcilable issues regarding formal statuses and moreover rely on a 'big brother' protecting them. In order to understand the present situation in Georgia, we have to go back in history. The Russian revolution in 1917 was followed by a civil war. The South Caucasian countries Georgia, Armenia and Azerbaijan declared themselves independent, but were forced to join the new Soviet Union a few years later. On 31 March 1921, an independent Soviet Socialist Republic (SSR) of Abkhazia was proclaimed. Abkhazia shortly kept that status, until December 1921, when the Abkhaz SSR joined the Georgian SSR under a Treaty of Union. Abkhazia became a so-called contractual republic, i.e.: a union with Georgia on military, political and financial matters, although subordinated in some areas. This situation lasted until 1931, when the Abkhazian republic was degraded and incorporated into Georgia as an autonomous entity (ASSR).

I.1 Abkhazia

Under the dictatorship of Stalin, born in the Georgian city of Gorki, the repression of the Abkhaz population was fierce. A resettlement of many Georgians into Abkhazia took place. Because of the degradation in status, Abkhaz party leaders repeatedly (1965, 1967, and 1978) petitioned to separate

like sanctions and international prosecution, and in extreme cases military intervention". To rebuild: "to provide, particularly after a military intervention, full assistance with recovery, and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert".

⁴ This is the subtitle of Evans' book.

⁵ UN General Assembly, "World Summit Outcome 2005", Resolution A/RES/60/1 (October 24, 2005).

from Georgia and join Russia.⁶ At the end of the 1980s, the total population was 537.000, 44% Georgians, 17% Abkhazians, 16% Russians and 15% Armenians. When in 1989 the Soviet Union began to disintegrate, the objective of the Abkhaz separatists, as a first step towards complete independence from Georgia, was a return to the status of Abkhazia prior to 1931. On 18 March 1989, a peoples assembly in the village of Lykhny proposed that Abkhazia should secede from Georgia and the status of a (Soviet) Union republic be restored. The 30.000 participants, including five thousand Armenians, Greeks, Russians and even Georgians, signed an appeal published in all local newspapers. Georgian outrage at the Abkhaz demands spread around the republic and expressed itself in anti-communist and anti-Soviet slogans, and called for a punishment of the Abkhaz by abolishing its autonomy altogether. The various demonstrations in Georgia also got a broader, pro-independence character until they were finally put down by Russian (Soviet) troops. At the end of the year, the Georgian Supreme Council (Soviet), officially condemned Soviet Russia's infringement of the Russo-Georgian Treaty of 7 May 1920 in annexing Georgia in February 1921, thus paving the way for Georgia's independence. In 1989-90, the Georgian Supreme Soviet adopted legislation annulling all the treaties concluded by the Soviet Georgian government since February 1921 which had also served as a legal foundation for the existence of the Georgian autonomies, particularly Abkhazia and South Ossetia.

On 25 August 1990, in the Abkhaz capital, Sukhumi, the Abkhaz delegates in the local Soviet passed a declaration on the sovereignty of Abkhazia. Two months later, in October 1990, the Round Table bloc of the ultra-nationalist Zviad Gamsakhurdia won the elections in Georgia. Almost at the same time, in December 1990, the hard-line nationalist Vladislav Ardzinba was elected chairman of the Abkhazian Supreme Soviet. In an appeal to the Abkhazian people, Gamsakhurdia called Ardzinba a traitor and a tool in the hands of Moscow. On his turn, Ardzinba declared that Abkhazia still considered itself part of the Soviet Union. A self-organised referendum in Abkhazia, on the preservation of the Soviet Union, on 17 March 1991, with a turn-out of 52.4% of the electorate, showed a 98.4% 'yes'. Now, Gamsakhurdia threatened to disband the Abkhazian Supreme Soviet and abolish the autonomy. In a counter move, Ardzinba arranged the deployment of a Russian airborne assault battalion from the Baltic republics to Abkhazia. The battalion has been quartered in Sukhumi ever since. It became a visible and solid protector of Abkhaz-desired independence. Soon thereafter, a reinforced Russian presence in Abkhazia compelled Gamsakhurdia to make concessions and allow the elections to the Abkhazian parliament to proceed on a quota basis: 28 seats to the Abkhaz, 26 to the Georgians and 11 to the remaining groups.⁷

⁶ A. Zverev, 'Ethnic Conflicts in the Caucasus 1988-1994', in: B. Coppeters (ed.), *Contested Borders in the Caucasus*, Brussels: VUBPress 1996.

⁷ *Idem*, p. 43.

At home, Gamsakhurdia became more and more dictator-like, squeezing the opposition, closing newspapers and TV-channels. Ministers left his cabinet out of protest and the National Guard almost split into two. On 2 September 1991, a big demonstration of the opposition in Tbilisi was dispersed by the police. During the fall, several paramilitary groups ruled and barricaded parts of the city and fought each other. On 22 December a *coup d'état* removed Gamsakhurdia from power. He himself escaped. Many of his followers, the Zviadists, regrouped in Mingrelia, near the Abkhaz border. In Tbilisi, Members of the Military Council went to Moscow and invited Eduard Shevardnadze, a Georgian himself, to become the new chair of the council. Shevardnadze accepted and in March 1992 he became the most powerful man and the new ruler of Georgia.

On 23 July 1992, the Abkhazian Supreme Council ruled that the 1978 constitution of the ASSR was invalid and that the old 1925 Abkhazian constitution was again in force. Immediately, the State Council of Georgia declared this decision null and void. Three weeks later, war broke out. The trigger was the slumbering internal Georgian conflict. The Zviadists of Gamsakhurdia in Mingrelia and the Gali region had taken hostage a number of high-ranking Georgian officials. Shevardnadze was forced to react.

In the early morning of 13 August 1992, I was part of an international delegation that was received by President Shevardnadze in his office in Tbilisi. The president was in a sad mood. He told us that with great reluctance, he had just taken the decision that the hostages should be liberated by force, since Gamsakhurdia wanted a civil war in order to topple his government. Ardzinba had been informed of the operation (though he later denied this).

Georgian troops entered Abkhazia and were soon battling the Abkhaz National Guard. Georgian tanks were even moved into Sukhumi. With Russian involvement, a cease-fire was negotiated. Georgian troops left the city and Ardzinba's government withdrew to Gudauta in the north of Abkhazia. However, on 18 August Georgian troops again arrived in the centre of Sukhumi, and captured the city. The Abkhaz flag was removed from the Abkhazian parliament. It was the start of a prolonged war.

From August 1992 until March 1993, according to an Abkhaz White Book, 2,000 Abkhaz people (listed by name) were killed either in battle or as a result of the harsh regime by the Georgian forces during that period. The Georgians behaved as if the Abkhaz forces were no match for them. But they were mistaken. The Abkhaz planned an asymmetrical war relying very much on the North Caucasian factor. Indeed, in all North Caucasian republics, public meetings were organised under the slogan 'Hands off Abkhazia'. Everywhere people were asked to form a detachment of 60 to 100 armed men.⁸

⁸ *Idem*, p. 50

On 18 August, a special session of the Confederation of Mountain Peoples of the Caucasus adopted a resolution: 'If the Georgians do not withdraw from Abkhazia within three days, the Confederation will declare war on Georgia'. This is precisely what happened. The confederates began to arrive in Abkhazia via mountain paths. The Russian authorities did not really welcome them, however, fearing that the confederates would not only disturb Abkhazia, but also other regions in the North Caucasus, like Chechnya.

To complicate the situation even more, Cossacks also got involved, partly because they wanted to prevent secessionism in the North Caucasus, but also in support of the Abkhaz aspirations to join Russia. Following their traditional role, they patrolled the border between Georgia and Russia.

In 1992, Russia was still ready to mediate between Shevardnadze and Ardzinba. The latter was compelled to sign a document authorising the presence of Georgian troops in Abkhazia. However, the Russian military on the ground were less inclined to pressurise Abkhazia in favour of Shevardnadze. They considered the latter an initiator of the break-up of the Soviet Union. And they were more than ready to offer the Abkhaz assistance in drawing up a battle plan.⁹ Taking into account these inconsistencies, it is difficult to claim that Moscow's policies were inspired *avant la lettre* by a R2P approach. Russian policy gradually drifted towards a more assertive and paternalistic style in relation to the 'near abroad areas', regarded as 'the sphere of Russia's strategic interests'. The Kremlin came to the conclusion that Russia should be granted special powers to settle ethnic conflicts on the territory of the former USSR.

On 27 July 1993, an agreement to end the war was signed in Sochi by the Georgian, Abkhazian and Russian sides. It provided for a ceasefire, the withdrawal of the Georgian army from Abkhazia and demilitarisation by all belligerents. Moreover, the agreement called for the return of the 'legal' government. But who that government would consist of was still to be agreed upon.

Although many thousands of Georgian civilians returned to Sukhumi, large sections of the public were demoralised, enabling Gamsakhurdia to emerge once more as a 'saviour' for Georgia. A third of the Georgian troops to be withdrawn from Abkhazia went over to the Zviadist side. Commanded by Loti Kobalia, the Zviadist forces retook the Abkhaz cities of Senaki, Abasha and Khobi, at the end of August. And the Zviadist faction in the Georgian parliament convened in Zugdidi, appealing Gamsakhurdia to return to Georgia and resume his duties as head of state.

In Tbilisi, on 14 September 1993, Shevardnadze tendered a letter of resignation, but a large crowd outside the parliament implored him to stay. He accepted on the condition that the parliament would be suspended for three months. After the Zviadists launched another attack, on 15 September

⁹ Moskovskie novosti, 18 July 1993.

1993, the Abkhaz felt it was time to act. The next day, they launched an all-out attack on the official Georgian forces still around. Shevardnadze went to Sukhumi and at the third day of the attack he shed his suit for a combat uniform and his official black Volga Sedan for a white Russian-built Fiat. Armed with an automatic pistol, he tried desperately to rally his panicky troops against the Abkhazians' relentless assault.¹⁰ By the weekend, with part of Abkhazia under the control of the separatists and the Western region of Mingrelia controlled by Zviadists, it appeared that Shevardnadze's personal courage was not enough to save the unity of Georgia.

With the help of freelance Russian soldiers and North Caucasian volunteers, the separatists drove the Georgian army from Abkhazia, capturing Sukhumi on 27 September. Although Russia condemned the Abkhaz actions, the minister of defence, general Pavel Grachev, let the Abkhazian offensive run its course. Meanwhile the Zviadist offensive in Mingrelia continued. Shevardnadze desperately needed Russian help and made some important concessions. On 8 October 1993, Georgia decided to join the CIS and thus effectively render itself part of the Russian sphere of influence. (it terminated its membership in August 2008). On 9 October, an agreement was signed on the status of Russian troops in Georgia. The Russian army was called upon to guard strategic roads, as Georgian troops were fighting Kobalia in the North.

In the beginning of November 1993, Mingrelia was brought back under government control, with the exception of the Gali region. But Abkhazia remained a self-declared independent security zone, under protection of the Russian army. On the 14th of May 1994, the 'Moscow agreement' was signed under the aegis of the UN. A CIS peacekeeping force, entirely Russian, was deployed in Abkhazia.¹¹ Since that time, alternating periods of *détente* and periods of 'irregularities' (fighting) have occurred. However, the conflict remained frozen, especially due to the presence of Russian troops.

When it was already too late for a compromise, the OSCE and the UN (and other informal bodies like 'Friends of Georgia') became active mediators in the region. Direct contacts between the governments in Tbilisi and Sukhumi were established. However, the 'status' issue was never resolved. Far-reaching autonomy was offered, but the response was another referendum and declaration of independence. The more emphasis that was put on this issue, the less progress was possible on other issues such as the return of refugees, economic relations, et cetera. It was a case of 'either-or'.

I.2 South Ossetia

The history of South-Ossetia was somewhat different. Several rebellions took place during 1918-20, when for a short time Georgia was an independent social-democratic (Menshevik) country. The rebels were claiming

¹⁰ NYT, October 3, 1993.

¹¹ Conciliatory Resources, Dimitrii Danilov, *Russia's Role*, September 1999.

independence. But the government in Tbilisi ruthlessly suppressed the Bolshevik-supported South Ossetian insurgency.

On 20 April 1922 the South Ossetian Autonomous Oblast (AO) was formed as part of the Georgian SSR. In 1989 the population was nearly 100,000, of whom 66% were Ossetes and 29% Georgians. Half of the families were of mixed Georgian-Ossetian descent. For a long time the South Ossetes have tried to secure a federal status in Georgia or to seek to be reunited with North Ossetia, which forms part of Russia. On 10 November 1989, the South Ossetian Popular Front, established in 1988, sent a request to the Georgian Supreme Council to be upgraded to the status of autonomous republic. The answer, received in August 1990, was a law banning regionally-based parties from taking part in the elections to the Georgian parliament. On 20 September 1990, the South Ossetian Oblast Council declared the oblast a South Ossetian Soviet Democratic Republic and appealed to Moscow to recognise it as an independent subject of the Soviet Federation. Two months later the newly elected parliament (Supreme Soviet) of Georgia adopted a law abolishing South Ossetian autonomy.

In December 1990, Georgia started a blockade of South Ossetia which lasted to the end of July 1992. During the night of 6 January, 1991, Georgian police and paramilitary entered Tskhinvali, the capital of South Ossetia, and carried out violent reprisals against a defenceless population. The presence of Georgian police in Tskhinvali continued until February 1991 when, by agreement with the South Ossetian authorities, they withdrew from the besieged city.

At the all-Union referendum, initiated by Moscow, of 17 March 1991, on the fate of the Soviet Union, boycotted by Georgia, the South Ossetes voted 99 per cent in favour of keeping the Union, hoping that such a vote would induce the authorities in Moscow to take measures to protect them. As a result, Georgian atrocities only increased. Ossetes began to be expelled from their villages, which they said were pillaged and burned with people still in them. But 10,000 Georgians also took refuge from the war after facing terrible atrocities from the Ossetes. The Kremlin showed no willingness to intervene at that time. It was preoccupied with other 'hot spots' in a disintegrating Soviet Union.

After Gamsakhurdia's fall from power, a referendum in South Ossetia on the issue of joining Russia turned out with 90% of the Ossetes in favor. South Ossetia refused to enter into negotiations with the new regime in Tbilisi until it pulled out troops and lifted the blockade. On 20 May 1992, unidentified gunmen massacred a busload of (ethnic Georgian) Ossetian refugees. North Ossetia cut the pipeline supplying Georgia with gas. It was war. As the influx of refugees from South Ossetia grew, North Ossetia felt forced to intervene. As in Abkhazia, another factor of increasing importance was the Confederation of Mountain Peoples of the Caucasus.

In the end, the Russian leadership was forced to take steps towards the resolution of the conflict. In the middle of June 1992, Russia was on the brink of war with Georgia over South Ossetia. The chairman of the Supreme Soviet, Ruslan Khasbulatov, warned Georgia that the Russian parliament would consider granting South Ossetia's request to join Russia. In strong contrast with a 'R2P' approach, vice-president Rutskoi telephoned the new leader of Georgia, Eduard Shevardnadze, and threatened to bomb Tbilisi.¹² But Shevardnadze still had some credit in Moscow since he had been the Soviet foreign minister for quite some time. He met with president Yeltsin and representatives of North and South Ossetia and signed the Sochi agreement (22 June 1992) declaring a ceasefire and the deployment of joint Russian, Georgian and Ossetian peacekeeping forces. After the 'Moscow agreement' of 14 May 1994, this gave way to an UN-mandated CIS force. A milestone with far-reaching consequences: Russian troops on the ground in South Ossetia, as protectors.

I.3 Georgia 2008

The war had left serious wounds. Most of the thousand Ossetes killed in the war were civilians, only a hundred were members of the defence forces. Ninety-three (mostly Ossetian) villages were completely burned down. Tens of thousands had become refugees. When I visited Tskhinvali in the summer of 1995, it was a peaceful town, however. I arrived on a Sunday afternoon. Having searched for the 'foreign minister' of South Ossetia, I found his office deserted. A guard put me in the minister's room and to my surprise I saw a big picture of the Bosnian Serb leader Radovan Karadzic on his desk. As soon as the minister came in, I asked him how they came to know each other. He told me that the portrait had been presented to him by the Bosnian Serb delegation at a meeting of prominent Eastern Christians and that he admired the Bosnian Serbs' independent stance.

An hour later we went together to a wedding party of the daughter of the mayor of Tskhinvali. At a very long table on the main road in the center of the city, I was introduced as a special guest from The Netherlands whose daughter also prepared for her own wedding - which was true. Numerous toasts accompanied by patriotic speeches gave me a vivid impression how proud people felt about their self-declared independent country as the best guarantee for happiness to the bride and groom. The next day, I visited the military compound of the Russian peacekeepers. On my question who guarantees peace and security in South Ossetia, the commander answered: "We are in charge here".

Since 1994, irregularities in South-Ossetia and Abkhazia still happened although mostly not (officially) instigated by the Georgian government. Now and then, UN monitors were taken hostage in Abkhazia whereupon the UN

¹² *Nezavisimaya gazeta*, 16 June 1992.

mission was normally stalled. During such a period local hostilities often flared up which provided evidence for the UN-commander to claim: “This shows that our mission is effective. If we are around, hostilities seldom occur.”¹³ Of course, in South Ossetia the Georgian peacekeepers were protecting Georgian villages while the Russian peacekeepers protected the Ossetian ones.

This pattern suddenly changed in August 2008, when the Georgian president Mikhail Saakashvili decided to make use of ongoing irregularities to regain control over the whole of South Ossetia. On the night of 7-8 August he ordered a massive artillery assault on the town of Tskhinvali which had no purely military targets and whose residents were formally still his own citizens. Russia immediately reacted, sending fresh troops based already in North Ossetia to the front and defeated the Georgian army in a flash. South Ossetia became fully under Russian control.

The Russian foreign minister, Sergei Lavrov, defended the operation as an R2P mission since almost all Ossetes (and Abkhaz) possess Russian passports and therefore needed to be protected by Russia.¹⁴ That the Russian peacekeepers already for a long time acted as an informal occupying power was, for obvious reasons, not used as an argument by Lavrov. Despite Georgian and Western protests, Russia officially recognised the independence of Abkhazia and South Ossetia, on 26 August. Nicaragua followed a week later. The Georgian parliament declared South Ossetia and Abkhazia to be occupied by Russia and severed its diplomatic relations with Russia. The Georgian embassy in Moscow and the Russian embassy in Tbilisi were closed.

II. Bosnia & Herzegovina

To whet our appetites for Kosovo, let us continue our story with the case of Bosnia & Herzegovina (further: BiH). This federal republic of the former Yugoslavia was not the first one plunged into war on the Balkans, in the 1990s. The wars in Slovenia (June 1991) and Croatia (June 1991) preceded the outbreak of an all-out war in Bosnia (April 1992). One can even add Kosovo to this list, since the abolishment of Kosovo's autonomy by Milosevic, in 1989, and thereafter the ‘occupation’ of Kosovo by Serbia, was considered an act of war by the local Albanians and was followed by the

¹³ Personal conversation with a Pakistani UN-commander in Zugdidi. August 1995.

¹⁴ At a BBC interview, 19 August 2008, Sergei Lavrov argued that “under the constitution (the President) is obliged to protect the life and dignity of Russian citizens, especially where they find themselves in the armed conflict”. According to the Global Centre for the R2P: “R2P codified by the General Assembly is not a legitimate base for Russia’s military action. (1) The primary ground for intervention – the protection of Russian citizens abroad – is beyond the scope of the R2P norm, (2) The scale and intensity of the military operation went beyond the direct protection, (3) In the absence of a UNSC approval, there is no legal authority for a R2P based military intervention”. See: Global Centre for the Responsibility to Protect, website.

creation of a parallel underground society with its own representative bodies and a declaration of independence.

While the war in Croatia was at its boiling point, in September 1991, 10,000 citizens of Sarajevo formed a human chain connecting the mosque with the synagogue, the synagogue with the Croatian catholic church, the Croatian catholic church with the Serbian orthodox church, and the Serbian orthodox church with the mosque, again. The message of these citizens was twofold: clearly, they didn't want an ethnic war in BiH and in order to prevent such an ethnic war the international community should immediately deploy a stabilisation force in their republic. The message was clear, but there was no address that was ready to take it seriously. Preventive deployment was not an option for the international community at that stage.¹⁵ Diplomacy should do the job and keep the peace in BiH.

In order to prevent the spread of war in Yugoslavia, the international community, the EC in particular, mandated one of its best diplomats, the British ex-foreign minister Lord Carrington, to convince the republics of Yugoslavia that a peaceful separation was acceptable, but not on the basis of ethnic principles, only by respecting the existing boundaries of the republics. Unfortunately, the root causes of the conflict were ethnic, not federal. In BiH a referendum was held in March 1992 and the Muslims and Croats voted overwhelmingly in favour of an independent BiH while the Serbs boycotted the referendum. A month later, the day after the formal declaration of independence, war broke out. It became a dual track exercise: The battlefield was characterised by ethnic cleansing and paralleled by negotiations supervised by the EC and the UN where the warring parties tried to redraw the map of BiH according to ethnic principles. Thus, on the battlefield as well as at the negotiation table, the warring parties, assisted by the international community, addressed the root causes of the conflict. Not by eliminating them from the equation, but through confirming them.¹⁶

An R2P operation was also carried out during the war, but in the beginning restricted to material security, i.e. freedom from want. The other component of human security, freedom from fear, or physical security, was neglected. The UNHCR became the leading agency in trying to provide the numerous but anonymous victims with food and medicines, without changing their unbearable circumstances. Also, a UN protection force, UNPROFOR, was

¹⁵ Preventive deployment took place in the former Yugoslav Republic of Macedonia (FYROM), in 1995. But UNPREDEP (United Nations Preventive Deployment) was ordered "to monitor and report any developments in the border areas which could undermine confidence and stability in FYROM". In other words, UNPREDEP was considered a trip wire against any incursion from Serbia and not used for the internal stability between the different communities.

¹⁶ Of course, this is not the way the advocates of the R2P prefer to address the root causes. However, when a state is in a process of failing, the most urgent thing to do is to stop the process before it is too late. Preventive deployment might help here. Diplomacy alone is mostly not sufficient. On the contrary, diplomacy follows readily the agenda dictated by the war (mongers).

deployed in order to secure the UNHCR-convoys en route to the victims. However, the great majority of these victims received no physical security at all.

Fortunately, the R2P operation was extended in March 1993, when UNPROFOR commander Morillon joined a humanitarian convoy to Srebrenica in order to investigate whether the threat of massive violations of human rights, in case of a successful Serbian attack on this isolated Muslim enclave, was real. He was shortly taken hostage by the refugee community in Srebrenica and forced to promise that they would get protection from the United Nations.¹⁷ Thereby, the first 'safe haven' was born in BiH due to a desperate act of local people.

Almost two years after a human chain in Sarajevo unsuccessfully tried to convince the international community to deploy a preventive security force in order to forestall the outbreak of war, now another attempt of people locked up in Srebrenica in the middle of war and faced with ethnic cleansing tantamount to genocide, did succeed. They successfully pressured the UN to take into account the full meaning of R2P and provide them also with physical security or freedom from fear.

A few months later six UN 'safe areas', all of them besieged and isolated Muslim enclaves, were established in BiH (1993). The UNSC was crystal clear in its deliberations about the aim of the safe areas. It should be places where physical security was to be provided to the inhabitants. However, apart from Srebrenica none of the other safe areas were demilitarised. Consequently, the local armies and various militias from both sides continued their war while the available UN-troops were more or less doomed to an attitude of wait and see.

Occasionally, a NATO air force was asked to intervene, especially when the Serbs used heavy weapons killing numerous people inside the safe areas. Due to this structural fault, physical security was far from assured in any of the safe areas. But the demilitarised safe area Srebrenica was an exceptional case. Here, the UN was in full control of the security of the enclave, at least on paper. For one and a half year, the Netherlands armed forces (Dutchbat) were in charge of protecting the people inside this safe area. According to the mandate, the Dutch had to deter any attack on the safe area. Given the fact that the battalion had a lack of manpower and was rather lightly armed, the Dutch interpreted 'to deter' in a minimalist way as 'to deter by presence'. Even more alarming was the fact that right from the beginning Dutchbat considered itself a neutral peacekeeping force instead of a protection force. As soon as the Bosnian Serbs attacked the safe area, there was no peace to keep anymore and the Dutch would consider their role to be finished. In other words, when protection was most needed, the local community would be abandoned by the Dutch. This is indeed what happened.

¹⁷ Morillon: "From now on you are under protection of the United Nations." Dutch Institute for War Documentation (NIOD), Boom, Amsterdam, p.1222.

At the end of May 1995, the neighbouring UN safe area, Gorazde, was attacked by the Bosnian Serb army. A British battalion, Britbat, with barely 200 soldiers at the scene, fired all of its munitions and managed to hold most of the enclave and thus protect the inhabitants. A month later, on July 6, Srebrenica was attacked. Dutchbat did not try to defend the enclave. The majority of the refugees, in particular women and children, but also a few thousand men, fled to the main compound of Dutchbat in Potocari, 5 kilometres north of Srebrenica, in search of physical protection. However, Dutchbat refused to protect them and even assisted with the deportation of the Muslims allowing the Serbs to separate the men and boys from the rest to be brought to nearby locations to be slaughtered.

Not a single Muslim man was rescued by the Dutch, although hundreds of them had found temporary shelter on the well-protected Dutch compound. The Dutch themselves ordered the men to leave the compound when it was their turn to be deported. The safe area concept as a R2P operation miserably failed when it was time to react. With the massacre in Srebrenica, the war on ethnic cleansing was almost completed, when, finally a NATO air force and Croatian ground forces bombed Republika Srpska (further: RS) to the negotiation table. Represented by the Serbian leader Milosevic, the RS signed a deal on the 21st of November 1995, in Dayton (Ohio). The parties agreed on a new constitution for BiH, heavily based on the principle of ethnicity. Soon thereafter, the third pillar of R2P, to rebuild, was deployed. To facilitate the stabilisation process, an international protectorate was established, sustained by a 60.000 men strong NATO-force, including an autonomous Russian battalion, called IFOR. Despite several efforts to reintegrate the country and to deemphasise the role of ethnicity, RS has remained a semi-independent entity inside BiH. The chance that BiH will fall apart and RS will join Serbia proper is still there, more than 13 years after the Dayton peace agreement. In conclusion, the R2P recipe has been extensively applied in each phase of the conflict in BiH. But was it successful?

III. Kosovo

Finally comes the case of Kosovo. NATO's air campaign of 1999 without a UN mandate was justified as a humanitarian intervention. Indeed, the spokesperson of NATO during the 78 days air campaign which began on the 24th March 1999, Jamie Shea, presented an eloquent argument at the Summer Forum on Kosovo¹⁸, in London, on 15 July 1999, just a few days after the end of the war. He started by saying that wars of interest are less frequent these days and are being replaced by wars of conscience. According to him "liberal democracies feel the need to become involved in order to save lives by putting a stop to persecution on grounds of ethnicity or religion". This represented a bold statement after the massacres in Rwanda and Srebrenica.

¹⁸ J. Shea, *The Kosovo Crisis and the Media; Reflections of a NATO spokesman*, Address to the Summer Forum on Kosovo organised by the Atlantic Council of the United Kingdom and the Trades Union Committee for European and Transatlantic Understanding, Reform Club, London 15 July 1999. Unpublished lecture notes.

Shea continued: “These new types of humanitarian interventions are allegeable conducted in the name of moral values and higher standards of civilization. ... Therefore the military campaigns themselves should also be conducted in a more civilised way”¹⁹.

Since the UN Security Council seems unready to mandate such interventions, Shea turned to the principles of the just war doctrine developed by the Catholic philosophers Augustine and Thomas Aquinas. Indeed, he brought us back to a Christian way of thinking in the Middle Ages, where wars were waged on moral grounds, i.e. in battles between good and evil. Also nowadays, under certain circumstances morality transcends sovereignty, Shea argued.²⁰ We are back from where we came. Although he claimed there are only four principles and moreover confused *jus ad bellum* and *jus in bello* principles of the just war doctrine²¹, his defence of NATO compliance with these principles, in the case of the Kosovo intervention, was quite enlightening. He translated the *in bello* principle of proportionality by defining it as “the requirement that only minimum force be used to achieve a certain objective” and then defended the destruction of roads, bridges, electricity switching stations, radio relay sites and petroleum refineries by saying: “The irony is that to be successful force has to create disorder in order to cure disorder. The ulcer cannot be removed from the stomach unless the patient is operated upon”.

Being the primary spokesperson of NATO during the Kosovo war, Shea had often been asked: “Hasn’t NATO bombing only provoked Milosevic into expelling hundreds of thousands of Kosovar Albanians? Instead of stopping a humanitarian disaster, haven’t you caused one instead?” His answer was: “You cannot make an omelette without breaking eggs. All military interventions are based on the premise that you have to exacerbate a crisis in order to solve it”.

Shea handled the *in bello* principle of discrimination in a similar way responding to a critical article in the French daily *Le Monde* where the point was made that “so far the problem with this conflict is that the only people who are dying are civilians”. NATO pilots were not being shot down because they were flying at an excessively high attitude. Moreover, NATO was not able to attack Serb units in the field successfully. So *Le Monde* posed the question whether this really was a humanitarian intervention? Shea’s reaction

¹⁹ *Idem*.

²⁰ Shea does not attempt to formulate a (semi-)legal definition of humanitarian intervention, like the one of the Dutch AIV-CAVV (2000): “The threat or use of force by one or more states, whether or not in the context of an international organisation, on the territory of another state: (a) in order to end existing or prevent imminent grave, large-scale violations of fundamental human rights, particularly individuals rights to life irrespective of their nationalities; (b) without prior authorisation of the UNCC and without the consent of the legitimate government of the state on whose territory the intervention takes place.”

²¹ For Shea, there are four principles: (1) last resort, (2) proportionality between the means and ends, (3) discrimination between military and civilian targets, (4) the good should outweigh the costs. (1) and (4) are *jus ad bellum* principles, while (2) and (3) are *jus in bello* principles.

to this critique was quite revealing: “Morality without effectiveness is as bad in the eyes of the media as effectiveness without morality.”

Shea and NATO needed both morality and effectiveness. Here, he misinterpreted Thomas Aquinas. For Aquinas introduced his doctrine in order to criticise and restrain war fighting based on the moral high ground of a battle against evil and the practice of killing and destroying much of the good (innocence) that stands in the way of being successful in this fight.²²

No wonder that Shea simply equated the *ad bellum* principle of ‘the good should outweigh the evil’ with ‘the end justifies the means’. A clean humanitarian intervention does not exist. In the end, war follows its own logic. To paraphrase Jamie Shea: You can’t make an omelette without breaking eggs and spoiling part of the content, which is normally referred to as the unavoidable collateral damage, in particular innocent victims. It seems that this is one of the main reasons why R2P has been adopted so quickly by the international community (UN) thereby putting the notion of military intervention in brackets.

III.1 Kosovo 1995 -2008

The General Framework Agreement for Peace in Bosnia-Herzegovina, better known as the Dayton accords, of 21 November 1995, did not show any meaningful interest of the international community in the future of Kosovo. The only paragraph in which Kosovo was mentioned dealt with the maintenance of the outer wall of sanctions “until Serbia addresses a number of other areas of concern, including Kosovo and cooperation with the War Crimes Tribunal”.²³ The international community still considered Kosovo an internal affair of Serbia which should and could be solved peacefully, given the pacifist attitude of the popular leader Rugova. As long as the Albanian community remained peaceful under Serbian structural oppression, there was no need for an international approach that could be retrospectively labelled an R2P mission. The resistance movement inside Kosovo under the inspirational leadership of the poet Ibrahim Rugova, who was admired by the West because of his pacifism, represented an exceptional case in the Balkans during a long time. In 1998, the European Parliament granted Rugova the prestigious Sakharov price. But in 1998, Rugova was no longer the only player in town. For that reason, the so-called Contact Group on Bosnia and Kosovo, in which the USA, Russia, UK, France, Germany and later Italy cooperated, with the EC participating as an observer, became active on the matter. The circumstances had changed dramatically.

Since 1996, the Kosovo Liberation Army (KLA or in Albanian UCK, further: UCK) had become more and more active and successful in attacking Serbian police stations in the area and also in liquidating Albanian collaborators and destroying Serb villages. Its popularity increased with the failure of Rugova to implement an education agreement between himself and Milosevic, brokered

²² S.C. Neff, *War and the Law of Nations*, Cambridge: Cambridge University Press 2006.

²³ Dayton Peace Agreement, Appendix V.

by the catholic Sant'Egedio community and signed in 1996, allowing pupils and students to return to their schools and university buildings and reintroducing the original Albanian curricula. Huge peaceful student demonstrations in 1997 and 1998 did not make a difference and many disappointed youth turned to the UCK or at least showed their sympathy for the so-called terrorist organisation.

On 28 November 1997, 15.000 people gathered in Lausa, in the area of Drenica, at the funeral of a schoolteacher who was killed by the Serbian police in a gunfight with UCK members. One of the speakers, in a camouflage costume, declared under enormous enthusiasm the region of Drenica a 'liberated area'. This approach of creating security zones labelled 'liberated areas' was one of the hallmarks of the UCK and carried out in particular in the regions around the cities of Malisevo and Dakovica near the Albanian border. Bunkers were built and trenches were dug to delineate the borders of the zone which were defended by local and lightly armed men, often an easy target for the better-armed Serb special forces. One of the consequences of this rather odd guerrilla tactic was that after a fight with the Serb forces, the zone was totally destroyed and all inhabitants of the 'liberated area' became Internally Displace Persons (further: IDPs) - if they had not been killed.

In March 1998, the UCK claimed to have almost 40% of Kosovo under control. Although on 23 March 1998, Milosevic and Rugova (again) signed the education agreement which was hailed by the American foreign minister Madeleine Albright as "historic" and "likely the best confidence building measure since the cancellation of the provincial autonomy"²⁴, in April 1998 the Yugoslav army concentrated its troops in the Drenica region and the road between Pec and Dakovica, in order to cleanse the region from UCK-fighters/supporters and to hermetically close off the border with Albania. The offensive continued the next month. Whole villages were plundered and put on fire and the Albanian people were "ethnically cleansed" according to the American special envoy, Robert Gelbard. The number of IDPs hiding in the mountains became huge; according to Albanian journalists around 100.000.

On 6 June 1998, despite the enormous militarisation of Kosovo, I miraculously managed to reach Pristina. There I met three young journalists from the newspaper *Koha Ditore*, who just came back from a trip into the mountains where they had compiled a report on a huge community of IDPs. The main concern they had noted down was not the lack of food or the fear to be left alone for the months to come. The question they had heard over and over again was: "When will NATO come to rescue us?" They were waiting for a humanitarian intervention.

I invited the journalists to come to the Netherlands as soon as circumstances permitted and join me in Brussels in order to confront NATO officials with

²⁴ M. Heirman, *Kosova versus Kosovo*, IPIS brochure 110, Antwerp.

their experience. The meeting in Brussels took place on 22 September 1998. Among others, they met Jamie Shea and Pieter Feith, the head of NATO's Balkan Task Force. Their answers to the question: "When will NATO come to rescue us", were rather shocking. "NATO will not send ground forces", they were told. "Maybe it will intervene from the air, like in BiH in the late summer of 1995. But only in case the European home front will be confronted with massacres on their TV-screens." The NATO officials predicted an 'BiH'-endgame, including 'Srebrenica'. It is indeed true that generals always prepare for the last war.

In the mean time, the UCK after a tactical retreat conquered Orahovac, the first city that came under its control, on 17 July 1998. The Albanians celebrated their victory, but it lasted only five days before Serb forces drove the UCK out again. Many Albanians escaped from the city and flew to Malisevo, which the UCK declared the new capital of the liberated area. For the Serbs, this represented an extra incentive to destroy all the villages between Orahovac and Malisevo.

On 25 July 1998, the Serbs fired grenades on the city which led to a massive exodus of the local population. The UNHCR estimated that for 70.000 people the mountains became a place of refuge. The city of Junik, another stronghold of the UCK, was taken on the 29th of July. Now, the backbone of the resistance was broken. The UCK had really got a well-known lesson, i.e.: a guerrilla movement should not defend territory but focus its activities on the weak side of the superior enemy, in this case on isolated police stations and military posts. The lull that followed the partial defeat of the UCK was used by the international community to force a diplomatic solution. The BiH-approach was revoked and the 'West' seemed ready to use force if Milosevic would refuse to cooperate. The US special envoy Richard Holbrooke went up and down from Belgrade to Pristina with a set of proposals while on 12 October NATO issued a so-called Act ORD (activation order). This order held that if Serbia would obstruct the promised withdrawal of its special forces from Kosovo, then on 17 October NATO air forces would attack and enforce the withdrawal. On 13 October, Milosevic accepted the 'Accords of Belgrade', which also outlined a temporary status for Kosovo. Serbia had to withdraw all its special forces from Kosovo and respect the ceasefire. An OCSE mission, called the KVM (Kosovo Verification Mission), of 2000 monitors would be deployed to verify the withdrawal. Moreover, Serbia had to start negotiations with Kosovo on a far-reaching autonomy. But Kosovo should remain part of the Federal Republic of Yugoslavia (Serbia, Montenegro, Kosovo). The UCK, still considered an outsider and a terrorist organisation, bluntly rejected the Accords and Rugova was half-hearted in his reaction. Nevertheless, Milosevic began, although slowly, to withdraw his special forces from Kosovo, which was still enough for NATO to postpone its planned intervention. The UCK used the opportunity to return to the villages and reinstall its checkpoints. The cities remained under control of the Serbs.

The trigger that rang the bell for the final round in the dispute about the status of Kosovo, became Racak. On 16 January 1999, the KVM discovered 45 dead bodies lying in a ditch, in the village of Racak, in Central Kosovo. It was surmised that they must have been summarily killed the day before. Belgrade immediately asserted that it were all UCK members. But the KVM-commander William Walker insisted that this was a massacre. That day the TV screens in every home all over Europe showed the long row of bodies of ordinary mostly middle-aged or even elder males. It created the outrage that Shea and Feith had spoken of and the international community realised that enough was enough. It ordered all parties, including the UCK, to convene in Rambouillet, France, for a final attempt to reach agreement on a rather balanced prepared text. On the 6th of February 1999 the talks began, but after a while ran the risk to just drag on without any results. The US secretary of state, Madeleine Albright, who herself had left the meeting, told Milosevic that a 'nay' would result in a NATO air campaign to enforce a 'yes'.

Under strong pressure, the UCK delegation had already accepted the text, but Milosevic put the text in front of his parliament and on 23 March he got a 'nay'. NATO started its air campaign the following day. After 78 days of bombing and a diplomatic intervention of Russia slightly modifying the deal in favour of Milosevic, Serbia also came on board. But as a result of the NATO campaign, Milosevic had *de facto* 'lost' Kosovo. Kosovo became a UN-protectorate and declared itself independent in 2008.²⁵ A last attempt by the UN special envoy, Martti Ahtisaari, to offer the Serb enclaves in Kosovo special 'horizontal' relations with one another and special 'vertical' relations with Belgrade, in a new independent Kosovo, failed. What remained was an independent but divided Kosovo, with the Serb enclave Mitrovica-North *de facto* belonging to Serbia. At the end of 2008, Kosovo was recognised by 53 member states of the UN.

Would it be possible to put an R2P label on the bombing campaign? Not really, in my opinion. First, it is very difficult to distinguish between the three phases: prevention, action, rebuilding. Since 1996 there had been fighting all the time, although only at the end of 1998 was the international community ready to accept the UCK as a relevant party in the equation, even though the UCK was the only actor able to change the parameters of the conflict.

Second, the BiH-approach was literally copied. Therefore, it is strange that in retrospect Jamie Shea labelled it a 'war of conscience' or a humanitarian intervention. During the war the UCK functioned as the forward air controllers of NATO. Thus, it became a crucial factor in the final success of the air campaign. If (for Shea) the end justifies the means, then NATO's aim was overridden by the aim of the UCK, i.e. the liberation of Kosovo, which goes far beyond the single goal of providing human security.

²⁵ Kosovo declared itself independent on February 17, 2008 after negotiations on their status, headed by the former Finnish president Martti Ahtisaari, broke down.

Third, the R2P advocates assume, not to say claim, that problems should be solved within the failed state under consideration. That did not happen in the Kosovo case. Separation was the name of the game, both for the Albanians and, in the end, for the NATO-countries too.

Fourth, even during the period of the UN-protectorate, when violence was kept to a minimum, it was not possible to solve the underlying ethnic problems. How could it? The Serbs had become a small and isolated minority in Kosovo. Athisaari was ready to accept this reality in his plan, by implicitly handing the Serb enclaves over to Serbia proper.

IV. The Role of the International Community

So far I have described the complexities on the ground of internal/regional conflicts. For the international community, these realities should be the point of reference of every international involvement. Indeed, they define the limitations and shortcomings of most initiatives launched by the international community, including resolutions of the UNSC. It is one thing to emphasise the territorial integrity of Georgia (or Serbia), but it is bad politics if one does not seriously take into account the hard realities on the ground contradicting this principle. Moreover, the people behind those realities are in a position to challenge the principle by adopting it for their own purposes, because regions can declare independence and can effectively defend their proclaimed territorial integrity, when their external sovereignty is guaranteed by a 'big brother', i.e.: a powerful friend and/or neighbour. If so, the invocation of international law is nothing more than an arbitrary argument instead of a final answer in a dispute. It happened in Kosovo - backed-up by the US and most of the EU member states - as well as in South Ossetia and Abkhazia - both backed-up by Russia. In the first case, Russia emphasised the territorial integrity of Serbia, while in the second case the West underlined the territorial integrity of Georgia. In retrospect, there is no fundamental difference between these cases. Humanitarian intervention and the R2P were used as additional labels to conceal the real intentions (secession) for military intervention. In each case *de facto* independence was already realised with the active support of 'big brothers' long before the official secession. They needed just one more argument to formally legitimise that status. In the case of Kosovo, the Athisaari-plan became the trigger while in South Ossetia and Abkhazia the unfortunate Georgian assault did the job.

Numerous scholars and politicians have convincingly argued that international law was violated. True, but there is no international authority able to enforce international law in cases where a combination of military and political power really matters. Since the NATO intervention in Kosovo (1999), carried out without a UN mandate, and the establishment of an internationally UN-mandated mainly western protectorate in the country, the power equation has changed drastically. Serbia and its main ally Russia were on the defence and lost their grip on the situation. Likewise, when the international

community was more or less forced to mandate Russia to keep the peace in South Ossetia and Abkhazia, Georgia and its main allies (US, NATO, EU) came on the negative side of the power equation. The final results were almost predictable, although in the beginning there was still a small window of opportunity in both cases. Maybe, the pacifist Rugova could plausibly have been moulded by the US and the EU, while President Shevardnadze made use of the fragilities inside Russia, immediately after the demise of the Soviet Union. At that time, negotiated solutions were not totally out of reach.

For too long - and this practice is still going on - the international community had tried to produce a solution through - first track - diplomacy with the help of civil society - second track diplomacy. Both mostly failed (so far). Diplomacy by itself is seldom a mechanism that can enforce international law. President Saakashvili seemed to have realised that when he ordered his own military forces to restore (inter)national law. With consequences which were the opposite of what he intended.

The problem with the R2P and similar recipes that are invented to address state failure, is that their respective toolboxes do not match the intensities of the problems they try to address. Centuries ago, Thomas Hobbes (1588-1679) has taught us that we need a Leviathan to cope with a situation comparable to a *bellum omnia contra omnes* (a war of all against all). Implicitly, he referred to situations in which countries fall apart in a (great) number of hostile security zones²⁶ each with its own rulers. The R2P mechanism is simply too soft, since it does not consider the necessity of installing a substitute Leviathan before it is too late. In BiH and Kosovo, protectorates were only established in the third phase – rebuilding - instead of the first phase - prevention.

In South Ossetia and Abkhazia the CIS peace keeping force was only deployed after periods of fighting and destruction. International prevention was absent in the South Caucasus and quite disastrous in the Balkans. In both cases, the atrocities were only stopped after the graves were fully filled. The various protectorates established in the third stage couldn't and wouldn't do more than ratifying the outcome of the war. In none of the cases it was possible to return to the status quo ante.

Conclusion: Whither now for the R2P?

The tools of R2P are simply not strong enough. Some essential and necessary attributes are actually missing in the tool boxes.²⁷ In particular stand-by forces, to be deployed in the preventive phase of some (not all) emerging

²⁶ M. Dekker & M. J. Faber, 'Winning the hearts and minds of foreign protectors', in: Molier & Nieuwenhuis (eds.) *Peace, security and Development in an era of Globalisation*, Place: Martinus Nijhoff Publishers, February 2009.

²⁷ The toolboxes developed by Evans suggest to contain stand-by forces where he refers to the necessity of pre-emptive deployment. But the UN doesn't possess this instrument. Evans 2008, *supra* note 2, p. 253.

conflicts, are crucial. BiH is a good example here. Kosovo and the two South Ossetian regions are more problematic. Stand-by forces cannot prevent secessionism but they must be able to prevent war. It is not a new idea but even the impressive UN secretary general Dag Hammarskjöld already faced huge obstacles in the 1950s to get the formal Security Council approval to establish a pool of standby troops for peace keeping operations and was finally left with the sympathy of a number of countries, among them the Netherlands, willing to offer on a voluntary base and on his call, so-called 'stand-by troops'.

A new futile attempt was initiated by the Dutch foreign minister van Mierlo in 1994, after the Rwanda genocide. A few years later, in 1996, after the Srebrenica genocide, six countries²⁸ created the Stand-by High Readiness Brigade (further: Shirbrig)²⁹ and offered the brigade to the UN secretary-general. The brigade has been used now and then in different kinds of operations, but not as a UN fire brigade for emergency situations, for which it was conceived and trained. At the end of 2008 it passed away, almost unnoticed.

The R2P concept seems to be developed for very specific cases.³⁰ It presupposes that the root causes of the conflict are solvable or manageable. But in case of ethnic/nationalist conflicts, it takes a strong, often authoritarian state to realise that. Yugoslavia under Tito or nowadays China, to mention just two examples, illustrate this necessity. Liberal democracies are not an immediate recipe, at best a long term goal. R2P might only work if its advocates become much more serious about its own shortcomings as far as its toolbox is concerned.

In December 2008, Archbishop Tutu from South Africa publicly asked for a humanitarian intervention in Zimbabwe, to be undertaken by his own country. He referred to the R2P as a justification for such a military operation.³¹ He could also have argued that it is purely in the interest of South Africa to do so, since millions of Zimbabweans try to escape to their neighbouring country with serious destabilising consequences.

It is this sense of self-interest that makes a 'war of conscience' possible. Without that sense a R2P operation remains one more muddling-on recipe, unable to adapt when things run out of hand. I doubt the wisdom of

²⁸ Denmark, Canada, Austria, the Netherlands, Poland and Sweden.

²⁹ CPPi Research Paper Series, no. 11 (2008).

³⁰ It would be helpful if the intellectual 'fathers' of the R2P concept could provide us with a list of countries (characteristics) where they think the concept in its full meaning will probably work. Evans underlines the success of the international intervention in Kenya (2007/8). But does Kenya provide us with a model for a successful R2P intervention? Or does the Kenya-exception confirm the rule that soft interventions are not sufficient?

³¹ The purists of R2P would immediately argue that Tutu does not comply with the definition of R2P which excluded non-UN-mandated interventions in other countries. See footnote 16.

introducing yet another new label while the situation on the ground confronts us with the hard realities of opposing and often hostile national/ethnic feelings. Here self-preservation is at stake, the only natural right, according to Hobbes. For ethnic groups, self-preservation will often lead to self-determination. And separation is more often than not the final outcome. In the end, the main root causes of (internal) war are almost all about status and ethnicity/nationality, and have a long history. It was obvious that they would flare up after the break-up of Yugoslavia and the Soviet Union, like they did a century ago after the break-up of the Austro-Hungarian and the Russian empires.

The Russian intervention in the breakaway regions, firstly through volunteers from the North Caucasus and next by regular troops, and the upgrading of the presence of their troops to the status of peace keepers, in fact 'settled' or froze the controversies. The Georgian attempt to force a solution in August 2008 was doomed to fail and created a new situation (for the foreseeable future) for Georgia, now bordering two independent countries under protection of Russia.

The comparison with Serbia, bordering an independent Kosovo protected by NATO and the West is obvious. Of course, from a legal point of view there is a lot to discuss and to disagree about. But in the end, I share the feelings of a British diplomat, a member of the UN Committee on Disarmament, who I met in Geneva, in 1980. When I confronted him with a barrage of issues of injustices all over the world, he responded with: "Sir, the world is as it is".

The above treatment of some of the most serious conflicts which have shaken Europe in recent times illustrates the failure of the language of human rights, human security and the responsibility to protect to live up to its billing. Where we are to go from here in order to protect individuals from gross human rights abuses in conflict zones is a troubling question, and one which remains to be answered.