



“Those Who Bear the Greatest Responsibility”

**A Conservative Party Human Rights
Commission Report**

16 March 2010

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No one's identity can be reduced to membership of a single group, be it ethnic, national, religious, or whatever. Each one of us is defined by a unique combination of characteristics that make up our personality. And it is that individual person whose rights must be preserved and respected.

Kofi Annan

Introduction:

The insane brutality of genocide, crimes against humanity and war crimes are unimaginable to those who have never experienced them; there is no reason and no mercy from the perpetrators. “In the minds of those who commit genocide, it is not a question of killing human beings. They believe that they are eliminating a kind of vermin.”² People are tortured, murdered, displaced and stripped of all dignity simply for being born. “It is no use looking for logic in this illogical behaviour.”³ Genocide has been the subject of much commentary, analysis and debate; however, words cannot appease the collective mental and emotional scars of such horror; “the frightful noise of skulls being smashed in, the sounds of bodies falling on top of each other; the screams of people being killed, the groans of the dying and, perhaps worst of all, the unbearable silence of death which still hovers over the mass graves.”⁴ Many survivors of genocide have such traumas etched deep in their memory that, nothing can ever remove it.

It is notable that through the ages the violations that have taken place between one human being and another, between one tribe and its neighbour, or between nations in conflict have at their roots remarkably similar underlying themes. It is of paramount importance that the international community commits itself to holding war criminals and other grave violators of international criminal law accountable for heinous mass crimes and puts in place the architecture of a human rights based foreign policy that will work to prevent, and bring to an end genocide, war crimes and crimes against humanity. It is for an incoming Conservative government to give a lead in this regard.

Prior to 1944, the term ‘genocide’ did not exist. The term was coined by Raphael Lemkin, who managed to escape the Holocaust but lost up to 49 relatives. Through

¹ Statute of the Special Court for Sierra Leone, <http://www.sc-sl.org/CASES/tabid/71/Default.aspx>

² Conversations with Laure Guilbert and Hervé Deguine, Hope For Rwanda, André Sibomana, page 70

³ Conversations with Laure Guilbert and Hervé Deguine, Hope For Rwanda, André Sibomana, page 58

⁴ Conversations with Laure Guilbert and Hervé Deguine, Hope For Rwanda, André Sibomana, page 59

Lemkin's scholarship and personal struggle for reconciliation, genocide came to be defined as "not necessarily immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups with the aim of annihilating the groups themselves." Lemkin's in depth definition encouraged the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) to define genocide as "a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilised world."⁵

Many countries have recognised that "at all periods of history, genocide has inflicted great loss on humanity"⁶ and have fought for genocide prevention, as well as reacting when necessary; such as in Rwanda and Srebrenica. However, the question still remains: can humans learn from history? Post World War II, the international community recognised genocide and the Holocaust as ultimate tragedies in modern history. The international community after nearly fifty years of inactivity in this regard has established ad hoc international criminal tribunals and the International Criminal Court (ICC) to ensure that the world has moved from impunity to accountability. It is not just the problem of defining and criminalising genocide, but the problem as a whole found in war torn and conflict ridden countries. The violations of laws and codes of conduct during warfare resulting in crimes against humanity, genocide and war crimes, occurs when a government allows for the unbridled practise of murder, rape, torture, persecution and extermination.

The Conservative Party Human Rights Commission was established in 2005 by the Shadow Foreign Secretary, under the inspiration of the eighteenth century parliamentarian, William Wilberforce, who boldly led the movement to end the slave trade. The commission's priority is to bring into awareness international human rights violations, and to advise and strengthen the Conservative Party's foreign policy on human rights.⁷ After New Labour's unsuccessful "ethical foreign policy", it is imperative that an incoming Conservative administration fashions a foreign policy that enjoys both moral appeal and true international benefits.

The Conservative Party Human Rights Commission heard oral evidence and received written reports from: The Medical Foundation for Victims of Torture, The United Nations Association UK, Aegis Trust, The Henry Jackson Society, The Burma Campaign UK and Human Rights Watch UK. Within the evidence and reports submitted, the following four themes emerged, and may form the basis of a new human rights based foreign policy:

- Strong British leadership at the United Nations Human Rights Council review in 2011.

⁵ Preamble to the Convention of the Prevention and Punishment of the Crime of Genocide (CPPCG)

⁶ Preamble to the Convention of the Prevention and Punishment of the Crime of Genocide (CPPCG)

⁷ The Conservative Party Human Rights Commission, Annual Report 2006, page 4

- Implementation of independent judicial systems in countries lacking such systems.
- Britain to join the Human Rights Treaty Complaints System.
- Responsibility to Protect (R2P).

Responsibility to Protect (R2P):

In a report for the General Assembly in 2000 the then UN Secretary General, Kofi Annan declared that, “state sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself; where a population is suffering serious harm as a result of internal war, insurgency or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of no intervention yields to the international Responsibility to Protect.” R2P is a somewhat controversial subject; its controversy is in part due to its modernity. Within the unfamiliar terrain of R2P, however, lies the potential to develop a distinctly British human rights based foreign policy. Such a policy would include both humanitarian intervention coupled with the political and economical obligations of the Foreign and Commonwealth Office.

R2P should be seen as a reinforcing, rather than undermining, state sovereignty as it must be considered as a means of promoting human security by stressing that the primary responsibility for the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity lies with the state itself. R2P reinforces the responsibility of governments towards the protection of their own citizens but considers, however, that where governments are unable or unwilling to provide such protection then the responsibility to take appropriate action becomes the collective responsibility of the wider international community.

The concept of R2P combines humanitarian intervention with three main components: peace making (prevention or stopping conflict), peace keeping (maintaining peace), and peace building (re-establishing the structures of a post conflict society).

R2P Peace Making (prevention or stopping conflict):

The first and foremost obligation of human rights based foreign policy is encouraging dialogue. Through peace talks, peace treaties and peace negotiations, much progress can be made.

It is critical that prior to any dialogue or peace talks that there should have been a careful, shrewd and accurate assessment of that which is or may be the cause of possible imminent conflict. Recently in Kenya, an electoral dispute took on a violent ethnic dimension and yet a major conflict was prevented through diplomacy which stopped ugly political events into more serious and prolonged ethnic conflict civil war. Sincere and ongoing dialogue can serve a valuable role as a means to prevention of conflict, often without the need for outside imposition of solutions. In peaceful prevention, a country can be assisted in implementing or refining its judicial system, and laws. The trials and

convictions of war criminals can indicate a measure of the nation's self-empowerment, as it moves towards greater economic and socio-economic stability.

R2P Peace Keeping:

Dialogue is the cornerstone of the peace-making process in R2P human rights policy for nations in transition. In instances where all dialogue has been exhausted, however, military intervention should be considered in exceptional circumstances and with extreme care. Although always coupled with continual peace making dialogue, it is the last resort. There should always be, in these circumstances, an endeavour to act through and with the United Nations. In such instances where military intervention is necessary in order to stop a genocide, systems need to be put into place to combine the expertise of peace-keeping troops and, where absolutely necessary, the security of military intervention. Peace keeping in extent and definition, specific to the country in crisis, will determine the best course of action for British human rights intervention. The multiple and complex obligations of the FCO and all financial constraints (such as the January 2010 report by Baroness Kinnock on the reduction of funds available for counter-terrorism in Pakistan due to the devaluing of the pound-sterling) all need to be considered. A further concern with FCO financial constraints must be the possibility of British embassies closing. In addition, there have been closures of Secret Intelligence Service (SIS) stations in areas where timely advance warning of trouble could well lead to early steps being taken by HM Government to avoid the use of force. Military intervention is a difficult final resort and needs to be carefully defined in terms of objectives and whether it should be accompanied by such other measures as sanctions. The establishment of a "cross-regional treaty organisation with membership conditional on democratic governance"⁸, may ultimately be of benefit. Under the scheme, member regions would be committed to, and be defined by "sovereignty as responsibility"⁹ and be given approval by the UN.

Leila Sadat, similarly, recommends in her report on the Crimes Against Humanity Initiative a needed role for R2P and the development of a type of "multilateral convention"¹⁰ (cross-regional treaty organisation). "The Rome Statute does not provide for State responsibility in the case that a State either commits or fails to prevent the commission of crimes against humanity. A multilateral convention could do so."¹¹ Sadat further states that discussions leading to the Draft Convention are connected to the "emerging doctrine" of R2P. "The Responsibility to Protect requires that they (States)

⁸ Julia Pettengill, 'A Guilt Beyond Crime': The Future of Genocide Prevention in the Anglo-American Sphere, The Henry Jackson Society, page 48

⁹ Julia Pettengill, 'A Guilt Beyond Crime': The Future of Genocide Prevention in the Anglo-American Sphere, The Henry Jackson Society, page 48

¹⁰ Leila Sadat, The Crimes Against Humanity Initiative, Enforcement of International Criminal Law, Aegis Trust, page 22

http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

¹¹ Leila Sadat, The Crimes Against Humanity Initiative, Enforcement of International Criminal Law, Aegis Trust, page 22

http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

also affirmatively intervene to protect vulnerable populations from nascent or continuing international crimes.”¹²

Codes of principle and law pertaining to any peace keeping or military intervention should comply transparently with the Geneva Conventions. The cross-regional organisation would have to be specific to human rights foreign policy and its guidelines, and to individual countries needs. Clear foreign policy would be needed; explaining how countries can be part of the treaty and outlining the criteria for membership coupled with precise guidelines on human rights “policy, resources and concept.”¹³ To follow Sadat’s thread, “a necessary condition precedent to the invocation of the Responsibility to Protect doctrine is a clear definition of the event which triggers that responsibility.”¹⁴

When is military intervention (peace keeping action) called for? Extreme brutality that defies all logic or reason; total anarchy as witnessed in Rwanda. It is after the point of absolute breakdown and exemption from governance, justice, redress and humanitarian consideration of any kind that peace keeping action should be considered. Peace keeping in human rights foreign policy intervention should be defined by firm action, specific to the conflict afflicted country, and only to restore humanitarian order. When such pressure on a country is needed, a human rights based foreign policy must remain true to its philosophy; geo-politics should never be a deciding factor for peace keeping action. Consultation and combined effort within the FCO and international community will be needed in such extreme and last resort circumstances. There should be cross-departmental work with specifically set out guidelines between the FCO and Ministry of Defence if peace keeping with military intervention is needed. The deployment of armed forces should, in these instances, not be influenced by geopolitics. Total transparency of aims and agendas are needed so as to enable a clear distinction to be drawn between a human rights driven foreign policy, and other foreign policy concerns and obligations within the FCO. In cases where intervention is called for but where no human rights intervention can be undertaken, an honest account of the politics behind why no action has been taken must be made clear, so it may be understood albeit for reasons of practicality or economics.¹⁵

R2P Peace Building:

The third component of R2P is peace building (re-building). This is a process that should take precedence next to prevention. In peace building every effort must be made to

¹² Leila Sadat, The Crimes Against Humanity Initiative, Enforcement of International Criminal Law, Aegis Trust, page 22

http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

¹³ Tim Montgomerie, blogger and editor for Conservative Home, BBC, Today Programme, January 2010

¹⁴ Leila Sadat, The Crimes Against Humanity Initiative, Enforcement of International Criminal Law, Aegis Trust, page 22

http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

¹⁵ Sir Geoffrey Nice QC, Principal Prosecution Trial Attorney in the case of Slobodan Milosevic and co-sponsor of Crimes in Burma report by Harvard Law School, written evidence for Conservative Human Rights Commission, Burma hearing, 18 January 2010

endure minimum standards of basic services for populations affected by conflict, in particular in building, humanitarian aid and development activities which form a strategic framework in relation to gaining access to food, clean water and sanitation, medicines, health care and personal security. When peace building, however, there should be a wider understanding of the challenging conditions under which the strategic framework will be established. “Many peace support operations (PSOs) are not in control of their zones of operation; instead they co-exist with a range of rebel and government forces, and attempt to achieve a wide range of tasks, many of which are both more important and urgent than the apprehension of suspects.”¹⁶ Peace building and peace keeping military pressure within conflict afflicted countries should be allies in pursuit of stability and security when necessary.

Of the many factors that exist as to post conflict peace building, one of the most vital is to reintegrate former combatants and child soldiers; a failure to take account of former combatants and to help them reintegrate into civil society can often lead to a collapse of temporary peace. Action needs to be taken to combat the use of child soldiers and the recruitment of girls into the armed forces and their subsequent subjection to sexual abuse. In many conflict ridden areas there must be a great need to protect the rights of women and children in post conflict situations.

Consideration of the voluntary return of refugees and internally displaced persons (IDPs) must be a high priority while ensuring that they have sustainable means for survival. IDPs should be spread across the country and resettled in their original villages or towns and not concentrated in large groups which can lead to further conflict and violence. True peace building must promote family reunification and the reintegration of children affected by armed conflict.

A high priority in post conflict situations is the registration of land titles and the regularisation of land ownership. This should be made in accordance with international human rights law, to avoid governments, private companies or ruling elites illegally appropriating land, often at the expense of the poorest and most vulnerable, including returnees and IDPs. This must be backed up by efforts to strengthen courts so that they can better enforce property and commercial law, especially in countries where women have a diminished legal status or are denied basic property rights.

Such factors as the rule of law, sound money, a free market, an efficient and competent civil service, independent judiciary, legislative and executive branches free from corruption are essential to the concept of peace building.

R2P Peace Building and an Independent Judicial Systems:

The reestablishment of the Rule of Law would be an essential part of intervention. Peace is not just ‘the absence of war’. Justice is the cornerstone of a sustainable peace. The

¹⁶ Nick Donovan, Introduction: Enforcement of International Criminal Law, Aegis Trust, page 12 http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

need for the implementation of measures aimed at strengthening the Rule of Law and justice in post conflict situations is critical to the ultimate success of any intervention. Where victims see nothing being done to bring to account those whom they consider bear the greatest responsibility for grave crimes they may well pick up arms to seek redress thereby fracturing a fragile peace. The aim, therefore, must be to bring those who bear the greatest responsibility for international crimes to account.

Any Conservative human rights based foreign policy must stress the importance of the ICC, and work towards a situation in which all States ratify the Rome Statute; so as to make the ICC more operational, coherent and consistent. Universal jurisdiction allows for the perpetrators of war crimes, genocide and crimes against humanity to be brought to justice, and establishes a united stance against such heinous crimes within the international community. In concern of any abuse of power within the present system of universal jurisdiction, “no evidence has been cited by the Attorney General, the Justice Secretary or others that senior district judges have abused their powers by exercising their discretion to issue arrest warrants for international crimes.”¹⁷ There has recently been, however, concern regarding the powers of the Attorney General on deciding whether a senior judge can issue an arrest warrant in an individual case. What is being asked for within universal jurisdiction is prosecutorial independence, accountability and transparency, “reflected in a new protocol setting out the respective responsibilities of the Attorney General and Director.”¹⁸ Such legislation lends itself to a human rights based foreign policy in setting the precedence of working to end impunity. The UK should strengthen its law on international crimes, and within the fight against impunity. Through universal jurisdiction, lies the State's responsibility to enforce international criminal law within the remit of a war crimes' units. Countries that have established such a practice are Denmark, Norway, Sweden, Belgium, The Netherlands and Canada. “The creation of specialised units suggests a political willingness of governments to fight impunity and to take their obligations under international law seriously. It allows national authorities to develop expertise in the investigation and prosecution of serious international crimes.”¹⁹ The challenges when developing State war crimes' units are developing strategies that help domestic law enforcement agencies, including investigators and prosecutors, to further develop a historical and political understanding of international crimes concerned with war crimes' unit.²⁰ Once establishing a UK war

¹⁷ Human Rights Watch, Justice, Global Witness, International Federation for Human Rights, Redress, Briefing to Parliamentarians by the UK Universal Jurisdiction Group: Reasons to oppose the Attorney General interfering with the arrest warrant procedure in cases of suspected serious international crimes, 27 January 2010, page 4

¹⁸ Human Rights Watch, Justice, Global Witness, International Federation for Human Rights, Redress, Briefing to Parliamentarians by the UK Universal Jurisdiction Group: Reasons to oppose the Attorney General interfering with the arrest warrant procedure in cases of suspected serious international crimes, 27 January 2010, page 4

¹⁹ Jürgen Schurr, Ending the Culture of Impunity: The Establishment of Specialized War Crimes' Units, Enforcement of International Criminal Law, Aegis Trust, page 39

http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

²⁰ Jürgen Schurr, Ending the Culture of Impunity: The Establishment of Specialized War Crimes' Units, Enforcement of International Criminal Law, Aegis Trust, page 37

http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

crimes' unit, a clear understanding of "residence" in UK law should be defined and jurisdiction for genocide should be backdated to 1969, and internal war crimes backdated to 1957.²¹

The acknowledgement of a country's war crimes, the right to justice, redress and governance as well as a country evolving through sound economic and socio-economic plans of action is vital. Many international and UN organisations help post genocide countries to re-stabilise socially and psychologically. An equivalent body should be formed to guide countries to re-build economically, however, since increased prosperity may reduce the risk of circumstances repeating. Economic global standards should set the precedence for diplomacy, yet allow the commerce and entrepreneurship to thrive in both developed and emerging markets. There should be legal systems of rules and principles that hold in place codes of conduct and guiding choices that set exact measures to protect, stabilise and yet enhance an open corridor between and within developed and emerging economies. Furthermore, policies created should implement international and national plans of action that embrace the law, protect, maintain guidance, and yet leave room for innovation, growth and economic shifts.

Caution and wise discrimination should be in place throughout these processes, since failure will inevitably result in further abuses of power. It is perhaps inevitable that someone, somewhere will question and criticise regime change even under the most democratic of circumstances. Peace-building in a country after years of tyrannical rule must be established on firm foundations and with an intelligent architecture.

Appointed Minister for Human Rights:

A future Conservative government should create a ministerial position designated to oversee human rights within the FCO, specifically: a Human Rights Minister. The Human Rights Minister would develop human rights policy and intervention. He or she would act as the cross-departmental director overseeing a group of human rights ambassadors that specialise in specific regions and areas of humanitarian need. The Human Rights Minister would also liaise carefully between the FCO Human Rights department and the other departments in the FCO, as well as promote cross departmental dialogue and co-operation between the FCO and MOD.

Annual Debate:

In maintaining the distinct implementation of a Conservative human rights based foreign policy, an annual debate on human rights should take place on the floor of the House.

United Nations Human Rights Council 2011:

²¹ Anna Macdonald, Strengthening UK Law on Genocide, War Crimes and Crimes Against Humanity, Enforcement of International Criminal Law, Aegis Trust, page 48
http://www.aegistrust.org/images/reports_briefings_2009/Enforcement_of_International_Criminal_Law.pdf

The General Assembly's review of the UN Human Rights Council takes place in 2011. It has been recommended strongly that a future Conservative government initiate a lead role at the review by setting new agendas and plans of action that reshape and strengthen the Council's multi-strategic approach to human rights. A future Conservative government has been recommended to introduce a policy that defines the blurred boundaries of international cases and NGOs, and that the FCO liaise closely with the NGO community.

Human Rights Treaty Complaints System:

A future Conservative government has been urged to sign up to the Human Rights Treaty Complaints System. Many European countries have joined; however, the UK has yet to do so. Consideration on joining, while researching why participation has not occurred yet, would be helpful to the victims of torture and many other human rights violations within the international community.

Conclusion:

A successful human rights based foreign policy should consist of three components: diplomacy, practicality and humanitarian intervention (or stabilisation). It is, however, impossible for governments to intervene in every crisis, since the number of conflict afflicted countries in need of urgent relief is huge. Instead, a balance needs to be struck.

The process of shaping a human rights based policy must revolve around the rights of two groups: the national group (the people), and the individual (the citizen). To retain awareness of the macrocosm of the former, made up by the microcosm of the latter is to realise that the lives of men, women and children make up the human face of foreign policy intervention. The individuals that fall victim to acts of terror and genocide are deserving of life, respect and humanitarian help. Genocide, crimes against humanity and war crimes plague many countries both within the developing and developed world, however, an attempt to try and create foreign policy that is specific-centric (like the many irreplaceable human rights NGOs and organisations) would be a daunting task. A broader human rights based foreign policy should act as an umbrella under which sits 'macro-humanitarianism', more specific-centric NGOs, along with the FCO.

The intention of this report is to appeal to the Conservative Party as a collective force. The FCO serves as the spearhead of that collective understanding. Few would challenge the notion of fundamental human rights for the individual regardless of race or creed. The structural gaps and shortfalls within the FCO, however, need to be bridged cross-departmentally combining civil servants, department heads and the prevailing government. Any human rights based foreign policy should remain loyal to its fundamental purpose of the humanitarian cause.

As a primary player within the international community, with a significant influence on the Security Council, Britain has a multilateral influence across the UN and

internationally. The UK is also a centre of global media, finance, NGOs and wields considerable political influence. Mistakes have been made, however, and it is by questioning the humanitarian contradictions and misguided motivations behind events, like the Iraq war and Afghanistan, that we learn from our shortcomings. Perhaps only from such a process of self-examination, can an evolved, intelligent and distinctly British human rights based foreign policy be formed that will serve as the benchmark within the international community.

Tony Baldry, MP
Sir Desmond de Silva QC
Benedict Rogers
Heather Blake
Philip Riches