

**Further supplementary written evidence from
the Rt Hon Hugh Robertson MP, Minister of State, Foreign and
Commonwealth Office:
humanitarian intervention and the responsibility to protect (USA 19)**

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Rt Hon Sir Richard Ottaway MP
House of Commons
LONDON
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Further to my letter of 6 January, I am pleased to enclose at Annex A responses to the questions posed in the Committee Specialist's follow-up letter of 9 December regarding the UK Government's position on humanitarian intervention and the responsibility to protect.

I hope the Committee finds this information useful.

All my very best wishes

THE RT HON HUGH ROBERTSON MP
MINISTER OF STATE

Annex A

Question 2: In the Committee's understanding, the Government considers that, under the doctrine of humanitarian intervention, it would be lawful for the UK to use force against another state without a UN Security Council resolution authorising the use of such force, if the Security Council cannot agree to authorise the use of force, and if other conditions are met (convincing and generally accepted evidence of extreme humanitarian distress, no practicable alternative, proportionate and limited force). The Committee's understanding is based on the legal advice that the Government published on 29 August 2013 in connection with possible UK military action against Syria.

The Committee notes that the legal position set out by the current Government at the end of August 2013 is the same as that advanced by the then Government in 1998-1999 with respect to the NATO military action against the then Yugoslavia (in the FCO note circulated to NATO Allies in October 1998 and the Defence Secretary's statement to the House on 25 March 1999). However, the Independent International Commission on Kosovo concluded in 2000 that the NATO military action was "illegal but legitimate".

The Committee further notes that the 2005 World Summit Outcome Document (endorsed by the UN General Assembly in Resolution 60/1 of 24 October 2005) accepted the doctrine of 'responsibility to protect' with reference to genocide, war crimes, ethnic cleansing and crimes against humanity. With respect to the role of the UN and the Security Council, the Outcome Document said that in such cases Member States were "prepared to take collective action [...] through the Security Council, in accordance with the Charter, including Chapter VII....."

The Government therefore appears now to regard as lawful military action (for example, that proposed in Syria) of a type which the International Commission on Kosovo concluded was unlawful.

i) **In this context, the Committee would like to know if it has understood the Government's position correctly.**

As set out in the note of the Government's legal position published on 29 August 2013 in connection with possible UK military action against Syria, if action in the Security Council is blocked, the position of the Government is that it is permitted under international law to take exceptional measures in order to avert a humanitarian catastrophe. Such a legal basis is available provided three conditions are met:

(i) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;

(ii) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and

(iii) the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose).

In October 1998 a Government note was circulated to NATO allies identifying these three key criteria.

Baroness Symons also set out the Government's position to Parliament in November 1998:

"There is no general doctrine of humanitarian necessity in international law. Cases have nevertheless arisen (as in northern Iraq in 1991) when, in the light of all the circumstances, a limited use of force was justifiable in support of purposes laid down by the Security Council but without the council's express authorisation when that was the only means to avert an immediate and overwhelming humanitarian catastrophe. Such cases would in the nature of things be exceptional and would depend on an objective assessment of the factual circumstances at the time and on the terms of relevant decisions of the Security Council bearing on the situation in question."

The United Kingdom has relied on this doctrine on three occasions:

- (i) In protecting the Kurds in Northern Iraq in 1991;
- (ii) In maintaining the No Fly Zones in Northern and Southern Iraq from 1991; and
- (iii) In using force against the Federal Republic of Yugoslavia in relation to Kosovo in 1999.

In relation to the last of these, the statement of the UK's Permanent Representative to the United Nations to the Security Council on 24 March 1999 read as follows:

"The action being taken is legal. It is justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe. Under present circumstances in Kosovo there is convincing evidence that such a catastrophe is imminent. Renewed acts of repression by the authorities of the Federal Republic of Yugoslavia would cause further loss of civilian life and would lead to displacement of the civilian population on a large scale and in hostile conditions.

Every means short of force has been tried to avert this situation. In these circumstances, and as an exceptional measure on grounds of overwhelming humanitarian necessity, military intervention is legally justifiable. The force now

proposed is directed exclusively to averting a humanitarian catastrophe, and is the minimum judged necessary for that purpose.”

The Government's position has not changed in light of the report of the Independent International Commission on Kosovo. It did not agree with the Commission's view that NATO's action in Kosovo in 1999 was illegal. The Government does not consider the Commission, while made up of experts, to be authoritative. Its views are not binding in any way, but represent the views of its independent members.

ii) **what development(s) since 2000 provide(s) the basis for the Government's position – and specifically, whether the relevant development is the 2005 World Summit Outcome Document and/or something else.**

Nothing has changed with regard to the basis for the Government's position, which predates 2000.

The “Responsibility to Protect”, as set out in paragraphs 138 to 139 of the 2005 World Summit Outcome document, makes it clear that the primary responsibility is on States to protect their own populations from war crimes, crimes against humanity, genocide and ethnic cleansing. However, it recognises the willingness of the international community to act speedily and appropriately in specific cases and take collective action where States are either unable or manifestly fail to do so. Responsibility to Protect in the World Summit Outcome document contains three pillars: (i) conflict prevention; (ii) capacity building; and (iii) military and non-military intervention. The focus of the Government has been on the first two of these pillars.

The 2005 World Summit Outcome document is in the form of a non-binding United Nations General Assembly resolution, albeit one that was agreed by consensus and adopted at a high-level political event. It simply indicates a responsibility based on existing legal norms, while going on to express a political readiness to take collective action. The Summit's adoption of the “Responsibility to Protect” was politically significant, and one that the Government welcomed and has continued to promote. But the “Responsibility to Protect” as set out in the Outcome Document does not in itself create new legal rights and duties or modify existing ones. And it does not address the question of unilateral State action in the face of an overwhelming humanitarian catastrophe to which the Security Council has not responded. Rather, the “Responsibility to Protect” is aimed at making sure that the Security Council does take action.

iii) **whether it is relevant that the 2005 World Summit Outcome Document was couched in terms of responsibility to protect, whereas the then-Government's position regarding the 1999 Kosovo intervention and the current Government's**

published legal advice on Syria in 2013 referred to the doctrine of humanitarian intervention.

As set out above in the answers to questions (i) and (ii), the legal basis of humanitarian intervention and the concept of the responsibility to protect are not the same thing and this is reflected in the fact that different terminology is used.

iv) whether, in the FCO's understanding, the US's position is the same as that of the UK on the lawfulness of the use of force without an authorising Security Council resolution under the doctrine(s) of R2P/humanitarian intervention.

The US interpretation of the lawfulness of the use of force without a UNSCR is a question for the US Government and, in any case, will always be case-specific. We believe the US to be as committed to the protection of civilians as the UK. The Administration's 2010 National Security Strategy makes clear that the US supports the concept of R2P and that in cases when prevention fails, "the United States will work both multilaterally and bilaterally to mobilize diplomatic, humanitarian, financial, and – in certain instances – military means to prevent and respond to genocide and mass atrocities".

v) the FCO's assessment of the implications for the UN if Member States use force under the doctrine(s) of R2P/humanitarian intervention without an authorising Security Council resolution.

The position of the Government is that intervention may be permitted under international law in exceptional circumstances where the UN Security Council is unwilling or unable to act in order to avert a humanitarian catastrophe subject to the three conditions set out above. The Government does not consider that this has adverse implications for the UN. It also is important to recognise that the responsibility to protect emerged after NATO's humanitarian intervention in Kosovo. The responsibility to protect was in many ways a response to what its framers saw as the failures of the Security Council over its reaction to the genocide in Rwanda in 1994 (where it acted too late), and to the humanitarian crisis in Kosovo in 1999 (where it did not authorise an intervention). The adoption of the responsibility to protect was therefore an attempt to move debate away from a focus solely on external military intervention by emphasising the responsibility of States towards their own populations, but also to signal the UN membership's support for the idea that, if necessary, the Security Council can and should act in the face of genocide, ethnic cleansing, war crimes and crimes against humanity; the expectation being that this political commitment would make Security Council action more likely and less controversial in future.