WARS OF CHOICE OR CRIME? THE NATIONAL INTEREST, STATE CRIME AND OFFICIAL OVERSEAS BRITISH MILITARY INTERVENTIONS SINCE 1945

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Abstract: Since 1945 British governments, as a matter of official policy, have undertaken a number of military interventions against another sovereign state. Some interventions were justified on the grounds that they delivered United Nations Security Council Resolutions (UNSCR) whether through another international organization such as the North Atlantic Treaty Organisation (NATO) or as a joint state activity. Others have been justified on humanitarian grounds or in terms of a regional or global responsibility to maintain peace and security. International law and international standards provide a framework for the legitimacy or otherwise of any intervention by one sovereign state in the affairs of another sovereign state; to act in breach of them would be a state crime. As a liberal democratic country the United Kingdom (UK) would not be expected so to act.

On the other hand, successive UK governments have emphasized the role of the national interest as a major official criterion for intervention, in part where authorization has been, or claimed to have been, provided by a UNSCR or, increasingly, where the UK intervenes without such an authorization.

This article asks if the formal reasons for any of the interventions give grounds for questioning their legality under international law and why a liberal democratic state may pursue an approach amounting to state crime. It concludes by suggesting that a liberal democratic state such as the UK has both the capacity and motivation for state crime at international level and, while the opportunities for so acting may be limited, the pursuit of the national interest is an ever-present potential for initiating or engaging in interventions whose justification under international law or other international standards may be tenuous at best or illegal at worst.

Keywords: British government; military intervention; state crime; national interest

Introduction

The nature of a liberal democratic state and of the liberal democratic perspectives that have been assumed to underpin domestic policies during the twentieth century are also those that have seen the UK play leading roles in establishing international

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organizations such as the UN and NATO and which continue to seek to influence contemporary overseas policies. These have been exemplified by successive governments' announcements in recent years. These include Robin Cook's 1997 statement on "an ethical content to foreign policy", Tony Blair's 1999 "doctrine of international community" and William Hague's 2010 claim of a foreign policy with "a conscience".[1]

On the other hand, Blair was to argue in 1999 for a "more subtle blend of mutual self-interest and moral purpose" and Hague was also to claim in 2009 that "foreign policy is above all about the protection and promotion of our national interest" and that any foreign policy should be tempered with "realism". In 2010 the Strategic Defence and Security Review noted that, when the British government proposed military intervention, the government should be more selective, including "deploying them decisively at the right time but only where key UK national interests are at stake" (HM Government 2010: 17).

Through the focus of official military interventions against other sovereign states, this article argues that the continuing emphasis on the national interest, however presented, means that official claims of legitimacy may be challenged even if it is claimed that the intervention accords with the intention of a UNSCR and all the more so where no official authorization is provided. The purpose of the article is to explore how far in a liberal democratic context the pursuit of a national interest as one key driver of foreign policy could lead to a breach of international law and other international standards in what would amount to a state crime.

Context

There has been extensive use of UK armed forces and other state agencies for official and unofficial political, policing and military actions in the international context. Reasons given have ranged from responses to – or within the scope of – UN Resolutions to "counter-insurgency" deployments (see, for example, Dixon 2012), assisting governments that relied on UK military support, reacting to *ad hoc* disputes (such as the conflict over fishing rights with Iceland) or in terms of covert activities (see, for example, Curtis 2003 and Cormac 2012).

The policy intentions that initiated such actions are relevant to understanding the nature of the British state and illustrate the full spectrum of illegal-legal interventions, but covering all such types of intervention would be beyond the scope of this article. The focus is on interventions undertaken overtly as official policy and which are justified as legitimate interventions under international law and other standards. Here the term "military intervention" or "military conflict" concerns the official deployment of armed policy "where British forces are sent in anticipation that they will or may be involved in lethal exchanges of force or where

British air or naval force is used against targets in another state or in international waters" (House of Lords Select Committee on the Constitution 2006: 7).

Military intervention as an instrument of state policy may be initiated for several reasons:

> some wars, for example of self-defence ... serve precisely the same purposes as they ever did and have been described as "wars of necessity". But the phenomenon of military intervention for reasons other than to preserve the state's own vital territorial interests, sometimes called "wars of choice", could only be categorised as being waged in the national interest if that "interest" is given a very broad definition. (House of Lords Select Committee on the Constitution 2006: 12)

The most common types of intervention are those initiated by treaty obligations; for the UK:

> [T]here are four treaties which probably create the strongest sense of general political expectation, namely the North Atlantic Treaty, the Treaty of the European Union, the UN Charter and the Brussels Treaty establishing the WEU, but all four "preserve the fundamental principle that the United Kingdom armed forces cannot be deployed without a sovereign decision by the United Kingdom government". (House of Lords Select Committee on the Constitution 2006: 13)

Others, increasingly, have included wars of choice on grounds ranging from a perceived responsibility to protect citizens of other sovereign states from catastrophic or widespread violence from their own governments, through a willingness to maintain international peace and security by intervening in those countries considered to threaten either or both, to pre-emptive self-defence against attacks by or launched from another sovereign country.

The areas where state crime could occur in such circumstances could thus include a unilateral act of aggression against another sovereign state, the exploitation of treaty obligations by acting beyond or at variance to the professed purpose of the relevant representative organization or association, the manipulation of alliances of member states to produce a UNSCR or other formal supra-national agreement that serves the interests of those alliances, going beyond the authorized basis for the original intervention, or intervention on grounds of benefit to the wider international community that masks the self-interest of particular geo-political perspectives and alliances.

The Interventions

UK overseas military interventions have been greater than any other country in the twentieth century (although, since 1945, the USA has undertaken significantly

more interventions, with these increasing since the late 1980s; see Kavanagh 2013) (Human Security Centre 2005). Since 1945, successive British governments have officially authorized overt overseas military interventions against other sovereign states which are outlined in Table 1.

Case Studies in Intervention

It is not the intention of this article to explore the legality of all the interventions but to review those where allegations of illegality or state crime have been raised before or after the intervention to understand the causes and consequences in relation to state crime and a liberal democratic state.

Egypt

The Suez invasion in 1955 followed the nationalization of the Suez Canal Company by the Egyptian government. Exasperated by the delays in a negotiated settlement, aware that the US would not support a unilateral act of aggression to retake the canal, and aware that the nationalization process would be difficult to justify as an illegal act, the UK government were looking for grounds for a reassertion of UK international authority through military intervention (see Scott Lucas 1991).

A scenario was offered to the UK by France and Israel whereby the latter's invasion of Egypt in October 1956 would allow France and the UK to demand Egypt pull out of the canal area to guarantee its security and, when it failed to do so, invade. The scenario was a pre-arranged collusive arrangement by the three governments (Scott Lucas 1991; Bar-On 1990). Questions in Parliament about conspiracy, collusion and cover-up began from the moment of the time of the Israeli invasion. Government consistently failed to account for its actions to Parliament; both main political parties sought to avoid any post-invasion inquiry.

Kosovo

NATO intervention in support of Kosovo's unilateral declaration of independence on the basis of ethnic self-determination, and the subsequent humanitarian crisis it initiated, involved bombing Belgrade to persuade Serbia to disengage in Kosovo. This was recognized at the time as the prime consideration that overruled state sovereignty and international law. The UK Foreign Affairs Committee concluded that the bombing was "contrary to the specific terms of what might be termed the basic law of the international community – the UN Charter" and that "the doctrine of humanitarian intervention has a tenuous basis in current international customary law, and that this renders NATO action legally questionable".

On the other hand, it also considered that, given no action was likely to be forthcoming through the UN, "the NATO allies did all that they could to make

Table 1 UK Overseas Military Interventions

Date start	*Date finish*	*Country*	*Type of intervention*	*Brief formal description*
1950	1953	Korea	US-led intervention in a civil war following collapse of unification talks to enforce UNSCR	UNSCR 84, mandating members to support South Korea in face of invasion by North Korea and "restore peace"
1956	1957	Egypt	Collusive arrangement to seize Suez Canal area following Israeli invasion	To keep canal open following Egypt's "failure" to acquiesce to Anglo-French demands to withdraw from canal area following an Israeli invasion
1982	1982	Falklands	Invasion of Falkland Islands occupied by Argentinean troops. Military action to retake the Islands	Actions under UN Articles 73 and 51 whereby the British Government was, under Article 73, the recognized administering authority for the Falklands, and had an "inherent right of self defence under Article 51" with the right to use the minimum force necessary to deal with the Argentineans
1991	1991	Kuwait/Iraq	US-led intervention to enforce UNSCR	One of a series of UNSCRs (starting with Resolution 660 demanding Iraqi withdrawal) to condemn the unilateral invasion of Kuwait by Iraq, culminating in Resolution 678 authorizing members to invade to expel Iraq
1992	1996	Serbia	NATO-led air strikes and components of the UN Protection Force	Based on UNSCR 743, 816 and 836, intended to end internal conflict between Serbia and Bosnia-Herzegovina. Air strikes by NATO at UN's request
1998	1998	Iraq	Operation Desert Fox, a US-UK air attack on Iraq	Short campaign to impair Iraq's capacity to produce weapons of mass destruction (WMD) after obstructions to role of weapons inspectors established by UNSCR 687 (see also 1060 and 1441)
1998	1999	Kosovo	NATO-led peace-keeping force	To protect the Kosovan population from aggression by Serbian forces
2000	2002	Sierra Leone	UK-only intervention	Initially an evacuation exercise expanded into military support for, and return of, the exiled government
2001	Continuing	Afghanistan	US-UK bombing and ground intervention	Intended to attack the Al Qaida network and hold the Taliban regime, accused of harbouring it, "accountable"
2003	2009	Iraq	US-UK bombing and ground intervention	Intended to remove Iraq's capacity to produce WMD
2011	2011	Libya	UK/French-led support for the Resolution	UNSCR 1973 intended to provide support to anti-regime forces and protect civilian population

Source: Compiled from several sources by author.

the military intervention in Kosovo as compliant with the tenets of international law as possible" and that "NATO's military action, if of dubious legality in the current state of international law, was justified on moral grounds" (Foreign Affairs Committee 2000: paras 128, 132, 134, 138; for arguments to the contrary, see Amnesty International 2000 and Human Rights Watch 2000).

Iraq

Iraq's invasion of Kuwait in 1990 resulted in unequivocal condemnation by the UN, followed by authorized military action led by the US government to expel Iraqi forces. A series of Resolutions were subsequently imposed to force an end to any Weapons of Mass Destruction (WMD) programmes and admit UN inspection teams to oversee this. During this period the US and the UK unilaterally launched Operation Desert Fox, a short bombing campaign, in response to Iraq's failure to cooperate with the teams.

The second invasion of Iraq invoked a much stronger reaction. This was in part because of publication by the Labour government of material of dubious provenance in support of intervention, the insistence that previous UNSCRs provided a legal basis for invasion without referral to the UN Security Council on the basis of the continuing presence of WMD, and in part because the invasion was less about enforcing the UN Resolutions about WMD than about regime change.

One of a number of official inquiries, none of which actually addressed the issue of legality, noted that the Labour government, aware that there was no legal justification for the overthrow of the Iraq regime other than failure to comply with UN disarmament obligations, used "intelligence on Iraqi nuclear, biological, chemical and ballistic missile programmes … in support of the execution of this policy to inform planning for a military campaign; to inform domestic and international opinion, in support of the Government's advocacy of its changing policy towards Iraq" (Butler 2004: 165).

Sierra Leone

Sierra Leone was a former British colony whose post-independence progress was increasingly marked by corruption, public order failure and the collapse of government revenue. Prolonged civil war saw the Labour government introducing an Order-in-Council in support of a UN Resolution banning the supply of arms to "any person connected with Sierra Leone". In 1998, a deal by a military consultancy company to supply arms and logistics to the ousted president was investigated by HM Customs and Excise. The solicitors for the company involved wrote to the Foreign Secretary that its clients had been assured "throughout that the operation had the full support" of the government (see Foreign Affairs Committee 1999; Legg and Ibbs 1998).

Whether this affair could be seen as "seriously tarnishing the claims of the Government to have injected an 'ethical dimension' into foreign policy" (Lunn et al. 2008: 76), the Foreign Affairs Committee later pointed out that the Order-in-Council under British law was "perfectly clear" in creating a criminal offence. It then exonerated all of the parties involved by arguing that there was "ambiguity" in the Resolution, that the Order-in-Council could be seen to be *ultra vires* if it went beyond the requirements of the Resolution, that it was not given "full publicity" among those who could be affected. Since ministers were not party to the activities of the Foreign and Commonwealth Office and the military consultancy they could not be accused of complicity in disregarding its contents (Foreign Affairs Committee 1999: paras 11–25; see also Rawnsley 2001: 176–84; Woods and Reese 2008; Dorman 2009).

Afghanistan

The unilateral invasion of Afghanistan led by the US and UK has been argued as both legal and illegal (Kelly 2002: 287; Williams 2011), based on the grounds that the Taliban regime, which controlled much of the country following the expulsion of the Russian army, was harbouring and supporting those involved in the 2001 attacks on the Twin Towers in New York. The invasion was argued as justified on the grounds of pre-emptive self-defence, supported by UNSCR 1368, passed after strong US pressure, which both condemned the attacks and also threatened "all necessary steps" to combat terrorism. In particular it called on "all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks" and stressed that those "responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable".

The UK has argued retrospectively that the "current Government's key objective in Afghanistan, like that of its predecessor is that Afghanistan should not again become a place from which al-Qaeda and other extremists can attack the UK and British interests", based on a stated policy of bringing Bin Laden and others to justice and regime change if the Taliban regime failed to comply with a requirement that Afghanistan ceased to harbour and sustain international terrorism (Foreign Affairs Committee 2011: 76).

Leaving aside the questions of distinguishing between a terrorist attack and the actions of a sovereign state, of the US expecting any agreement to hand over those involved in the attacks, or whether the Taliban were capable of so doing, given they were essentially "a social movement and a tribal militia running a country (with) few meaningful governmental structures and little that actually functions" (Goodson 2001: 115), the failure to achieve the invasion's objectives left the invading forces remaining in the country, a continuing presence legitimized by

Resolution 1386. This mandated the troops on the ground as an International Security Assistance Force to provide security and assistance in the reconstruction of the country (although the Force was, and is, not UN-led largely because the Force was actively engaged in combat, rather than peace-keeping) but which has since been argued to be equally unsuccessful (see Smith and Thorp 2010; Foreign Affairs Committee 2011; Bird and Marshall 2011).

Libya

When the civilian protests provoked an armed response from the Gaddafi regime in February 2011, the UNSC approved Resolution 1973 the following month that authorized member states individually or through associations to protect civilian populated areas from government attack by any means short of invasion. It also imposed a no-fly zone, an arms embargo and an assets freeze. As the House of Commons Defence Committee noted in relation to Libya, "the question of the legality both of the Libyan operation overall and of individual targeting is vital, not only intrinsically but also because of the possibility that in future years those who took part in it might find themselves before the International Criminal Court" (Defence Committee 2012: 21).

Concerns have been advanced on the grounds that "since the situation in Libya does not involve aggression and is not a breach of, or threat to, international peace and security, it falls outside the parameters of Security Council authority" (Modeme 2011: unpaginated). On the other hand, Resolution 1973 was seen as "a robust and carefully crafted no-fly zone authorization" since it ensured the legality of the action and the ability of countries to act unilaterally or through NATO without further resource to the UN by providing them with the authority to initiate attacks outside the no-fly zone. These could be on Libyan security forces which, "while not directly engaged in attacks on civilians or areas populated by civilians, are supporting, or reasonably could be expected to support, such attacks, even far from the battlefront" (Schmitt 2011: 55–6).

International Laws and Standards

Official interventions are governed by international law whose development sought to curtail wars originating through unilateral state aggression:

> [B]y 1939 a norm of illegality had appeared as part of customary law based upon a considerable state practice and instruments the obligations of which were accepted by virtually all states … in particular the acceptance by the majority of states of the criminal character of illegal resort to force, or at least the major forms of resort to force,

> has considerable significance in supporting, and raising to a higher power, the norm of illegality. (Brownlie 1963: 424)

This development has substantially addressed the conduct of states in terms of considering the potential for or possibility of state crime. For the purposes of this article, "international and domestic laws and human rights standards can be used to define certain state activities as criminal. Thus, in defining the activities of a state as criminal, one may employ ratified international law and customary international law (i.e., which may or may not be codified) in addition to domestic law or human rights standards" (Kauzlarich et al. 2001: 176).

The main focus of the requirements of international law lies with the UN Charter with Article 2(4) forbidding the threat or use of force against "the territorial integrity or political independence of any state". The exceptions to this are "the use of force when mandated by a competent organ of the UN (usually the Security Council acting under Article 42 of the Charter) or the use of force in self-defence (under Article 51)" (Youngs and Oakes 1999: 25).[2]

Breaches (or a disproportionate response under Article 51) may incur the accusation of a crime against international law; how a state conducts itself under Articles 42 and 51 in terms of International Humanitarian Law (IHL)[3] may also attract allegations of illegality. At the same time a similar accusation could be made in terms of customary international law – law that is uncodified. Here, the Statute of the International Court of Justice notes that the court will apply "international custom, as evidence of a general practice accepted as law, and the general principles of law recognized by civilized nations" although there is a lack of clarity over questions as to what comprises state practice or prevalence of recognition by states (see Goldsmith and Posner 1999).

Unilateral intervention on humanitarian grounds is less governed by a formal legal framework than by a professed over-riding commitment to protect human rights as opposed to an acceptance of the inviolability of a state to organize its own affairs. The "responsibility to protect" is premised on "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states" (Siskind 2011: 6; see also International Commission on Intervention and State Sovereignty 2001). The criteria for "acceptable" intervention are usually: right intention ("for the common good, not for self-aggrandizement or because of hatred of the enemy"), a just cause ("self-defence, defence of others, restoration of peace, defence of rights and the punishment of wrongdoers"), proportionality of ends ("whether the overall harm likely to be caused by the war is less than that caused by the wrong that is being

righted"), and last resort ("is the use of force the only, or the most proportionate, way that the wrong is likely to be righted?") (see Bellamy 2006: 122–3).

Applying International Standards and State Interests

The assumption that in being responsible for enforcing the UN Charter or, through the Security Council, addressing breaches and any other actions that threaten international peace and security, the UN is an international actor that can act independently from, and in pursuit of a global community agenda distinct from, its members is less than accurate. The UN is an organization representative of its members' interests and particularly those of the five permanent and ten rotating members of the Security Council. In the discussion on the authorized use of combat aircraft over Libya, the UK Permanent Representative to the United Nations was asked before the House of Commons Defence Committee in October 2011 about the reasons why the UNSC was prepared to pass a Resolution authorizing external intervention, in a way that was not approved for other Middle East countries in internal conflict. The response was each member of the UNSC "has its own national interest". These sometimes "come together and they sometimes vary" (Defence Committee 2012: Evidence Q103; see Guiora 2012).

Of the permanent members of the UNSC, the capacity and intent of developed states, such as the USA, to shape the international system through exercising undue influence over international institutions (see Chandler 2006; Curtis 1998) continues to see the UN influenced by "small coalitions of like-minded states to use force in order to impose a set of values on recalcitrant or 'illegal' regimes" (Simpson 2004: 88; see also Arend and Beck 1993). Such coalitions are often based on the "most powerful states" (Ramsbottom and Woodhouse 1996: 224; see also Wheeler 2002) – that is, those states that have common cause, and the capacity, to intervene as well as underlying agendas that would also benefit from UN legitimacy to intervene. The case of Libya suggests that "if one focuses on UN Resolution 1973, the goal of the intervention, is to protect Libyan civilians. However, it is also clear that many of the coalition members are also hoping for regime change as a desired outcome whether or not this is one of the publicly stated goals of the action" (Siskind 2011: 13).

Nevertheless, it is for the UN to decide when the conditions of any Resolution have not been met and for the UN to mandate specific intervention. It is the "Security Council that is charged with determining whether there has been a threat or breach of international peace and security and with recommending measures to counter such a threat" (Williamson 2009: 22); the Security Council "can delegate enforcement to member states, but not the determination of whether enforcement should take place" (Verdirame 2004: 95; see also Bethlehem 2004; Chomsky

2000). In terms of humanitarian unilateral intervention, the potential contradiction in relation to international relations has not gone unnoticed in terms of the disproportionate capacity for intervention by globally powerful states, individually or in concert, whose interests are "still centred on their power and welfare" (Domagala 2004: 3). This has made such interventions "fraught with dangers to international stability", with "the potential to encourage adventures beyond the legal framework on the basis of claims that the system is irredeemably sclerotic" but at the same time ensuring "unilateral rescue exercises raise issues of motive and authority" (Thornberry 2005: 129). While the national interest behind such intervention may well, as Blair has argued, be about "the spread of values makes us safer" and for that reason the British government could and should intervene to "spread the values of liberty, the rule of law, human rights and an open society" it is also something that could be described as "notoriously in the eyes of the beholder and impossible to pin down definitively – a matter of opinion and not a matter of fact" (Haines 2010: 66, 68).

The susceptibility of the UN to state influence, and its inability to rein in unilateral interventions, despite its recognition as the UN Secretary-General noted in 2003, that such conduct "represents a fundamental challenge to the principles" (quoted in Bethlehem, 2004, para. 4) of the UN's role in ensuring global peace and security, as well as the subjective nature of interventions undertaken on humanitarian grounds, provides an environment conducive to the pursuit of national interests whose underlying intent, whatever the official justification, may well be in breach of international law and standards.

UK State and the National Interest: Grounds for Intervention

Blair's arguments as to the current iteration of the national interest reflect assumptions about a liberal democratic state in that the values associated with such a state permeate its culture, policies and practices. On the other hand, in terms of state development it should be remembered that "the state preceded democracy by some four or five centuries" when "its initial functions were external security, internal law enforcement, and the management of the country's finances" (Bealey 1988: 6; see also Bulpitt 1983; Held 1995). As core responsibilities, these latter functions do not disappear but their significance or visibility, as well as their short-term or long-term implications, and the relative priorities or attention they may be given by elected, appointed officials or citizens, may vary.

Nevertheless, they will remain central to the role of the state in protecting its identity and primacy (see Strange 1996; Horsman and Marshall 1995). Such a role continues to be infused "with important residues from earlier, pre-democratic times" including a "unitary state, in which formal authority is concentrated at the centre",

and a "centralised state decision making involving a small, exclusive governing group of politicians and officials (Burch and Holliday 1996: 10, 11), allowing "the concentration of power in the hands of the executive (and the Prime Minister in particular) and the absence of any effective checks and balances" (Ewing and Gearty 1990: 255–6). The state *qua* state, certainly in terms of enduring traditions and policy imperatives, may thus contain countervailing or contradictory influences: "the pragmatic development of British political and governmental institutions and practices has meant that alongside expectations about openness, democracy, public accountability and the like there have developed strong traditions and practices concerning the day-to-day doing of the nation's business which live very uneasily with those expectations" (Harden and Lewis 1986: 11).

In terms of the UK's geo-political interests, an increasing perception of an international role (Held 1989: 140) has been promoted by "the primacy of executive independence in determining and implementing those policies deemed best suited to further the 'national interest'" (Kettell 2006: 15; see also Burnham and Pyper 2008). Foreign affairs, as a core responsibility of the state, forms an example of what this means in practice: "the moral and legal predilections that shape decision-making about war derive more from the decision-maker's own community than from a sense of universal obligation … Leaders have a duty to protect the physical security, material wealth and common life of their citizens, and these obligations override other obligations to law and morality" (Bellamy 2006: 118).

Government's interpretation of the national interest, noted above as a positive force for good, may overlook or ignore these continuing countervailing influences. It is noteworthy, for example, that the efforts to use the national interest as a legitimation tool "reveals it to be a term largely devoid of substantive meaning and content" (Burchill 2005: 9). It very much reflects the view that UK national interest may have "a fine conclusive ring. But in fact the phrase is little more than shorthand for whatever course has seemed important to our political leaders at a particular time" (Cradock, 1997: 210), something that might also suggest that "ethics can only play a role at the margins of policy thinking" (Gaskarth 2013: 207). This thus allows for approaches that see the national interest as an end that justifies the means; for example, commentators involved in recent UK foreign policy have called for a new kind of imperialism (Cooper 2002), policies of prevention alongside doctrines of "enduring strategic superiority" (Cooper 2004: 65) and pragmatism in dealing with certain states through "force, pre-emptive attack, deception, whatever is necessary" (Cooper 2002: 16; see also Keen 2012).

If the national interest reflects *realpolitik* as a key motive for its use as the basis for intervention, then the capacity so to act is facilitated by the nature of the UK state's constitution. For the UK, domestic law relies as much on conventions, principles and practice as on formal law in a number of areas where governments

have significant amounts of discretion and flexibility (see Brazier 1990; Bulpitt 1983; Kettell 2006). Among these is the authority of the Crown to deploy UK armed forces. This is a prerogative power; it is not subject to any domestic legal requirement and nor is it dependent on the approval of the Legislature (although there is continuing debate about parliamentary involvement; see Political and Constitutional Reform Committee 2011; Secretary of State for Justice and Lord Chancellor 2007). Similarly, the courts have indicated their reluctance to sit in judgement on the "culpability" of the UK state in terms of the international context: "there are well-established rules that the courts will be very slow to review the exercise of prerogative powers in relation to the conduct of foreign affairs and the deployment of the armed services, and very slow to adjudicate upon rights arising out of transactions entered into between sovereign states on the plane of international law" (Jones, R. *v* [2006] UKHL 16 (29 March 2006); para 30).

For governments, and particularly for prime ministers, the availability of prerogative powers and the enduring tradition of a concept of a national interest that espouses the rhetoric of liberal intent while facilitating pragmatic geo-political alliances and objectives, provides for a blending of justifications according to circumstance (see Atkins 2013; Haines 2010). It is also influenced by the UK's relationship with the USA through the presumption of a self-appointed role as the link between the EU and the USA, as a "pivotal power" constructing alliances to "persuade domestic and international opinion that the powerful states in the world had a duty to intervene" (Wheeler and Dunne 2004: 7).

Aligning itself to the US as its chosen international stance also aligns the UK with a state for whom international law and standards, or the work of the UN, is not a particular constraint, particularly in terms of its own concept of a national interest. This is explicitly about shaping "an international system in which we can thrive" (see for example, Commission on America's National Interests 2000; see Chomsky 2000: 13), its concerns with security issues and its willingness to use its own military interventions for hegemonic purposes. In so doing the UK's current iteration of its national interest may also mirror that of the USA in viewing external relations as one area "in which policy is almost invariably guided by considerations of *realpolitik*. What matters is not good intentions and the mutual benefits of economic intercourse, but the balance of military capabilities and the convergence or divergence of security interests" (Sanders 1990: 252–3; see also Elden 2009; Sands 2005).

The Interventions

Taken together – a tradition of the pursuit of a national interest that is both selective and seeks to blend state interests with international altruism and a pursuit of a role

at international level that seeks alliances with states that have a much sharper and much more selfish concept of a national interest – may be seen as "a marketing formulation again designed to displace responsibility for the terrorist threat and to justify the pursuit of an avowedly interventionist approach to world affairs. The result was to lock foreign policy into a self-ratcheting dynamic, precluding any possibility of policy change" (Kettell 2013: 276). Indeed, claims by the USA and its supporters to "an unlimited right to undermine absolute sovereignty whenever their vital interests are threatened" can lead to a "logic of pre-emption" which can "legitimise any number of actions anytime and anywhere" (Elden 2009: 177, 178), and one in which the UK might also have the motive and capacity to engage in terms of strategic alliances or its own national interest.

In so doing, however, successive governments have been mindful of their formal commitment to adherence to international law but also have used both UN authorization and humanitarian justification in circumstances where other motives such as the national interest have been at play. Here it is often difficult to disentangle whether the latter is the basis for engagement with the former or whether the former is exploited to benefit the latter and what standards are available to evaluate such interventions. Apart from Suez, where the breach of international law was deliberately pursued outside the formal decision-making processes, relying on "the Suez 'insiders' (who) blocked or simply ignored any advice that did not suit their purposes and utilised entirely inappropriate means to justify their actions" (Kelly and Gorst 2000: 5) and later justified as "act of State" or in "the national interest", nearly all interventions undertaken as official policy but where concerns over their legality have been raised reflect this dichotomy.

The invasion of Afghanistan was as much about regime change as it was about capturing the perpetrators of the Twin Towers attacks, although whether the attacks were terrorist attacks or attacks initiated or facilitated by the Taliban regime was arguable, as was the threat the perpetrators posed to the UK at that time. The US itself was subject to a terrorist attack, not an attack by another sovereign state, and its response would have needed to be under Article 51. On the basis of the general interpretation of the Article when applied to both countries:

> if an armed attack is not yet on the horizon, a concerned state cannot launch an aggressive war in order to prevent future attacks before they are planned … neither international law nor state practice allows force to be used in pre-emptive self-defence, unless the threat is imminent and there is no choice of means and no moment for deliberation. (Williamson 2009: 220)

Indeed, what looked like a war of reprisal against Afghanistan was reprised two years later with another state the US government regarded as a threat. Both the US and the UK had already been involved in unilateral action against Iraq in 1998

when the then Labour government argued that it had "sufficient legal basis" for "direct action of our own" on behalf of the international community to unilaterally launch Operation Desert Fox, a short bombing campaign as a reaction to the Iraqi regime's failure to cooperate with weapons inspectors. The grounds were criticized on the basis that "no single state has the right to use force solely according to its own judgement against Iraq … the conflict concerning Iraq's weapons of mass destruction is a conflict between the UN and Iraq, and not between single states and Iraq" (Wrange 2000: 511).

The UK's role in the 2003 invasion of Iraq provoked a stronger reaction with the allegations fuelled by the Labour government publishing material of dubious provenance in support of intervention, by an "the informality and circumscribed character" of decision-making that largely operated outside the normal Cabinet processes, the insistence that previous UN Resolutions provided a legal basis for invasion on the basis of the presence of WMD,[4] and in part because the invasion was in support of US intentions which were less about enforcing the UN Resolutions regarding WMD than about regime change.

There are strong arguments that, in each of these cases, the UK embarked on a war of aggression against a sovereign state without authorization or justification under international law. Indeed, the last of these has elicited similar reactions from sources as diverse as two US state crime criminologists – who argued that "existing international law alone establishes the United States and the United Kingdom as guilty of state crime linked to the invasion and occupation of Iraq" (Kramer and Michalowski 2005: 448) – to the late Lord Bingham, the senior Law Lord, who condemned the intervention because, "If I am right and the invasion of Iraq … was unauthorised by the Security Council, there was a serious violation of international law and the rule of law" (*Guardian*, 8 February 2010).

In the three cases involving intervention on humanitarian grounds, the case of Kosovo is debatable in terms of international intervention, initiated by a regional organization with no formal authority to order military interventions against a sovereign state and where those involved in the intervention had some years to press for a UNSC response to an evolving conflict. Certainly the use of the unilateral right of self-determination was seen in terms of "the province's secession as inevitable with the prioritization of self-governing democracy above issues of sovereignty" (Chandler 2000: 207), thus suggesting that the NATO intervention and subsequent UNSCR were less about humanitarianism than reshaping the former Yugoslavia.

Similarly the intervention in Libya had both a pre-intervention and post-intervention agenda:

> [T]he further in time the military action against Libya stretched away from UNSC Resolution 1973 adopted on 17 March 2011, the further it seemed to depart from the level of force authorised by that Resolution. Resolution 1973 was intended to authorise military action to prevent imminent attacks on Benghazi and other centres of civilian population such as Misrata. Instead of making it clear to Colonel Gaddafi and his forces, by statements and by action, that attacks or threats of attacks on civilian targets would not be tolerated, NATO, led by France and the UK, increasingly engaged government forces in a coordinated effort with rebel forces to defeat government forces and dislodge Gaddafi from power. The response to the crisis moved from an immediate and necessary protection of civilians towards regime change, illustrating that the UN collective security system does not appear to be capable of governing or regulating the use of force, even force which was initially taken under its authority. (White 2011: 228)

The case of Sierra Leone is somewhat different in that the deposed elected government had invited UK support; indeed such support was not only forthcoming in 2000 but appeared more expected of the UK government, and necessary to enhance UN efforts, than simply of its own volition (see Dorman 2009: 62–77). On the other hand, where there are circumstances in which third parties, such as private military companies (PMCs), become involved, this would raise issues as to at what point the state could or should be held responsible or accountable as a consequence (see Jamieson and McEvoy 2005, on "othering"); their use "does not imply a decline of the political decision-making processes … in other words PMCs do not work in a political vacuum, but are dependent upon the consent of governments for their livelihood" (Whyte 2003: 584).

A number of cases also raise some important issues under IHL in terms of the consequences of the interventions. The 1990 action against Iraq was itself criticized for going beyond its mandate to eject Iraq from Kuwait and, in bombing of Iraqi infrastructure, combined with the post-war sanctions imposed by the UN, being "akin to an act of war in which civilians are targeted, be that directly or indirectly" (Blakeley 2003: 34). It may also be argued that, in the case of Afghanistan, Iraq and Libya, the consequences have left the states and their citizens to date yet to see significant gains from the interventions.

Conclusion

Overall, the cases suggest that, for the UK, the potential for state crime rests through wars of choice that exploit treaty obligations by acting beyond or at variance to the professed purpose of the relevant representative organization or association, the manipulation of alliances of member states to produce a UNSCR or other formal supra-national agreement that serves the interests of those alliances, going beyond

the authorized basis for the original intervention, or intervention on grounds of benefit to the wider international community that masks the self-interest of particular geo-political perspectives and alliances.

The interventions, and the propensity for a breach of international law, appear to be exacerbated not only by the blending of the national interest with humanitarianism but also a governmental approach to a more active international role, and its relationship with the USA. This has had a number of consequences, including reaffirming "the vice-like grip of Atlanticism on Britain's identity" (Dunne 2005: 21–2) and, following the attack on the Twin Towers, "a noticeable shift in emphasis away from the idea of doing good towards taking action in expressed defence of the national interest. … It is ironic that a doctrine born out of humanitarian motive against a backdrop of an illegal but arguably legitimate intervention in Kosovo, should be sacrificed in an illegal and illegitimate invasion of Iraq" (Haines 2010: 77).

Certainly most of these cases were "wars of choice" which also reflect both selectivity – "a striking feature of all post-cold war humanitarian interventions is that no Western government has yet chosen to risk its military personnel in defence of human rights where there was a significant risk of casualties from the outset" (Bellamy and Wheeler 2008: 538)[5] – and inconsistency; "Kosovo is a flawed application of the 'Blair doctrine'; Afghanistan and Iraq are clear violations of it" (Sloboda and Abbott 2004). This "more subtle blend of mutual self-interest and moral purpose" and a closer alliance with the US, "whilst only selectively responding to humanitarian crises in strategically important areas" is "damaging rather than furthering the humanitarian agenda" (Bellamy and Wheeler 2008: 538; see also Ralph 2005; Davies 2008) although it is also clear that there have been few cases where such an agenda has been, or will be, the clearly identifiable sole criterion for official intervention. This would also suggest that any area of military intervention has the potential for state crime, particularly in contexts where the intervention takes place under the auspices of international law or under the guise of humanitarianism but where this also masks or facilitates the national interest. That such potential has been discerned or alleged in relation to a number of the military interventions pursued since 1945 as official government policy would suggest that the culture and traditions of the British state have, do and will foster the potential and capacity for state crime.

Notes

1. Ministers are in any case bound by a ministerial code which requires a duty to comply with the law, including international law and treaty obligations.
2. Under the UN Charter non-violent measures may be taken to address what the Charter calls "any threat to the peace, breach of the peace, or act of aggression". If these fail to work, the UN may

authorize under Article 42 "such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security".

3. Any military intervention by one sovereign state against another would be governed by IHL; equally importantly, if the basis for the intervention changes so that the basis on which the initiator continues that intervention would also be governed by IHL. IHL is an assemblage of international conventions which cover an extensive range of issues from combat operations to treatment of citizens.
4. Essentially the government's argument was that failure to comply with the Resolution requiring "a final opportunity to comply with its disarmament obligations" activated previous Resolutions relating to the ending of the Iraqi invasion of Kuwait; in other words, military action was suspended rather than ended, and any conduct by Iraq jeopardizing the ceasefire, including non-compliance over the destruction of WMD, allowed any state to act to "restore international peace and security in the area", only telling the Security Council of what they decided to do.
5. For similar reasons it has been argued that "the abuse of human rights has been consistently treated less seriously when perpetrated by a major state with oil, markets for British exports or other forms of economic muscle. In particular, when these considerations are reinforced by the export needs of the British arms industry, human rights have always taken a back seat" (Self 2010: 224).

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