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# Nations at war

## A scientific study of international conflict

Daniel S. Geller

*University of Mississippi*

J. David Singer

*University of Michigan*



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*Ius ad bellum:*

- (1) Kompetente Autorität;
- (2) Gerechter Grund (*justa causa*);
- (3) Richtige Absicht (*recta intentio*);
- (4) Letztes Mittel (*ultima ratio*);
- (5) Vernünftige Aussicht auf Erfolg;
- (6) Verhältnismäßigkeit.

*Ius in bello:*

- (1) Non-Kombattanten-Immunität (Diskriminierungsgebot);
- (2) Verhältnismäßigkeit.

Peter Mayer: War der Krieg der NATO gegen Jugoslawien moralisch gerechtfertigt?

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In den folgenden zwei Kapiteln stelle ich die einzelnen Elemente der Lehre vom gerechten Krieg kurz vor und verbinde damit jeweils die Frage, inwieweit der Krieg der NATO-Staaten gegen Jugoslawien damit in Einklang stand.

### 3. Der Krieg der NATO gegen Jugoslawien und das *ius ad bellum*

#### 3.1. Kompetente Autorität

Ob ein Krieg gerechtfertigt ist oder nicht, hängt nicht allein davon ab, wozu und mit



# THE RESPONSIBILITY TO PROTECT

DECEMBER 2001

REPORT OF THE  
INTERNATIONAL COMMISSION ON INTERVENTION  
AND STATE SOVEREIGNTY

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# SYNOPSIS

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## THE RESPONSIBILITY TO PROTECT: CORE PRINCIPLES

### (1) BASIC PRINCIPLES

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

### (2) FOUNDATIONS

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A. obligations inherent in the concept of sovereignty;
- B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- D. the developing practice of states, regional organizations and the Security Council itself.

### (3) ELEMENTS

The responsibility to protect embraces three specific responsibilities:

- A. **The responsibility to prevent:** to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
- B. **The responsibility to react:** to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
- C. **The responsibility to rebuild:** to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

### (4) PRIORITIES

- A. **Prevention is the single most important dimension of the responsibility to protect:** prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.
- B. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

## THE RESPONSIBILITY TO PROTECT: PRINCIPLES FOR MILITARY INTERVENTION

### (1) THE JUST CAUSE THRESHOLD

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

- A. **large scale loss of life**, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
- B. **large scale 'ethnic cleansing'**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

### (2) THE PRECAUTIONARY PRINCIPLES

- A. **Right intention:** The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
- B. **Last resort:** Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
- C. **Proportional means:** The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
- D. **Reasonable prospects:** There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

### (3) RIGHT AUTHORITY

- A. There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.
- B. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.
- C. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.

- D. The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.
- E. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:
  - I. consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace" procedure; and
  - II. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.
- F. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.

#### (4) OPERATIONAL PRINCIPLES

- A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.
- B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.
- C. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.
- D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.
- E. Acceptance that force protection cannot become the principal objective.
- F. Maximum possible coordination with humanitarian organizations.





**A more secure world:**  
*Our shared responsibility*

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**Report of the High-level Panel on Threats,  
Challenges and Change**



**United Nations  
2004**

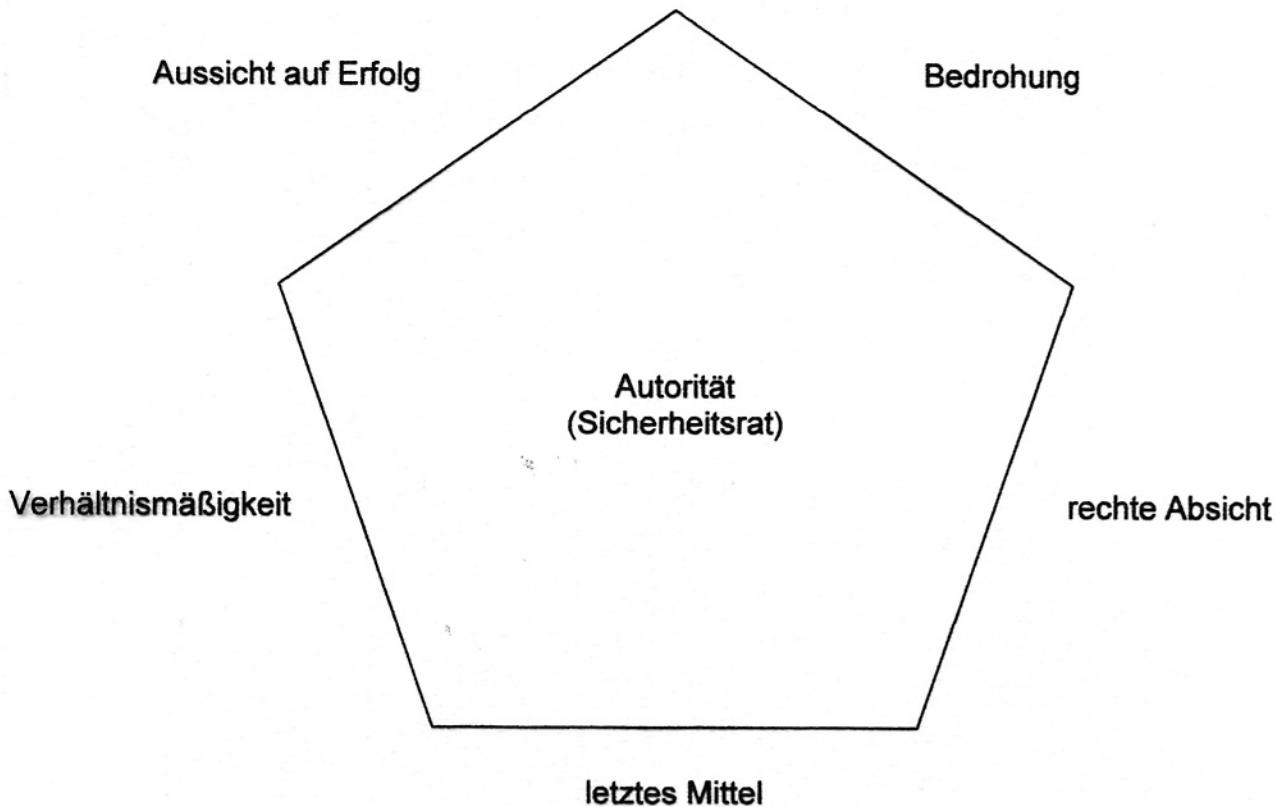
**So defined, there are six clusters of threats with which the world must be concerned now and in the decades ahead:**

- Economic and social threats, including poverty, infectious diseases and environmental degradation**
- Inter-State conflict**
- Internal conflict, including civil war, genocide and other large -scale atrocities**
- Nuclear, radiological, chemical and biological weapons**
- Terrorism**
- Transnational organized crime**

**In considering whether to authorize or endorse the use of military force, the Security Council should always address ... at least the following five basic criteria of legitimacy:**

- (a) *Seriousness of threat* . Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? In the case of internal threats, does it involve genocide A/59/565 and other large -scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?**
- (b) *Proper purpose*. Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?**
- (c) *Last resort* . Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?**
- (d) *Proportional means*. Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?**
- (e) *Balance of consequences*. Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?**

## Die Verbildlichung des Konzepts des Gerechten Krieges nach K. Annan

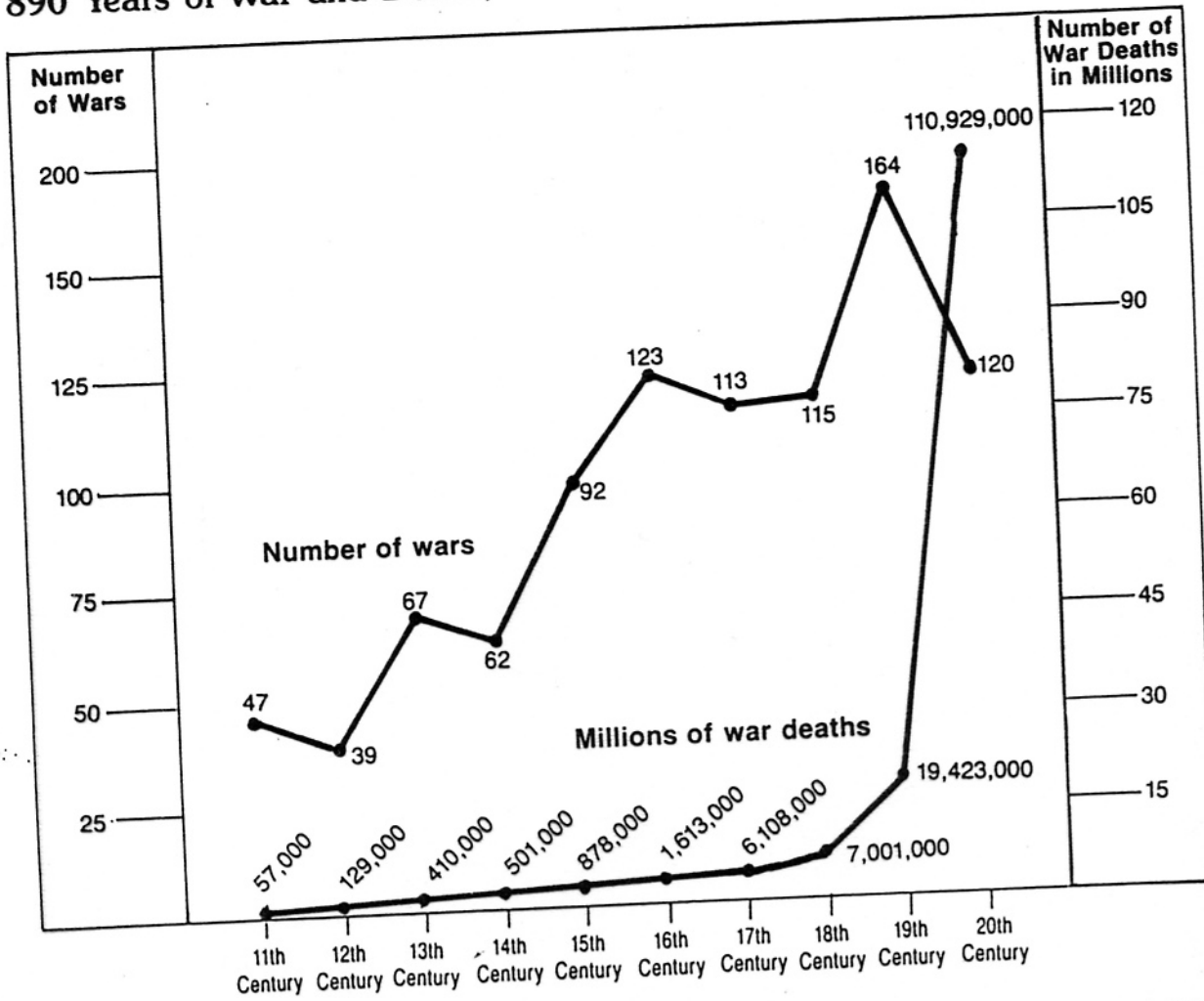


United Nations (2005): In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General, S. 33:

„The task is not to find alternatives to the Security Council as a source of authority but to make it work better. When considering whether to authorize or endorse the use of military force, the Council should come to a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success.”

Es sind nach obigem Textauszug sechs Komponenten erkennbar, die für einen gerechten Krieg notwendig sind: eine Quelle der Autorität, eine Bedrohung, eine rechte Absicht, Gewalt muss das letzte Mittel sein, Verhältnismäßigkeit muss gegeben sein, sowie auch eine vernünftige Aussicht auf Erfolg. Das Element der Autorität ist in dieser Grafik im Mittelpunkt da es der Ausgangspunkt für die Entscheidungen über die anderen Kriterien ist.

**FIGURE 13.1**  
**890 Years of War and Death, 1110-1990**



Data source: Eckhardt (1991). Eckhardt defines a war as a conflict that (a) involves a government on at least one side and (b) accounts for at least 1,000 deaths per year of the conflict.

This figure shows the long-term trend in the rise of both the frequency and severity of war. Beginning in the year 1100, the number of wars in each century has usually increased. The total for the twentieth century has declined from that of the nineteenth century, but new wars have increased this century's total since Eckhardt's study, which only went through the end of 1989. The soaring death toll of this century's wars, which account for 75 percent of the millennium's total, is a truly alarming figure.

number of wars, that has decreased the percentage of countries involved in international war in recent decades. In absolute numbers (still comparing 1816-1945 and 1946-80), the average number of countries involved in a war in any given year increased from 3.5 countries to 7.5 countries for international war and from 1.4 countries to 4.3 countries for civil war (DeMars, 1990). Perhaps the most depressing figure is derived from comparing the percentage of wars since 1800 with the percentage of wars throughout history. A recent study by William Eckhardt (1991) found that of the 1,266 wars in the past 50 centuries, 284 (22 percent) have occurred in the last two centuries (4 percent of recorded history). The frequency of war during the last 890 years is shown in Figure 13.1, above.

Severity is the truly awful news. According to Eckhardt's (1991) study, over 147 million people have died as a direct result of war during the past nine centuries (1100-1990). Of the dead, an astounding 75 percent (110.9 million) have died in this century. Of the dead, an astounding 75 percent (110.9 million) have died in this century. Of the dead, an astounding 75 percent (110.9 million) have died in this century.