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### Abstract

*Human Rights and Humanitarian Intervention are one of the most hotly disputed issues in global politics. While some see them as evidence that world affairs are being guided by new and more enlightened cosmopolitan sensibilities, others view them as deeply misguided and morally confused. Difficult questions have nevertheless been raised about Human Rights and Humanitarian Intervention. What are human rights, and on what basis can they be claimed? How, and how effectively, have international human rights been protected? On what grounds has the doctrine of human rights been criticized? What explains the growth of humanitarian intervention, and its subsequent decline? Under what circumstances is it right to intervene in the affairs of another state? Why has humanitarian intervention been criticized? This paper attempts to provide explicit and painstaking answers to these mind-boggling questions. It emphasizes that non-intervention is commonly understood as the norm in international society, but should military intervention be permissible when governments massively violate the human rights of their citizens, are unable to prevent such violations, or if states have collapsed into civil war and anarchy? This is the guiding question addressed in this paper. International law forbids the use of force except for purposes of self-defence and collective enforcement authorized by the United Nations Security Council (UNSC). The challenge posed by humanitarian intervention is whether it also should be exempted from the general ban on the use of force. This paper examines arguments for and against forcible humanitarian intervention. The theoretical analysis is explored in relation to humanitarian intervention during the 1990s and the war on terror. The final section focuses on the responsibility to protect, an important attempt to address this challenge.*

**Keywords:** Human Rights, Rights, Humanitarian Intervention, Humanitarian Activism, Humanitarian Principles, Military Intervention, Responsibility.

### Introduction

Moral and ethical questions have always been important in international politics. However, since the end of the Cold War they have attracted intensified interest, as issues of global justice have come to vie with more traditional concerns, such as power, order and security. Moreover, when matters of justice and morality are raised, this is increasingly done through a doctrine of human



rights that emphasizes that people everywhere enjoy the same moral status and entitlements. Human rights have come to compete with state sovereignty as the dominant normative language of international affairs and human development. This has created tension between human rights and states' rights, as the former implies that justice should extend beyond, as well as within, national borders. Difficult questions have nevertheless been raised about human rights. Not the least of these are about the nature of, and justifications for, human rights. In what sense are these rights 'human rights, and which rights do they cover? Other debates concern the extent to which human rights are protected in practice, and whether they are genuinely universal, applying to all peoples and all societies. How far are human rights applied in practice, and how far should they be applied? Tensions between states' rights and human rights have become particularly acute since the 1990s through the growth of so-called 'humanitarian intervention'. Major states have assumed the right to intervene militarily in the affairs of other states to protect their citizens from abuse and possibly death, often at the hands of their own government. How, and to what extent, is such intervention linked to human rights? Can intervention ever be genuinely 'humanitarian'? And, regardless of its motives, does humanitarian intervention actually work?

Humanitarian intervention poses a hard test for an international society built on principles of sovereignty, non-intervention, and the non-use of force. Immediately after the Holocaust, the society of states established laws prohibiting genocide, forbidding the mistreatment of civilians, and recognizing basic human rights. These humanitarian principles often conflict with principles of sovereignty and non-intervention. Sovereign states are expected to act as guardians of their citizens' security, but what happens if states behave as criminals towards their own people, treating sovereignty as a licence to kill? Should tyrannical states be recognized as legitimate members of international society and accorded the protection afforded by the non-intervention principle? Or, should states forfeit their sovereign rights and be exposed to legitimate intervention if they actively abuse or fail to protect their citizens? Related to this, what responsibilities do other states or institutions have to enforce human rights norms against governments that massively violate them?

Armed humanitarian intervention was not a legitimate practice during the Cold War because states placed more value on sovereignty and order than on the enforcement of human rights. There was a significant shift of attitudes during the 1990s, especially among liberal democratic states, which led the way in pressing new humanitarian claims within international society. The UN Secretary-General noted the extent of this change in a speech to the General Assembly in September 1999. Kofi Annan declared that there was a 'developing international norm' to forcibly protect civilians who were at risk from genocide and mass killing. The new norm was a weak one, however. At no time did the UN Security Council (UNSC) authorize forcible intervention against a fully-functioning sovereign state, and intervention without UNSC authority remained controversial. States in the global South especially continued to worry that humanitarian intervention was a 'Trojan horse': rhetoric designed to legitimate

the interference of the strong in the affairs of the weak. At the same time, however, a group of liberal democratic states and non-governmental organizations (NGOs) attempted to build a consensus around the principle of the responsibility to protect. The responsibility to protect insists that states have primary responsibility for protecting their own citizens. However, if they are unwilling or unable to do so, the responsibility to end atrocities and mass killing is transferred to the wider 'international community'. The responsibility to protect was adopted by the UN General Assembly in a formal declaration at the 2005 UN World Summit. Its advocates argue that it will play an important role in building consensus about humanitarian action while making it harder for states to abuse humanitarian justifications.

This paper is divided into thirteen sections. The first takes a look at the implications of the struggle for power between and amongst states for the individuals concerned. The second concerns the nature and types of human rights. The next grapples with the realist, liberal, and critical approaches to human rights. The fourth section stresses the profound implications of human rights for global politics. The fifth scrutinizes the elaborate international regime that has been developed since 1948 to promote and protect human rights. The section that follows examines why states are the only actors powerful enough to advance human rights, while also being the greatest human rights abusers. The seventh shows the various attacks on human rights. The next section looks at the rise of humanitarian intervention. The ninth sets out the arguments for both a legal right and a moral duty of humanitarian intervention. The tenth section outlines objections to humanitarian intervention, including Realist, legal and moral objections. Next we consider the evolution of state practice during the 1990s, and in the post-9/11 era. The final section focuses on the responsibility to protect.

### **The Individual in Global Politics**

International politics has traditionally been thought of in terms of collective groups, especially states. Individual needs and interests have therefore generally been subsumed within the larger notion of the 'national interest'. As a result, international politics largely amounted to a struggle for power between and amongst states with little consideration being given to the implications of this for the individuals concerned. People, and therefore morality (in terms of the happiness, suffering and general wellbeing of individuals), were factored out of the picture. However, this divorce between state policy and the individual, and thus between power and morality, has gradually become more difficult to sustain.

Many cultures and civilizations have developed ideas about the intrinsic worth and dignity of individual human beings. However, these theories were traditionally rooted in religious belief, meaning that the moral worth of the individual was grounded in divine authority, human beings usually being seen as creatures of God. The prototype for the modern idea of human rights was developed in early modern Europe in the form of 'natural rights'. Advanced by political philosophers such as Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679) and John Locke (1632-1704), such rights were described as

'natural', in that they were thought to be God-given and therefore to be part of the very core of human nature. Natural rights did not exist simply as moral claims but were, rather, considered to reflect the most fundamental inner human drives; they were the basic conditions for leading a truly human existence<sup>1</sup>. By the late eighteenth century, such ideas were expressed in the notion of the 'rights of man' (later extended by feminists to include the rights of women), which was used as a means of constraining government power by defining a sphere of autonomy that belongs to the citizen. The US Declaration of Independence (1776), which declared life, liberty, and the pursuit of happiness to be inalienable rights, gave expression to such ideas, as did the French Declaration of the Rights of Man and of the Citizen (1789).

Such thinking gradually acquired an international dimension during the nineteenth and twentieth centuries through attempts to set standards for international conduct, usually based on humanitarianism. For example, the growth of humanitarian ethics helped to inspire attempts to abolish the slave trade, a cause endorsed by the Congress of Vienna (1815) and was eventually achieved by the Brussels Convention (1890), with slavery itself being formally outlawed by the Slavery Convention (1926) (even though forms of slavery continue to exist in practices such as bonded labour, forced marriage, child labour and the trafficking of women). The Anti-Slavery Society, formed in 1837, can perhaps be seen as the world's first human rights NGO. Other humanitarian causes that were translated into a form of international standard setting included the regulation of the conduct of war, through the Hague Conventions (1907) and the Geneva Conventions (1926), and attempts to improve working conditions, spearheaded by the International Labour Office, formed in 1901, and its successor, the International Labour Organization, which was established in 1919 as part of the Treaty of Versailles and became, in 1946, the first specialized agency of the United Nations.

Such developments nevertheless remained piecemeal and largely marginal to the general thrust of international politics until the end of WWII. The adoption by the UN General Assembly of the Universal Declaration of Human Rights (1948), later supplemented by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both in 1966), established the modern human rights agenda by outlining a comprehensive code for the internal government of its member states, which has arguably acquired the status of customary international law. Reflecting a major change in the general climate of thought, deeply influenced by the horrors of WWII (especially the so-called 'Final Solution', the murder of some six million Jews, Gypsies and Slavs in the extermination camps of Nazi Germany), the Declaration led to a burst of law-making and standard setting that sought to establish international protection for the full range of human rights. 1948 thus brought to an end a period of exactly 300 years since the Treaty of Westphalia (1648), during which state sovereignty had stood unchallenged as the dominant norm of international politics. However, although the Declaration established the rival norm of human rights, tensions between states' rights and human rights were by no means resolved in 1948, as will be discussed later. In the meantime, it is necessary to examine the nature and

implications of human rights.<sup>1</sup> What are human rights, and why should they be respected?

### Nature and Types of Human Rights

A right is an entitlement to act or be treated in a particular way. As such, rights entail duties: the claim to have a right imposes obligations on others to act, or, perhaps, to refrain from acting in a particular way. Human rights are essentially moral claims or philosophical assertions, but they have gained, since 1948, a measure of legal substance<sup>2</sup>. Human rights, most basically, are rights to which people are entitled by virtue of being human. They are therefore 'universal' rights, in the sense that they belong to all human beings rather than to members of any particular nation, race, religion, gender, social class or whatever. This universalism was clearly expressed in the words of the American Declaration of Independence, written by Thomas Jefferson (1743–1826), which proclaimed: 'We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights'. However, there have been very deep divisions about what rights human beings should enjoy.

Indeed, thinking about the content of human rights has developed significantly over time, enabling three different types, or 'generations' of human rights to be identified<sup>3</sup>. These are: Civil and political rights; Economic, social and cultural rights; and Solidarity rights. *Civil and political rights* were the earliest form of natural or human rights. They were advanced through the English Revolution of the seventeenth century and the French and American Revolutions of the eighteenth century. The core civil and political rights are the rights to life, liberty and property, although they have been expanded to include, for example, freedom from discrimination, freedom from slavery, freedom from torture or other inhuman forms of punishment, freedom from arbitrary arrest, and so on. Civil and political rights are often typically seen as negative rights, or 'forbearance' rights: they can be enjoyed only if constraints are placed on others. Negative rights therefore define a private sphere within which the individual can enjoy independence from the encroachments of other individuals and, more particularly, from the interference of the state. Negative human rights thus correspond closely to classic civil liberties, such as the rights to freedom of speech, freedom of the press, freedom of religion and conscience, freedom of movement, and freedom of association.

However, it would be misleading to suggest that all civil and political rights are 'negative' in this respect. The right to non-discrimination, for instance, can only be upheld through legislation and a framework of enforcement on the part of government, while the right to a free and fair trial requires the existence of a police force and a court system. Civil liberties are therefore often distinguished from civil rights, the latter involving positive action on the part of government

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<sup>1</sup> Newman Frederick, Nweke Peter and Adekanye David, *International Human Rights: Law, Policy, and Process* (2<sup>nd</sup> Edition, Anderson Press 2019) 122-124.

<sup>2</sup> Chidozie Samuel and Chizea Obeze, *Human Rights and Two Conceptions of Sustainability* (Consart Publications 2012) 211

<sup>3</sup> Karel Vasak, 'Human Rights: A Thirty-Year Struggle', *UNESCO Courier* 30:11 (UNESCO 1977)

rather than simply forbearance. The dual character of civil and political rights is evident in the complex relationship between human rights and democracy<sup>4</sup>. The struggle for *economic, social and cultural rights* gained greater prominence during the twentieth century, especially in the post-1945 period. By contrast with traditional 'liberal' rights, these so-called 'second-generation' rights often drew on socialist assumptions about the tendencies of capitalist development towards social injustice and unequal class power. Socio-economic rights – including the right to social security, the right to work, the right to paid holidays, the right to healthcare, the right to education and so on – were designed to counter-balance inequalities of market capitalism, protecting the working classes and colonial peoples from exploitation. These rights are positive rights, in that they imply a significant level of state intervention, usually in the form of welfare provision (welfare rights), the regulation of the labour market (workers' rights) and economic management generally.

However, deep controversy has surrounded economic and social rights. Supporters have argued that economic and social rights are, in a sense, the most basic of human rights, as their maintenance constitutes a precondition for the enjoyment of all other rights. In this view, human dignity is more severely threatened by poverty, disease, ignorance and other forms of social disadvantage than it is by the denial of 'liberal' rights. Nevertheless, economic and social rights have often been thought of, especially in the USA and other western states, as at best second-class human rights, if not as entirely bogus moral claims. Critics have alleged, first, that the maintenance of such rights requires material resources and political capabilities that many states simply do not possess. Economic and social rights can therefore only be viewed as aspirations rather than entitlements. Second, it is unclear who or what is responsible for upholding economic and social rights. If, through a lack of resources or capabilities, a national government cannot deliver economic and social rights, do these obligations then fall on other states (if so, which ones?), international organizations or, somehow, on the peoples of the world? Third, from the perspective of economic liberalism, economic and social rights may be counter-productive, in that higher levels of (albeit well-intentioned) state intervention may simply undermine the vigour and efficiency of capitalist economies.

Since 1945 a further set of rights have emerged in the form of *solidarity rights*, or so-called 'third-generation' rights. These encompass a broad spectrum of rights whose main characteristic is that they are attached to social groups or whole societies, as opposed to separate individuals. They are sometimes, therefore, seen as collective rights or people's rights. Whereas 'first-generation' rights were shaped by liberalism and 'second-generation' rights were shaped by socialism, 'third-generation' rights have been formed by the concerns of the global South. The right to self-determination was thus linked to the post-1945 process of decolonization and the rise of national liberation movements<sup>5</sup>. Other such rights include the right to development, the right to peace, the right to environmental protection and multicultural rights. Solidarity rights have

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<sup>4</sup> Vincent Joseph, *Human Rights, Democracy and International Relations* (Cambridge University Press 2016) 232-236.

<sup>5</sup> Brown Ferdinand, *The Nigeria Police and Human Rights* (Ehis Press 2010) 312.

therefore been used to give issues such as development, environmental sustainability and cultural preservation a moral dimension. Nevertheless, critics of 'third-generation' rights have highlighted their inherent vagueness and, more seriously, questioned whether human rights can actually belong to peoples or groups as opposed to individuals. From this perspective, the very idea of human rights is based on a model of individual self-worth, which is in danger of being weakened whenever people are thought of in terms of group membership.

### **Approaches to Human Rights**

#### *Realist View*

Realists have tended to view a concern with human rights as, at best, a 'soft' issue in international affairs, by contrast with 'hard', or 'core', concerns such as the pursuit of security and prosperity. Other realists go further and believe that human rights thinking in relation to international and global issues is entirely wrong-headed. This is because realists hold that it is impossible, and undesirable, to view international politics in moral terms. Morality and the national interest are two distinct things, and states fail adequately to serve their own citizens (and often those of other states) when they allow ethical considerations – particularly ones as inherently vague and confused as human rights – to affect their behaviour. Realist objections to the culture of human rights have at least three bases<sup>6</sup>. In the first place, they take issue with the essentially optimistic model of human nature that underpins human rights, which emphasizes dignity, respect and rationality. Second, realists are primarily concerned about collective behaviour, and especially the capacity of the state to ensure order and stability for their citizens. The national interest should therefore take precedence over any individually-based conception of morality. Third, being based on positivism, realism is keen to uphold its scientific credentials. This implies a concern with what *is*, rather than with what *should be*.

#### *Liberal View*

The modern doctrine of human rights is very largely a product of liberal political philosophy. Indeed, so entangled with liberal assumptions are they that some doubt whether human rights can ever properly be described as 'above' ideological differences, bearing the cultural imprint of western liberalism. At a philosophical level, the image of humans as 'rights bearers' derives from liberal individualism. On a political level, liberals have long used the notion of natural or human rights to establish the basis of legitimacy. Social contract theorists thus argued that the central purpose of government is to protect a set of inalienable rights, variously described as 'life, liberty and property' (Locke), or as 'life, liberty and the pursuit of happiness' (Jefferson). If governments become tyrannical, by abusing or failing to protect such rights, they break an implicit contract between the people and government, entitling citizens to rebel. The English, American and French revolutions were all justified using such ideas. During the twentieth century, liberals increasingly used such thinking to outline the basis for international legitimacy, arguing that states should be bound,

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<sup>6</sup> Nickel J. Watson, *Making Sense of Human Rights: Philosophical Reflection on the Universal Declaration of Human Rights* (University of California Press 2016) 224-226.

preferably legally, to uphold human rights in their dealings with their domestic population as well as with other states<sup>7</sup>. The 1948 UN Declaration therefore has, for liberals, a near-religious significance. Nevertheless, liberals tend to regard only civil and political rights as fundamental rights, and sometimes view economic rights and any conception of group rights with grave suspicion.

### *Critical Views*

Critical approaches to human rights have either tended to revise or recast the traditional, liberal view of human rights, or they have been openly hostile to the idea itself. The global justice movement has used economic and social rights as the basis of calls for a radical redistribution of power and resources, both within countries and between them<sup>8</sup>. Human rights have thus been turned into a doctrine of global social justice, grounded in moral cosmopolitanism. Feminists, for their part, have demonstrated a growing interest in the cause of human rights. In particular, they have sought to transform the concept and practice of human rights to take better account of women's lives, highlighting the issues of 'women's human rights'<sup>9</sup>. This marks a recognition by feminist activists of the power of the international human rights framework, and especially its capacity to place women's issues on mainstream agendas. Human rights have thus been redefined to include the degradation and violation of women. At the same time, however, feminists have taken a critical view of rights that men have designed to protect their entitlement to private commerce, free speech and cultural integrity, which have been used to legitimize practices such as child marriages, the trafficking of women and child pornography.

### **Implications of Human Rights for Global Politics**

Human rights, by their nature, have profound implications for global politics. Why is this? The first answer to this question is that, being universal and fundamental, human rights invest governments with powerful obligations, affecting their foreign as well as domestic policies. The protection and realization of human rights is thus a key role of government, and perhaps, according to liberals, its core purpose. Interactions between states should therefore have, at least, a human rights dimension. This, in theory at least, imposes major constraints on the behaviour of national governments, both in terms of how they treat their domestic population and in their dealings with other peoples and countries. This affects matters ranging from the recourse to, and conduct of, war (where a concern for human rights has generally been seen to be compatible with the requirements of a 'just war'), to foreign aid and trade policies. More radically and controversially, these obligations may extend to taking action, perhaps military action, to prevent or discourage other countries

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<sup>7</sup> Abiodun Williams and Sonia Zanowski, *Human Rights, Humanitarian Intervention and Criminal Justice System in an Age of Globalization* (3<sup>rd</sup> Edition, Beacon Press 2016) 355

<sup>8</sup> Ted Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity Press 2018); and Shue Henry, *Basic Rights: Subsistence, Affluence and Policy* (Princeton University Press 2006) 115.

<sup>9</sup> Friedman Emil 'Women's Human Rights: The Emergence of a Movement', in Peters Joseph and Andrew Wolper (eds.) *Women's Rights, Human Rights: International Feminist Perspectives* (Cambridge University Press 2005) 342-344



from violating human rights within their own borders, what has come to be called 'humanitarian intervention'<sup>10</sup>.

The second way in which human rights have implications for global politics is that they imply that the boundaries of moral concern extend beyond national borders; indeed, in principle, they disregard national borders. Human rights are nothing less than a demand *of* all humanity *on* all of humanity<sup>11</sup>. Growing acceptance of the doctrine of human rights therefore goes hand-in-hand with the growth of cosmopolitan sensibilities. For Pogge, human rights fulfill each of the three elements of cosmopolitanism: individualism (an ultimate concern with human beings or persons, not groups), universality (a recognition of the equal moral worth of all individuals) and generality (the belief that persons are objects of concern for everyone, regardless of nationality and so on)<sup>12</sup>. The cosmopolitan implications of human rights are evident not only in attempts to use international law, albeit usually 'soft' law, to set standards for the behaviour of states, but also in attempts to strengthen regional and global governance and thereby constrain, or perhaps redefine the nature of, state sovereignty. However, despite the strengthening of human rights law and increased interest in cosmopolitan thinking in general and human rights thinking in particular, the theoretical implications of human rights are counterbalanced by powerful practical and sometimes moral considerations. This makes the protection of human rights a complex and often difficult process.

### The Human Rights Regime

Since 1948, an elaborate international regime has developed to promote and protect human rights globally. At the heart of this regime continues to stand the UN Universal Declaration of Human Rights. Although the 1945 UN Charter urged the promotion of 'universal respect for, and observation of, human rights and fundamental freedoms for all', it failed to specify the human rights that states had to guarantee and respect. This defect was rectified by the UN Declaration. Although the UN Declaration is not a legally binding treaty, it is commonly seen as a form of customary international law that is used as a tool to apply diplomatic and moral pressure to governments that violate any of its articles. By establishing that states could no longer violate human rights without the risk that their actions would come onto the agenda of the principal organs of the UN, the Declaration challenged states' exclusive jurisdiction over their own citizens and weakened the principle of non-interference in domestic affairs. The incorporation of the Declaration into a legally-binding codification of human rights – in effect, human rights law – was achieved through the adoption in 1966 of the international covenants on Civil and Political Rights and Economic, Social and Cultural Rights. Collectively, the 1948 Declaration and the two covenants are commonly referred to as the 'International Bill of Human Rights'.

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<sup>10</sup> Abatti Rasheed, *Human Rights and Humanitarian Intervention in a Globalized World: Nature, Character and Logic* (Oxford University Press 2017)284.

<sup>11</sup> Luban Davis and Abdullahi Isa, *Just War and Human Rights* (Princeton University Press 2016)233.

<sup>12</sup> Ted Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity Press 2018)129.

Until the mid-1960s, the UN concentrated almost exclusively on the generation of human rights norms and standards. Subsequently, it placed greater emphasis on their implementation. A major step in this direction was taken by the establishment of the Office of the UN High Commissioner for Human Rights, which had been one of the key proposals of the 1993 World Conference on Human Rights in Vienna. The role of the High Commissioner is to promote worldwide respect for the human rights enshrined in international laws by supporting the bodies created by human rights treaties. However, the Office of the High Commissioner has proved to be more effective in highlighting human rights violations than it has been in enforcing human rights law<sup>13</sup>. As its main sanction remains the publication and denunciation of violations by individual states – that is, naming and shaming – the Office relies very largely on persuasion and observation to improve governments' human rights policies. The UN's 47-member Human Rights Council, which replaced the much-criticized UN Human Rights Commission in 2006, also addresses situations of human rights violations. However, it has no authority other than to make recommendations to the General Assembly which, in turn, can only advise the Security Council. It has also, like its predecessor, been criticized for being biased and inconsistent in the exposure of human rights abuses. Not only does it include states that have themselves a dubious human rights record, but member states also tend to protect each other (and developing states generally) from criticism and they have, allegedly, been over-willing to highlight violations carried out by Israel.

One of the main features of the human rights regime is the prominent role played within it by a wide range of NGOs. For example, over 1,500 NGOs participated in the World Conference on Human Rights in Vienna, while the number of registered international NGOs reached 37,000 by 2000, most of them claiming to have some kind of human rights or humanitarian purpose. In the case of groups such as the International Committee of the Red Cross, Médecins Sans Frontières and Oxfam, operational NGOs work directly in the field to relieve suffering but also campaign on behalf of those they treat to promote the observance of human rights treaties and humanitarian law. The most prominent advocacy NGOs are Human Rights Watch (initially named Helsinki Watch, and set up to respond to the activities of East European dissidents' groups) and Amnesty International. They exert pressure by gaining media coverage, based, in part, on the high moral purpose that people customarily attach to their activities.

In this way, NGOs have made a substantial contribution to the growth worldwide of a human rights culture, influencing not only governments but also transnational corporations, over matters such as pay and working conditions in overseas factories<sup>14</sup>. The impact of NGOs within the human rights regime nevertheless goes far, particularly through behind-the-scenes lobbying of government delegations and experts, and the drafting of resolutions. A

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<sup>13</sup> Toyin Falola and Fred Akhere, *The Future of Global Relations: Crumbling Walls, Rising Regions* (Macmillan Publishing Co. 2014) 156.

<sup>14</sup> Phillip Andy, 'Transnational Terrorism and NGOs', in Mann Beeson and Ned Bisley (eds.) *Issues in 21<sup>st</sup> Century World Politics* (Palgrave Publishers 2017)

campaign by Amnesty International and the International Commission of Jurists during 1972–1973 thus initiated the process that led to the 1975 Declaration on Torture. NGOs played a particularly prominent role in drafting the 1990 Convention on the Rights of the Child, and were highly influential in the establishment of the Land Mine Treaty of 1997. Nevertheless, NGOs also suffer from limitations. These include that human rights NGOs cannot *force* governments to change their ways, and that their impact within the UN is weakest in relation to the Security Council, the only body with the power to enforce UN decisions. Finally, NGOs have sometimes been criticized for adopting a ‘band wagon’ approach, joining in on popular, or media-led, issues in the hope of enhancing their status or attracting funding.

### Table 1.1 Major International Human Rights Documents

<b>1948</b>	Universal Declaration of Human Rights
<b>1949</b>	Geneva Conventions on the Treatment of Prisoners of War and Protection of Civilian Persons in Time of War
<b>1950</b>	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
<b>1951</b>	Genocide Convention (Convention on the Prevention and Punishment of the Crime of Genocide)
<b>1954</b>	Convention Relating to the Status of Refugees
<b>1966</b>	International Covenant on Civil and Political Rights (came into force in 1976)
<b>1966</b>	International Covenant on Economic, Social and Cultural Rights (came into force in 1976)
<b>1969</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>1975</b>	Declaration on Torture
<b>1981</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>1984</b>	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
<b>1990</b>	Convention on the Rights of the Child
<b>1993</b>	Vienna Convention on Human Rights (Vienna Convention on the Law of Treaties)
<b>2000</b>	Charter of Fundamental Rights of the European Union

The protection of human rights is generally seen to be most advanced in Europe. This largely reflects the widespread acceptance, and status, of the European Convention on Human Rights (ECHR) (1950), which was developed under the auspices of the Council of Europe and is based on the UN Declaration. By 2009, 48 states had signed the European Convention. The ECHR is enforced by the European Court of Human Rights in Strasbourg, France. Complaints can be made to the Strasbourg court by signatory states or, much more commonly, by individual citizens. By the end of 2004, over 65,000 applications had been submitted to the European Court of Human Rights. This often creates a substantial backlog, meaning that cases commonly take three to five years before they are considered, added to the fact that they are also highly costly. Nevertheless, the almost total compliance with the Court’s verdicts attests to the effectiveness of this mechanism for the protection of human rights. The rate

of compliance within the time allowed for the Court is about 90 per cent. This makes the ECHR the nearest thing to human rights 'hard' law.

### Human Rights in a World of States

The key dilemma of human rights protection is that states are the only actors powerful enough to advance human rights, while also being the greatest human rights abusers. This reflects the inherent tension between human rights and foreign policy to which Joe Vincent drew attention (although he may well have included domestic policy as well)<sup>15</sup>. Nevertheless, the image of unavoidable antagonism between human rights and states' rights is misleading. In the first place, the trend for states to establish civil liberties and human rights in domestic law long pre-dates the advent of the international human rights regime. Second, international human rights standards have not been foisted on reluctant states – by, for instance, pressure from NGOs, citizens' campaigns or international bodies – rather, they have been the creation of states themselves, or, more precisely, of particular states. The USA and other western states took a leading role in the establishment of the post-1945 human rights regime, supported from the 1990s onwards by many post-communist states and a growing number of developing world states. The main reason why human rights protection is more effective in Europe than elsewhere is simply because of the high degree of consensus among European states about the importance of human rights.

Why, then, have states accepted, and sometimes championed, the cause of human rights? Virtually all states, for example, have signed the UN Declaration, with a large majority of them also having signed the two optional international covenants. From a liberal perspective, support for international human rights is merely an external expression of values and commitments that are basic to liberal-democratic states<sup>16</sup>. In this view, foreign affairs can, and should, have a moral purpose; the pursuit of national interests should operate in tandem with the global promotion of freedom and democracy. A further reason for states to sign human rights conventions and at least support the rhetoric of human rights is that, since 1948, this has been seen as one of the preconditions for membership of the international community, bringing diplomatic and possibly trade and security benefits. Support for human rights is therefore one of the common norms that has transformed the international system into an international society. This, nevertheless, allows for, at times, a significant gulf between the international standards that a state supposedly supports and how it actually behaves towards its own citizens and towards other states. In other circumstances, states may make cynical use of the human rights agenda. Realists, for instance, argue that, behind the cloak of humanitarianism and moral purpose, human rights are often entangled with considerations about the national interest. This is reflected in the selective application of human rights, in which human rights failings on the part of one's enemies receive prominent attention but are conveniently ignored in the case of one's friends. The USA was

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<sup>15</sup> Joe Vincent, *Human Rights and International Relations* (Cambridge University Press 2015)234-235.

<sup>16</sup> Subra Subramanya, *Human Rights and Humanitarian Intervention in International Law* (Allahabad Publishers 2016)334-335.

therefore criticized in the 1970s for condemning human rights violations in Soviet bloc countries, while at the same time maintaining close diplomatic, economic and political ties with repressive regimes in Latin America and elsewhere. For radical theorists, such as Chomsky, the USA has used human rights as a moral cloak for its hegemonic ambitions.

If the success of international human rights is judged in terms of whether they have served to improve the behaviour of states and other bodies and, in particular, helped to prevent acts of barbarism and systematic repression, the record is often unimpressive. When they conflict, as they often do, state sovereignty usually trumps human rights. This is particularly true in the case of powerful states, which may either simply be immune to human rights criticism, whether expressed internally or externally, or their transgressions are not forcefully exposed by other governments, for fear of damaging diplomatic relations and economic interests. There is little evidence that the Soviet Union was affected by condemnation of its human rights record, and a fear of criticism on such grounds certainly did not prevent the Warsaw Pact invasion of Hungary in 1956, the Soviet invasions of Czechoslovakia in 1968 and Afghanistan in 1979, or Russia's brutal suppression of the Chechen uprising in the 1990s. On the other hand, human rights activism both inside and outside the Soviet bloc may have contributed more subtly to the eventual collapse of the East European communist regimes. It did this by fostering a growing appetite for political freedom, thereby helping to undermine the legitimacy of these regimes, and contributing to the wave of popular protest that spread across eastern Europe in 1989. It is also notable that Mikhail Gorbachev, the General Secretary of the Soviet Communist Party, 1985–1991, used human rights rhetoric to justify his economic and political reforms as well as the realignment of the Soviet Union's relations with the rest of the world, arguing that human rights are principles that transcended the divide between capitalism and communism<sup>17</sup>.

Since the Tiananmen Square protests of 1989, China has been a frequent target of human rights criticism, from the USA and from groups such as Amnesty International and Human Rights Watch. Human rights controversies in China have focused on its suppression of political dissent, its widespread use of capital punishment, its treatment of religious minorities such as supporters of Falun Gong, political repression in the predominantly Muslim provinces of north-western China, such as Xinjiang, and, most particularly, its occupation of Tibet and the systematic subjugation of Tibetan culture, religion and national identity. It is notable that China's emergence as an economic superpower has not been matched by an appetite for political reform. If anything, China has become more uncompromising on human rights issues, both as an expression of growing national assertiveness and in order to contain the pressures that have been unleashed by economic reform. Condemnation by other governments has also become increasingly muted as China's economic resurgence has become more evident.

As far as the USA is concerned, its commitment to human rights and humanitarian law was called seriously into question by its conduct of the 'war

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<sup>17</sup> Walzimir Mikhail, Abraham Nwabuzor and Awele Abiodun, *Arguing about Eastern Europe* (4<sup>th</sup> Edition, Yale University Press 2019)225.

on terror'. For many, September 11 marked the culmination of the period initiated by the end of the Cold War in which the growing acceptance of human rights norms appeared to be irresistible. If the state that had been largely responsible for constructing the post-1948 international human rights regime appeared to violate human rights so clearly, what hope was there that other states would be recruited to the cause?

Human rights have been particularly difficult to uphold in conflict situations. In part, this reflects the fact that power politics amongst the permanent members of the Security Council usually prevents the UN from taking a clear line on such matters. The world has therefore often appeared to stand by as gross violations of human rights have taken place. This happened particularly tragically in the 1994 Rwandan genocide, in which about 800,000 mainly ethnic Tutsis and some moderate Hutus were killed, and in the 1995 Srebrenica massacre in which an estimated 8,000 Bosnian men and boys were killed. However, from the 1990s onwards, greater emphasis has been placed on extending international law to ensure that those responsible for the gross breaches of rights involving genocide, crimes against humanity and war crimes are brought to account.

### **Challenging Human Rights**

Despite its growing prominence, the doctrine of human rights has come under growing pressure, particularly since the 1970s, from a variety of sources. The chief thrust of more recent attacks on human rights has been to challenge the universalist assumptions that underpin them, creating a battle between universalism and relativism. However, there are two grounds on which universalism has been condemned. The first of these views the universalist approach as philosophically unsound, while the second portrays it as politically damaging.

### ***Philosophical Backlash***

The authority of universalist liberalism, which underpins the doctrine of human rights, has been challenged by two main philosophical developments in the West. From the perspective of communitarianism, liberalism is defective because its view of the individual as an asocial, atomized, 'unencumbered self' makes little sense<sup>18</sup>. Communitarians emphasize, by contrast, that the self is embedded in the community, in the sense that each individual is an embodiment of the society that has shaped his or her desires,

values and purposes. An individual's experiences and beliefs cannot therefore be separated from the social context that assigns them meaning. This implies that universalist theories of rights and justice must give way to ones that are strictly local and particular. Similar conclusions have been reached by postmodern theorists, albeit on a different basis. Postmodernism has advanced

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<sup>18</sup> Michael Sandel, *Liberalism and the Limits of Justice*(Cambridge University Press 2012) 203; and Chandara Taylor, *Multiculturalism and 'The Politics of Recognition'*(Princeton University Press 2014)

a critique of the 'Enlightenment project', which was expressed politically in ideological traditions such as liberalism and Marxism that were based on the assumption that it is possible to establish objective truths and universal values, usually associated with a faith in reason and progress. Instead, postmodernists have emphasized the fragmented and pluralistic nature of reality, meaning that foundationalist thinking of any kind is unsound. In the words of Jean-François Lyotard (1984), postmodernism can be defined as 'an incredulity towards metanarratives'<sup>19</sup>. Human rights and other theories of universal justice must therefore either be abandoned altogether or be used only in a strictly qualified way that takes account of the political and cultural context within which the ideas emerged.

### ***Postcolonial Critiques***

Whereas western concerns about human rights have been largely philosophical in orientation, postcolonial concerns have been more clearly political. Relativism has been defended by postcolonial thinkers on two grounds. First, in line with communitarian and postmodern thinking, postcolonial theorists have argued that circumstances vary so widely from society to society, and from culture to culture, as to require differing moral values and, at least, differing conceptions of human rights. What is right for one society may not be right for other societies, a position that suggests that the outside world should respect the choices made by individual nation-states. Secondly, and more radically, postcolonial theorists have portrayed universal values in general, and human rights in particular, as a form of cultural imperialism. Such thinking was evident in Edward Said's *Orientalism* (2008), sometimes seen as the most influential text of post-colonialism. Said developed a critique of Eurocentrism, in which Orientalism ensures the cultural and political hegemony of Europe in particular and of the West in general through establishing belittling or demeaning stereotypes of the peoples or culture of the Middle East<sup>20</sup>, although this is sometimes extended to include all non-western peoples.

Attempts to highlight the cultural biases that operate through the doctrine of 'universal' human rights have been particularly prominent in Asia and in the Muslim world. The Asian critique of human rights emphasizes the existence of rival 'Asian values', which supposedly reflect the distinctive history, culture and religious backgrounds of Asian societies. Key Asian values include social harmony, respect for authority and a belief in the family, each of which is meant to sustain social cohesion. As such, they challenge, and seek to counter-balance, the bias within traditional conceptions of human rights in favour of rights over duties, and in favour of the individual over community. A further difference is that, from an Asian values perspective, political legitimacy is more closely tied up with economic and social development than it is with democracy and civil liberty. Although those who have championed the idea of Asian values rarely reject the idea of human rights in principle, greater emphasis is usually placed on economic and social rights rather than on 'western' civic and political rights.

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<sup>19</sup> Jean-François Lyotard, *The Postmodern Condition: The Power of Knowledge* (University of Minnesota Press 2004).

<sup>20</sup> Edward Said, *Orientalism* (Penguin Publishers 2008) 234-235.

The Bangkok Declaration of 1993, adopted by Asian ministers in the run-up to the Vienna World Conference on Human Rights, thus attempted a delicate balancing act by recognizing both the distinctiveness of Asian cultures and the interdependence and indivisibility of human rights. It is also notable that the Chinese government often responds to criticism of its human rights record by arguing that collective socio-economic rights are more important than civic and political rights, highlighting its success in relieving an estimated 300 million people from poverty.

Islamic reservations about human rights have been evident since Saudi Arabia refused to adopt the UN Declaration in 1948, on the grounds that it violated important Islamic principles, notably its rejection of apostasy (the abandonment or renunciation of one's religion). The basis of the Islamic critique of human rights, as outlined by the *Cairo Declaration on Human Rights in Islam* (1990), is that rights, and all moral principles, derive from divine, rather than human, authority. As such, the UN Declaration and, for that matter, any other human principles and laws are invalid if they conflict with the values and principles outlined in divine *Shari'a* law. Indeed, in principle, the former should derive from the latter. From this perspective, the doctrine of universal human rights is merely a cultural expression of the political and economic domination that the West has customarily exerted over the Middle East in particular, and the Muslim world in general. Indeed, many of the concerns raised by the Asian values debate have been echoed within Islamic political thought. These include concern about the secular nature of western societies, implying a lack of sympathy with, if not outright hostility towards, religion, and an excessive individualism that threatens traditional values and social cohesion. The West, in short, is morally decadent, and through the idea of human rights is in danger of foisting its moral decadence on the rest of the world. Nevertheless, the Islamic critique is not so much a form of cultural relativism as a form of alternative universalism, as Islam, like liberalism, contains supposedly universal codes that are applicable to all cultures and all societies.

### **Rise of Humanitarian Intervention**

The state-system has traditionally been based on a rejection of intervention. This is reflected in the fact that international law has largely been constructed around respect for state sovereignty, implying that state borders are, or should be, inviolable. Nevertheless, it has long been recognized that intervention may be justifiable on humanitarian grounds. Francisco de Vitoria (1492-1546) and Hugo Grotius (1583-1645), for example, each acknowledged a right of intervention to prevent the maltreatment by a state of its own subjects, making them, effectively, early theorists of humanitarian intervention. Examples of such intervention, though traditionally rare, can also be found. In the Battle of Navarino Bay in 1827, the British and French destroyed the Turkish and Egyptian fleets off south-west Greece in order to support the cause of Greek independence. In the post-1945 period, interventions that had a significant humanitarian dimension included those that occurred in Bangladesh and Cambodia. In 1971, the Indian army intervened in a brief but brutal civil war between East and West Pakistan, helping East Pakistan to gain its independence as Bangladesh. In 1978, Vietnamese forces invaded Cambodia to overthrow Pol Pot's Khmer Rouge regime, which had, during 1975-1979, caused the deaths of



between one and three million people due to famine, civil war and executions. However, none of these military actions were portrayed as forms of 'humanitarian intervention'. India and Vietnam, for instance, justified their interventions squarely in terms of the national interest and the need to restore regional stability. The modern idea of humanitarian intervention was a creation of the post-Cold War period, and it was closely linked to optimistic expectations of the establishment of a 'new world order'.

### **The Case for Humanitarian Intervention**

In the first part, we explore the legal case for a right of humanitarian intervention, commonly labeled counter-restrictionist, and in the second part we discuss the moral justification for it.

#### ***The Legal Argument***

The 'counter-restrictionist' case for a legal right of individual and collective humanitarian intervention rests on two claims: first, the UN Charter (1945) commits states to protecting fundamental human rights, and second, there is a right of humanitarian intervention in customary international Law. Counter-restrictionists argue that human rights are just as important as peace and security in the UN Charter. The Charter's preamble and Articles 1(3), 55, and 56 all highlight the importance of human rights. Indeed, Article 1(3) identifies the protection of human rights as one of the principal purposes of the UN system. This has led counter-restrictionists to read a humanitarian exception to the ban on the use of force in the UN Charter. Michael Reisman argued that given the human rights principles in the Charter, the UNSC should have taken armed action during the Cold War against states that committed genocide and mass murder<sup>21</sup>. The ongoing failure of the UNSC to fulfill this legal responsibility led him to assert that a legal exception to the ban on the use of force in Article 2(4) of the Charter should be created that would permit individual states to use force on humanitarian grounds. Likewise, some international lawyers argued that humanitarian intervention did not breach Article 2(4) because the article only prohibits the use of force against the 'political independence' and 'territorial integrity' of states and humanitarian intervention does neither of these things<sup>22</sup>.

Other counter-restrictionists admitted that there is no legal basis for unilateral humanitarian intervention in the UN Charter, but argued that **it** is permitted by customary international law. For a rule to count as customary international law, states must actually engage in the practice that is claimed to have the status of law, and they must do so because they believe that the law permits this.

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<sup>21</sup> Michael Reisman, *The Lawful Use of Force in International Law* (Harvard University Press 2005), Pp. 279-280

<sup>22</sup> Francis Damrosch, 'Commentary on Collective Military Intervention to Enforce Human Rights', in Francis Damrosch and David Scheffer (eds.) *Law and Force in the New International Order* (Westview Press 2011)219.

International lawyers describe this as *opinio juris*. Counter-restrictionists contend that the customary right to humanitarian intervention preceded the UN Charter, evidenced by the legal arguments offered to justify the British, French, and Russian intervention in Greece (1827) and American intervention in Cuba (1898). They also point to British and French references to customary international law to justify the creation of safe havens in Iraq (1991) and Kofi Annan's insistence that even unilateral intervention to halt the 1994 genocide in Rwanda would have been legitimate.

There are, however, a number of problems with both elements of the counter-restrictionist case. They exaggerate the extent of consensus about the rules governing the use of force and their reading of the textual provisions of the UN Charter runs contrary to both majority international legal opinion<sup>23</sup> and the opinions expressed by its architects at the end of the Second World War.

### ***The Moral Case***

Many writers argue that irrespective of what the law says, there is a moral duty to intervene to protect civilians from genocide and mass killing. They argue that sovereignty derives from a state's responsibility to protect its citizens, and when a state fails in its duty, it loses its sovereign rights<sup>24</sup>. There are a number of different ways of arriving at this argument. Some point to the idea of common humanity to argue that all individuals have basic human rights and duties to uphold the rights of others.<sup>25</sup>

Others argue that today's globalized world is so integrated that massive human rights violations in one part of the world have an effect on every other part, creating moral obligations<sup>26</sup>. Some advocates of just war theory argue that the duty to offer charity to those in need is universal<sup>27</sup>. A further variety of this argument insists that there is moral agreement between the world's major religions and ethical systems that genocide and mass killing are grave wrongs and that others have a duty to prevent them and punish the perpetrators<sup>28</sup>.

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<sup>23</sup> Ian Brownlie, 'Humanitarian Intervention', in Jackson Moore (ed.) *Law and Civil War in the Modern World* (John Hopkins University Press 2004); and Samuel Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press 2011)

<sup>24</sup> Frederick Tesón, 'The Liberal Case for Humanitarian Intervention', in Lawrence Holzgrefe and Robert Keohane (eds.) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (4<sup>th</sup> Edition, Cambridge University Press 2013)93.

<sup>25</sup> Sylvia Caney and Chidi Nwabueze, *Human Rights and the Rights of States* (Brookings Institute Press 2007)234.

<sup>26</sup> Bimpe Banjo, Ibrahim Bukarambe and Chidi Chigozie, *Understanding Global Politics* (Institute of Strategic and International Studies 2013)45-48.

<sup>27</sup> Peter Ramsey, *The Just War: Force and Political Responsibility* (3<sup>rd</sup> Edition, Rowman and Littlefield Press 2015)35-36.

<sup>28</sup> Boyd Leopard, *Rethinking Humanitarian Intervention: A Fresh Approach Based on Fundamental Ethical Principles in International Law and World Religions* (Pennsylvania State University 2012)

There are problems with this perspective too. Granting states a moral permit to intervene opens the door to potential abuse: the use of humanitarian arguments to justify wars that are anything but. Furthermore, those who advance moral justifications for intervention run up against the problem of how bad a humanitarian crisis has to have become before force can be used, and there is also the thorny issue of whether force should be used to prevent a humanitarian emergency from developing in the first place.

### **The Case Against Humanitarian Intervention**

Seven key objections to humanitarian intervention have been advanced at various times by scholars, international lawyers, and policy-makers. These objections are not mutually exclusive and can be found in the writings of Realists, Liberals, Feminists, Post-colonial theorists and others, though these different theories afford different weight to each of the objections.

#### ***No Basis for Humanitarian Intervention in International Law***

Restrictionist international lawyers insist that the common good is best preserved by maintaining a ban on any use of force not authorized by the United Nations Security Council (UNSC). They argue that aside from the right of individual and collective self-defence enshrined in Article 51 of the UN Charter, there are no other exceptions to Article 2(4). They also point to the fact that during the Cold War, when states acting unilaterally could have plausibly invoked humanitarian claims (the key cases are India's intervention in East Pakistan in 1971, Vietnam's intervention in Cambodia in December 1978, and Tanzania's intervention in Uganda in January 1979), they had chosen not to do so. Interveners have typically either claimed to be acting in self-defence (during the Cold War especially), have pointed to the 'implied authorization' of UNSC resolutions, or have refrained from making legal arguments at all.

#### ***States Do Not Intervene for Primarily Humanitarian Reasons***

States almost always have mixed motives for intervening and are rarely prepared to sacrifice their own soldiers overseas unless they have self-interested reasons for doing so. For Realists this means that genuine humanitarian intervention is imprudent because it does not serve the national interest. For other critics, it points to the idea that the powerful only intervene when it suits them to do so and that strategies of intervention are more likely to be guided by calculations of national interest than by what is best for the victims in whose name the intervention is ostensibly being carried out.

***States Are Not Allowed to Risk the Lives of their Soldiers to Save Strangers***

Realists not only argue that states do not intervene for humanitarian purposes; their statist paradigm also asserts that states should not behave in this way. Political leaders do not have the moral right to shed the blood of their own citizens on behalf of suffering foreigners. Bhikhu Parekh encapsulates this position: 'citizens are the exclusive responsibility of their state, and their state is entirely their own business'<sup>29</sup>. Thus, if a civil authority has broken down or is behaving in an appalling way towards its citizens, this is the responsibility of that state's citizens, and crucially its political leaders.

***The Problem of Abuse***

In the absence of an impartial mechanism for deciding when humanitarian intervention is permissible, states might espouse humanitarian motives as a pretext to cover the pursuit of national self-interest<sup>30</sup>. The classic case of abuse was Hitler's argument that it was necessary to invade Czechoslovakia to protect the 'life and liberty' of that country's German population. Creating a right of humanitarian intervention would only make it easier for the powerful to justify interfering in the affairs of the weak<sup>31</sup>. Critics argue that a right to intervention would not create more 'genuine' humanitarian action because self-interest not sovereignty has traditionally been the main barrier to intervention. However, it would make the world a more dangerous place by giving states more ways of justifying force<sup>32</sup>.

***Selectivity of Response***

States always apply principles of humanitarian intervention selectively, resulting in an inconsistency in policy. Because state behaviour is governed by what governments' judge to be in their interest, they are selective about when they choose to intervene. The problem of selectivity arises when an agreed moral principle is at stake in more than one situation, but national interest dictates a divergence of responses. A good example of the selectivity of response is the argument that NATO's intervention in Kosovo could not have been driven by humanitarian concerns because it has done nothing to address the very much larger humanitarian catastrophe in Darfur. Selectivity of response is the problem of failing to treat like cases alike.

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<sup>29</sup> Bhikhu Parekh, *Rethinking Humanitarian Intervention* (Polity Press 2009)36.

<sup>30</sup> Timothy Franck and Nicholas Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Force* (8th Edition, University of California Press 2003)97.

<sup>31</sup> Yusuf Lawal and Issa Barongo, *Human Rights and Humanitarian Intervention in the Age of Nation-States* (Hopps Publications 2011)122-124.

<sup>32</sup> James Friedmann and Alan Friedberg, *Globalization, Human Rights, the State and Violence* (Alta-Mira Press 2014)324.

### ***Disagreement About Moral Principles***

Pluralist international society theory identifies an additional objection to humanitarian intervention, the problem of how to reach a consensus on what moral principles should underpin it. Pluralism is sensitive to human rights concerns but argues that humanitarian intervention should not be permitted in the face of disagreement about what constitutes extreme human rights violations. The concern is that in the absence of consensus on what principles should govern a right of humanitarian intervention, the most powerful states would be free to impose their own culturally determined moral values on weaker members of international society.

### ***Intervention Does Not Work***

A final set of criticisms suggests that humanitarian intervention should be avoided because it is impossible for outsiders to impose human rights. Liberals argue that states are established by the informed consent of their citizens. Thus, one of the foremost nineteenth-century liberal thinkers, John Stuart Mill, argued that democracy could only be established by a domestic struggle for liberty<sup>33</sup>. Human rights cannot take root if they are imposed or enforced by outsiders. Interveners will therefore find either that they become embroiled in an unending commitment or that human rights abuses re-ignite after they depart. Mill argued that oppressed peoples should themselves overthrow tyrannical government.

### **The 1990s: A Golden Era of Humanitarian Activism?**

The 1990s are sometimes seen as the golden age of humanitarian intervention. The end of the Cold War appeared to have brought to an end an age of power politics, characterized as it was by superpower rivalry and a 'balance of terror'. Instead, a 'liberal peace' would reign, founded on a common recognition of international norms and standards of morality. Key to this was the belief that in a global age states could no longer restrict their moral responsibilities to their own peoples<sup>34</sup>.

In order to explain the upsurge in humanitarian intervention in the early post-Cold War period, two questions must be answered. First, why did so many humanitarian emergencies arise? Second, why did other states intervene? Optimistic expectations of the establishment of a world of peace and prosperity in the post-Cold War era were soon punctured by the growth of disorder and chaos in what were sometimes called the 'zones of turmoil'<sup>35</sup>, or the 'pre-

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<sup>33</sup> John Stuart Mill, *Democracy, State and State Sovereignty* (Viking Press 1973) 377-378.

<sup>34</sup> John Wheeler, *Humanitarian Intervention in a Changing World* (United Nations Educational, Scientific and Cultural Organization (UNESCO) 2008)

<sup>35</sup> Mitchell Singer and Abraham Wildavsky, *The Real World Order: Zones of Peace / Zones of Turmoil* (Chatham House Publishers 2013) 221.

modern world'<sup>36</sup>. However, such turmoil and disorder can be explained in two quite different ways. They can be explained in terms of *internal* factors, faults and failing within the society itself. These include dictatorial government, rampant corruption, entrenched economic and social backwardness and festering tribal or ethnic rivalries. On the other hand, they can be explained in terms of *external* factors, structural imbalances and inequalities within the global system. These include the inheritance of colonialism, strains generated by economic globalization and, sometimes, the impact of structural adjustment programmes imposed by the International Monetary Fund (IMF), the World Bank and other bodies. To the extent to which humanitarian crises arise as a result of internal factors, intervention appears to be warranted as a way of saving the 'pre-modern world' from itself. However, if external factors have made a significant contribution to precipitating humanitarian emergencies, it is less easy to see how further interference, in the form of military intervention, would provide an appropriate solution.

Four factors help to explain a growing willingness by governments in the 1990s to intervene in situations in which humanitarian interests are at stake. In the first place, as realists and neo-realists tend to argue, humanitarian considerations often overlapped with concerns about the national interest. The motives for humanitarian intervention are invariably mixed and complex. For example, US intervention in Haiti was partly motivated by the desire to stem the flow of Haitian refugees to the USA. Similarly, NATO's actions in Kosovo were significantly affected by a wish to avoid a refugee crisis and also prevent regional

instability that may, in time, have required more politically risky levels of intervention. The simple reality is that, aside from moral justifications, states remain reluctant to commit their troops in circumstances in which important national interests are not at stake. Second, in a world of 24/7 news and current affairs and global television coverage and communications, governments often came under considerable public pressure to act in the event of humanitarian crises and emergencies. This was particularly demonstrated by the impact of 'non-interventions', especially the failure to prevent the Rwandan genocide and the Srebrenica massacre. What is sometimes called the 'CNN effect', shows how global information and communication flows make it increasingly difficult for governments to restrict their sense of moral responsibility to their own people alone.

Third, the end of Cold War rivalry, and the emergence of the USA as the world's sole superpower, created circumstances in which it was much easier to build consensus amongst major powers favouring intervention. In particular, neither Russia, then suffering from the political and economic turmoil of the collapse of the Soviet Union, nor China, in the early phase of its economic emergence, were strongly minded to block or challenge the USA, the major driving force behind most interventions. Fourth, in view of high expectations about the possibility of building 'new world order', politicians and other policy-makers were more

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<sup>36</sup> Richard Cooper, *The Breaking of Nations: Order and Chaos in the Twenty-first Century* (Atlantic Books 2013) 112.

willing to accept that the doctrine of human rights lays down accepted standards for ethical conduct. For Kofi Annan, UN Secretary-General(1997–2007), and national politicians such as President Clinton in the USA,(1993–2001), and UK Prime Minister Blair (1997–2007), the idea of human rights provided the basis for attempts to establish when and where states had a ‘right to intervene’ in the affairs of other states. In her constructivist account of changes in states’ behaviour with respect to military intervention, Martha Finne more thus emphasized ‘social influence plus internalization, in drawing attention to the impact of new norms about who is human and our obligations to save such people’<sup>37</sup>.

Indeed, it has become common to describe the immediate post- Cold War period as something of a ‘golden era’ for humanitarian activism. Thomas Weiss argues that ‘the notion that human beings matter more than sovereignty radiated brightly, albeit briefly, across the international political horizon of the 1990s’<sup>38</sup>. There is no doubt that during the 1990s, states began to contemplate intervention to protect imperiled strangers in distant lands<sup>39</sup>. This was symbolized for many by NATO’s intervention to halt Serb atrocities in Kosovo in March 1999 and the Australian-led intervention to end mass killing in East Timor<sup>40</sup>. But the 1990s also saw the world stand aside during the genocides in Rwanda and Srebrenica. This section tries to make sense of these developments by focusing on international interventions in northern Iraq, Somalia, Rwanda, and Kosovo. It is divided into three parts: the place of humanitarian impulses in decisions to intervene; the legality and legitimacy of the interventions; and the effectiveness of these military interventions.

### Table 1.2 Key Examples of Humanitarian Intervention

**1991 Northern Iraq.** In the aftermath of the Gulf War, the USA launched Operation Provide Comfort to establish ‘safe havens’ for the Kurdish people in Northern Iraq by establishing a no-fly zone policed by US, UK and French aircraft.

**1992 Somalia.** On the brink of a humanitarian catastrophe, a UN-authorized and US-led intervention (Operation Restore Hope) sought to create a protected environment for conducting humanitarian operations in southern Somalia.

**1994 Haiti.** Following a military coup and in the context of growing lawlessness and accelerating Haitian emigration to the USA, 15,000 US troops were despatched to Haiti to restore order and help in the establishment of civil authority.

**1994 Rwanda.** Following the Rwandan genocide and once the Tutsi RPF had gained control of most of the country, the French established a ‘safe zone’ for Hutu refugees to flee to(Operation Turquoise).

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<sup>37</sup> Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force*(Cornell University Press 2013)

<sup>38</sup> Thomas Weiss, ‘The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era’, *Security Dialogue*, 35(2), 2004: 136.

<sup>39</sup> Adewale Oladele, Buka Bukarambe and Adeyinka Meadows, *International History: From the Total War to the War on Terror* (Fledd Publishers 2010)112.

<sup>40</sup> Ricchy Wolfensohn, Zack Zalewski and Fletcher Bourguignon, *Human Rights, Humanitarian Intervention and Development* (Chicago University Press 2017)285.

**1999 Kosovo.** In a context of fears about the 'ethnic cleansing' of the Albanian population, a campaign of air strikes, conducted by US-led NATO forces, forced the Serbs to agree to withdraw their forces from Kosovo

**1999 East Timor.** As Indonesia stepped up a campaign of intimidation and suppression, a Unauthorized peacekeeping force, led by Australia, took control of the island from Indonesia.

**2000 Sierra Leone.** After a prolonged civil war in Sierra Leone, the UK government sent a small force, initially to protect UK citizens, but ultimately to support the elected government against rebel forces that were being accused of carrying out atrocities.

### **The Role of Humanitarian Sentiments in Decisions to Intervene**

In the case of northern Iraq in April 1991, but also Somalia in December 1992, domestic public opinion played an important role in pressurizing policy-makers into using force for humanitarian purposes. In the face of a massive refugee crisis caused by Saddam Hussein's oppression of the Kurds in the aftermath of the 1991 Gulf War, US, British, French, and Dutch military forces intervened to create protected 'safe havens' for the Kurdish people. Similarly, the US military intervention in Somalia in December 1992 was a response to sentiments of compassion on the part of US citizens. However, this sense of solidarity disappeared once the United States began sustaining casualties. The fact that the White House pulled the plug on its Somali intervention after the loss of eighteen US Rangers in a firefight in October 1993 indicates how capricious public opinion is. Television pictures of starving and dying Somalis had persuaded the outgoing Bush administration to launch a humanitarian rescue mission, but once the US public saw dead Americans dragged through the streets of Mogadishu, the Clinton administration announced a timetable for withdrawal. What this case demonstrates is that the 'CNN effect' is a double-edged sword: it can pressurize governments into humanitarian intervention, yet with equal rapidity produce public disillusionment and calls for withdrawal. However, these cases suggest that even if there are no vital national interests at stake, liberal states might launch humanitarian rescue missions if sufficient public pressure is mobilized. Certainly, there is no evidence in either of these cases to support the realist claim that states cloak power political motives behind the guise of humanitarianism.

By contrast, the French intervention in Rwanda in July 1994 seems to be an example of abuse. The French government emphasized the strictly humanitarian character of the operation, but this interpretation lacks credibility given the evidence that they were covertly pursuing national self-interest. France had propped up the one-party Hutu state for twenty years, even providing troops when the Rwandan Patriotic Front (RPF), operating out of neighboring Uganda, threatened to overrun the country in 1990 and 1993. The



French President, François Mitterrand, was reportedly anxious to restore waning French influence in

Africa, and was fearful that an RPF victory in French-speaking Rwanda would bring the country under the influence of Anglophones. France therefore did not intervene until the latter stages of the genocide, which was ended primarily by the RPF's military victory. It seems, therefore, that French behaviour accords with the realist premise that states will only risk their soldiers in defence of the national interest. French leaders may have been partly motivated by humanitarian sentiments but this seems to be a case of a state abusing the concept of humanitarian intervention since the primary purpose of the intervention was to protect French national interests.

The moral question raised by French intervention is why international society failed to intervene when the genocide began in early April 1994. French intervention might have saved some lives but it came far too late to halt the genocide. Some 800,000 people were killed in a mere hundred days. The failure of international society to stop the genocide indicates that state leaders remain gripped by the mind-set of statism. There was no intervention for the simple reason that those with the military capability to stop the genocide were unwilling to sacrifice troops and treasure to protect Rwandans. International solidarity in the face of genocide was limited to moral outrage and the provision of humanitarian aid.

If the French intervention in Rwanda can be criticized for being too little, too late, NATO's intervention in Kosovo in 1999 was criticized for being too much, too soon. At the beginning of the war, NATO said it was intervening to prevent a humanitarian catastrophe. To do this, NATO aircraft were given two objectives, reduce Serbia's military capacity and coerce Milosevic into accepting the Rambouillet settlement, with the emphasis if initially placed on the former. Three arguments were adduced to support NATO's claim that the resort to force was justifiable. First, it was argued that Serbian actions in Kosovo had created a humanitarian emergency and breached a whole range of international legal commitments. Second, NATO governments argued that the Serbs were committing crimes against humanity, possibly including genocide. Third, it was contended that the Milosevic regime's use of force against the Kosovar Albanians challenged global norms of common humanity.

Closer analysis of the justifications articulated by Western leaders suggests that while humanitarianism may have provided the primary impulse for action, it was by no means the exclusive impulse, and the complexity of the motives of the interveners coloured the character of the intervention. Indeed, NATO was propelled into action by a mixture of humanitarian concern and self-interest gathered around three sets of issues. The first might be called the 'Srebrenica

syndrome’—a fear that left unchecked Milosevic’s henchmen would replicate the carnage of Bosnia. The second is related directly to self-interest and was a concern that protracted conflict in the southern Balkans would create a massive refugee crisis in Europe. Finally, NATO governments were worried that if they failed to contain the crisis, it would spread and engulf several neighbouring states, especially Macedonia, Albania, and Bulgaria<sup>41</sup>. This suggests that humanitarian intervention might be prompted by mixed motives. This only becomes a problem if the non-humanitarian motives undermine the chances of achieving the humanitarian purposes.

### **How Legal and Legitimate were the Interventions?**

In contrast with state practice during the Cold War, the interventions in northern Iraq, Somalia, Rwanda, and Kosovo were all justified in humanitarian terms by the intervening states. Justifying the use of force on humanitarian grounds remained hotly contested, with China, Russia, and members of the Non-Aligned

Movement (NAM) defending a traditional interpretation of state sovereignty. However, this position became less tenable as the 1990s progressed. And by the end of the decade most states were prepared to accept that the UNSC was entitled to authorize armed humanitarian intervention. Thus, almost every peacekeeping mandate passed by the UNSC since 2000 contains an instruction for international soldiers to protect endangered civilians, using force if necessary and prudent. Chapter VII of the Charter enables the UNSC to authorize military enforcement action only in cases where it finds a threat to ‘international peace and security’. Since the early 1990s, the UNSC has expanded its list of what counts as a threat to the peace to include human suffering, the overthrow of democratic government, state failure, refugee movements, and ethnic cleansing. This attempt to justify humanitarian intervention on the grounds that human suffering constitutes a threat to international security was first controversially employed in the cases of northern Iraq and Somalia<sup>42</sup>.

NATO’s intervention in Kosovo raised the fundamental question of how international society should treat intervention where a state, or in this case a group of states, decide to use force to alleviate human suffering without the explicit authorization of the Security Council. Although the UN did not expressly sanction NATO’s use of force, the UNSC also chose not to condemn it. Russia

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<sup>41</sup> Anthony Bellamy, *Kosovo and International Society* (Princeton University Press 2012), p. 33; and Akin Bello, *Ethics and International Affairs* (Columbia University Press 2016) 87.

<sup>42</sup> Godwin Okafor and Issa Jubril, *International Security in a Globalized World* (Thoemmes Press 2014)86; and Lawrence Bakker, *The Global System: Economics, Politics and Culture* (Polity Press 2011)

tabled a draft UNSC resolution on 26 March 1999 condemning NATO's use of force and demanding an immediate halt to the bombing. Surprisingly, only Russia, China, and Namibia voted in favour, leading to a resounding defeat of the resolution. The UNSC's response to NATO's breach of the UN Charter's rules governing the use of force suggested that while it was not prepared to endorse unilateral humanitarian intervention, it was not necessarily going to condemn it either.

What emerges from post-Cold War state practice is that Western states took the lead in advancing a new norm of armed humanitarian intervention. Although some states, notably Russia, China, India, and some members of the NAM remained very uneasy with this development, they reluctantly came to accept that military intervention authorized by the UNSC was justifiable in cases of genocide and mass killing. The best illustration of this is the fact that no member of the UNSC tried to oppose intervention in Rwanda to end the genocide on the grounds that this violated its sovereignty. Instead, the barrier to intervention was the lack of political will on the part of states to incur the costs and risks of armed intervention to save Rwandans. There were also important limits to the emerging norm: intervention outside the UN remained very controversial; the UNSC refrained from authorizing intervention against fully functioning states; and although it is inconceivable that any state would have complained about intervention in Rwanda, this was a uniquely horrible case with a rate of killing higher than that of the Holocaust.

### **Were the Interventions Successful?**

Does the record of post-Cold War interventions lend support to the proposition that the use of force can promote humanitarian values? Humanitarian outcomes might usefully be divided into short- and long-term ones. The former would refer to the immediate alleviation of human suffering through the termination of genocide or mass murder and/or the delivery of humanitarian aid to civilians trapped in war zones. Long-term humanitarian outcomes focus on how far intervention addresses the underlying causes of human suffering by facilitating conflict resolution and the construction of viable polities.

"Operation Safe Haven" in Iraq enjoyed initial success in dealing with the refugee problem in northern Iraq and clearly saved lives. However, as the media spotlight began to shift elsewhere and public interest waned, so did the commitment of Western governments to protect the Kurds. While Western air forces continued to police a 'no-fly zone' over northern Iraq, the intervening states quickly handed over the running of the safe havens to what they knew was an ill-equipped and badly supported UN relief operation. This faced enormous problems owing to Iraqi hostility towards its Kurdish minority.

Nevertheless, the Kurds were able to fashion a significant degree of autonomy in the 1990s, which has persisted since the 2003 US-led invasion.

Some commentators identify the initial US intervention in Somalia in the period between December 1992 and May 1993 as a successful humanitarian intervention. In terms of short-term success, the US claims that it saved thousands of Somalis from starvation, though this is disputed<sup>43</sup>. What is not disputed is that the mission ended in disaster. This can be traced to the attempt by UNOSOM II (this UN force took over from the United States in May 1993 but its military missions were principally controlled by US commanders) to go beyond the initial US mission of famine relief to the disarmament of the warring factions and the provision of law and order. Suffering always has political causes, and the rationale behind the expanded mandate of UNOSOM II was to try to put in place a framework of political civility that would prevent a return to civil war and famine. However, this attempt to convert a short-term humanitarian outcome (famine relief) into the longer-term one of conflict resolution and reconstruction proved a failure. Once the UNSC had sanctioned the arrest of General Aidid after his forces killed 23 UN peacekeepers in June 1993, UNOSOM II acted like an imperial power relying on high-tech American weaponry to police the streets of southern Mogadishu.

The jury remains out on whether the international community can succeed in building a new multi-ethnic state in Kosovo. On the one hand, an improved security situation has enabled a marked decrease in the number of international soldiers and police deployed there and there have been a number of successful elections and transitions of power. On the other hand, ethnic violence remains a feature of life in province, there is high unemployment, and Kosovo has become a haven for organized crime. Looking back, the NATO-led force that entered Kosovo at the end of Operation Allied Force succeeded in returning Kosovo Albanian refugees to their homes but failed to protect the Serbian community from reprisal attacks.

The conclusion that emerges from this brief overview is that forcible intervention in humanitarian crises is most likely to be a short-term palliative that does little to address the underlying political causes of the violence and suffering. It is for this reason that the International Commission on Intervention and State Sovereignty (ICISS) insisted that intervention was only one of three international responsibilities, the other two involving long-term commitments to building the political, social, economic, military, and legal conditions necessary for the promotion and protection of human rights.

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<sup>43</sup> Timothy Weiss, *Military – Civil Interactions: Intervening in Humanitarian Crises* (3rd Edition, Rowman and Littlefield Press 2009)82-87.

### Humanitarian Intervention and the War on Terror

The 'war on terror' cast the issue of humanitarian intervention into a very different light. Whereas, before 2001, there was a growing belief that there had been too few humanitarian interventions – the failure to prevent massacres and barbarity in Rwanda and Bosnia served as a stain on the conscience of many in the international community – since then there has been the perception that there have been too many humanitarian interventions. This is because the controversial wars in Afghanistan and Iraq were both justified, in part, on humanitarian grounds. Strictly speaking, neither the Afghan War nor the Iraq War was examples of humanitarian intervention. In both cases, self-defence was the primary justification for military action, their purpose being to prevent 'future 9/11s' rather than 'future Rwandas'. However, supporters of the wars also, to a greater or lesser extent, portrayed them as humanitarian ventures. In the case of Afghanistan, the Taliban was seen to have established a brutal and repressive regime that, in particular, violated the rights of women, who were entirely excluded from education, careers and public life. In the case of Iraq, the Saddam regime was viewed as an ongoing threat to the Kurds in the north and the majority Shia population, both of whom had been subject to political exclusion and physical attack. 'Regime change' through the overthrow of the Taliban and Saddam Hussein therefore promised to bring about respect for human rights, greater toleration and the establishment of democratic government. In the process, supporters of the 'war on terror' further extended the doctrine of humanitarian intervention, but, arguably, contaminated the idea to such an extent that it has become more difficult to apply in other circumstances.

What effect did the terrorist attacks on 11 September 2001 have on humanitarian intervention? Has the war on terror made it less likely that powerful states will use their militaries to save strangers? Is there a danger that US administrations will return to their Cold War policy of prioritizing strategic advantage over human rights? There are two prominent perspectives on these questions.

The first is a sceptical position. It holds that since the 'war on terror' began, the United States has placed its own strategic interests ahead of concern for human rights, both overseas and at home. It has become more willing to align itself with repressive governments, such as Tajikistan and Sudan, that support its anti-terror strategy<sup>44</sup>. According to this view, where it might have been difficult to marshal Western commitment to humanitarian intervention in the 1990s, it has become virtually impossible after 9/11. Since 2001, the Western contribution to peace operations has markedly declined. Just as worrying for

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<sup>44</sup> Michael Ignatieff, 'Is the Human Rights Era Ending?' *New York Times*, 5<sup>th</sup> February, 2008

the sceptics is the fear that the USA and its allies are actually undermining the consensus on humanitarian intervention by abusing humanitarian principles in justifying their use of force.

The second perspective is more optimistic. It springs from the core premise that Western states will only militarily intervene in humanitarian emergencies if they believe that vital security interests are at stake. For the optimists, Afghanistan seemed to show that there is often a critical linkage between failed states and terrorism. Therefore, they predicted that the war on terror could provide the necessary strategic interests to motivate intervention that is defensible on grounds of both human rights and national security<sup>45</sup>. The Afghanistan experience might be seen as supporting the optimistic viewpoint, though important question marks can be raised over whether military means have been properly calibrated to humanitarian ends since the intervention in October 2001<sup>46</sup>. However, the more recent experiences in relation to Iraq and Darfur suggests not only that the war on terror has fractured the fragile consensus over humanitarian intervention, but also that the problem of political will continues to bedevil effective humanitarian intervention as it did over Rwanda. Indeed, the Darfur case suggests that the West's commitment to the war on terror is making it less likely to intervene to save strangers in strategically unimportant regions.

### **Afghanistan**

Although the US-led intervention in Afghanistan was a war of self-defence, the US President nevertheless felt the need to make a humanitarian argument to support his case. He told Afghans that, 'the oppressed people of Afghanistan will know the generosity of America and its allies. As we strike military targets, we'll also drop food, medicine and supplies to the starving and suffering men and women and children of Afghanistan'<sup>47</sup>. The United States took steps to minimize non-combatant suffering in Afghanistan but at least two operational choices undermined the humanitarian credentials of the war. The first was the decision to rely heavily on intelligence provided by different Afghan factions for the identification of military targets. This reflected the US determination to reduce the risks to its own armed forces. But this decision left US forces open to manipulation by Afghans eager to settle scores with their rivals, resulting in a number of attacks where innocent civilians were killed. The second failure was

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<sup>45</sup> Samuel Chesterman, *Humanitarian Intervention in International Relations Theory* (Oxford University Press 2014) 223.

<sup>46</sup> Nickel Wheeler and Joseph Morris, 'Justifying Iraq as a Humanitarian Intervention: The Cure is Worse than the Disease', in Raff Thakur and Windel Sidhu (eds.) *The Iraq Crisis and World Order: Structural, Institutional and Normative Challenges* (4<sup>th</sup> Edition, United Nations University Press 2014)

<sup>47</sup> George W. Bush, *Bush Announces Military Strikes in Afghanistan* (White House Press 2001)5.

Washington's refusal to contribute ground troops to the UN-mandate International Security Assistance Force (ISAF) and make a sustained contribution to rebuilding Afghanistan. The ISAF was initially confined to operating in Kabul and even though it was later expanded, only relatively small 'reconstruction teams' were dispatched to other regional centres. In 2005, ISAF became primarily engaged with combating a resurgent Taliban. The relative neglect of post-intervention Afghanistan can be measured by the amount of resources committed to it. In 2004, the United States committed \$18.4 billion of development spending to Iraq and a mere \$1.77 billion to Afghanistan.

The fact that the United States and its allies felt it necessary to employ humanitarian arguments in this case highlights the extent to which this justification has become a legitimating basis for military intervention in the post-Cold War world. However, the use of humanitarian language did not presage a new Western commitment to protecting civilians in need. In Afghanistan, the humanitarian impulse has been less important than political and strategic considerations, the protection of allied soldiers has been prioritized over the security of Afghans, and there has been insufficient commitment to post-conflict reconstruction<sup>48</sup>. This lends credence to the sceptical view about humanitarian intervention in a post-9/11 world.

### **Iraq**

The use of humanitarian arguments by the United States, United Kingdom, and Australia to justify the invasion and occupation of Iraq posed a crucial challenge to the legitimacy of humanitarian intervention in international society. The Iraq War was primarily justified as one necessitated by the danger posed by Saddam Hussein's weapons of mass destruction (WMD). However, as the offending weapons became more elusive, those justifying the use of force to remove Saddam Hussein relied increasingly on humanitarian rationales. As criticism of the war mounted, President Bush and British Prime Minister Tony Blair frequently retorted that regardless of WMD, the war was justifiable because 'Iraq is a better place' without Saddam<sup>49</sup>.

Many commentators and politicians believe that the use of humanitarian justifications in relation to Iraq damaged the emerging norm of humanitarian intervention by highlighting the potential for the norm to be abused by the powerful to justify interfering in the affairs of the weak. Of course, many states were deeply sceptical about humanitarian intervention before Iraq, but there is evidence that some states that were initially supportive of humanitarian

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<sup>48</sup> Williams Wheels, Borris Dozie, and Whyte Timothy, *Human Rights, Humanitarian Intervention and World Order* (Leicester University Press 2009) 122-123.

<sup>49</sup> Thomas Cushman, *A Matter of Principle: Humanitarian Arguments for War in Iraq* (University of California Press 2005) 96.

intervention have become less so as a result of the perceived misuse of humanitarian rationales over Iraq. For example, in 2003 Germany—a strong supporter of the Kosovo intervention refused to endorse a British statement on the responsibility to protect because it feared that any doctrine of humanitarian intervention outside the UNSC might be used by the United States and the United Kingdom to justify the invasion of Iraq<sup>50</sup>. A more subtle variant on this argument holds that while Iraq may not have damaged the norm itself, it has damaged the status of the United States and the United Kingdom as norm carriers, weakening the extent to which they are able to persuade others to agree to action in humanitarian crises<sup>51</sup>. As Kenneth Roth of Human Rights Watch grimly predicted, as a consequence of the use of humanitarian justifications in relation to Iraq, 'it will be more difficult next time for us to call on military action when we need it to save potentially hundreds of thousands of lives'<sup>52</sup>. Sadly, Roth's prediction was proved correct by the world's response to the humanitarian catastrophe in Darfur.

### Darfur

Since 2003, the Sudanese government and its 'janjaweed' militia have embarked on what the UN has described as a 'reign of terror' in Darfur. At least 250,000 people have died and over two million people have been forced from their homes. Despite this toll of human suffering, the world's response had been limited to the deployment of an understaffed and under-funded African Union (AU) mission that has proved utterly incapable of protecting civilians from harm.

Why has the world's response been so tepid? Three sets of factors are at work. The first, emphasized by the British and American governments especially, are prudential concerns. The Sudanese government has steadfastly refused to contemplate any non-African deployments in Darfur, so any armed intervention might be strongly resisted. In addition, intervention might make the Sudanese government close its ports to aid agencies making it difficult to get life-saving assistance to the refugees. There are also worries that firm action in Darfur might ruin a peace settlement for Sudan's other civil war, which claimed two million lives over more than a decade. The second set of factors relate more directly to the war on terror. The idea of forcible Western intervention in Darfur is strongly opposed by Russia, China, the AU, and the NAM. Since the invasion of Iraq, many states have been keen to reaffirm the principle of state sovereignty

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<sup>50</sup> Joseph Bellamy and Jackson Russett, *The Crisis in Darfur and Humanitarian Intervention after Iraq* (Clarendon Press 2008) 39.

<sup>51</sup> Charles Austin and Richard Schweller, *Humanitarian Intervention and Global Politics* (Cambridge University Press 2010).

<sup>52</sup> Kenneth Roth, *The War in Iraq: Justified as Humanitarian Intervention?* (Oxford University Press, 2004) 36-37.



and are less willing than before to contemplate actions that violate this. Finally, the reluctance to act in Darfur demonstrates the continuing relevance of statism. Just as in Rwanda, Western governments do not want to sacrifice troops and treasure to stop one group of Africans killing another group. Furthermore, several of the great powers have self-interested reasons for not upsetting the Sudanese government: China has significant interests in Sudanese oil; Russia has a smaller oil interest but also sells arms to Sudan; and the United States sees Sudan as a vital regional ally in the war on terror. The enduring logic of statism means that these powers afford more weight to their interests than they do to the lives of Darfurians.

During the 1990s, humanitarian intervention was seen to have strictly limited objectives. Military action was taken in emergency conditions with the intention of restoring peace and order and of allowing humanitarian relief to be deployed. Intervention was generally not linked to the wider restructuring of society, even though in cases such as East Timor, Sierra Leone and Kosovo, one of the outcomes was the establishment of a multi-party democratic process. As used in Afghanistan and Iraq, however, the idea of humanitarian intervention was drawn into a larger project of liberal interventionism. Liberal interventionism is based on two assumptions. First, liberal values and institutions, notably market-based economies and liberal democracy, are universally applicable and superior to alternative values and institutions. Second, in circumstances where the advance of liberalism is being blocked by obstacles that the domestic population finds impossible to remove, notably a dictatorial and repressive government, established liberal states have a right, and maybe even a duty, to provide support. This support may take the form of diplomatic pressure, economic sanctions or, when basic human rights are being flagrantly violated, possibly military intervention. However, such intervention aims not merely to provide humanitarian relief but, further, to address the source of the problem: the government or regime that has become a threat to its own citizens. Liberal interventionists therefore link humanitarian intervention to the wider and more long-term goals of regime change and democracy promotion. Such ideas overlapped with and helped to inform the neo-conservatism that shaped the USA's strategic approach to the 'war on terror'.

However, its association with the 'war on terror' has created problems for the idea that intervention can and should be used to promote humanitarian or wider liberal goals. In the first place, many have argued that the human rights rationale for intervention in Afghanistan and Iraq was mere window-dressing. Despite the records of both the Taliban and the Saddam regimes, in neither case were there humanitarian emergencies or an imminent threat of genocidal massacres. Radical critics of the 'war on terror', indeed, argued that goals such as regime change and democracy promotion were only elements in a larger strategy of consolidating the USA's global hegemony and securing oil supplies from the Middle East. Second, the interventions in Afghanistan and Iraq proved to be considerably more problematical than initially anticipated, as both wars

turned into protracted counter-insurgency struggles. This highlighted the danger of getting bogged down in an intervention, especially as domestic support for intervention tends, sooner or later, to weaken due to the so-called 'body bag effect', regardless of the motives behind it. Third, the 'war on terror' raised serious questions about the universalist assumptions that underpin liberal interventionism.

Not only have doubts surfaced about the viability of imposing western-style democracy 'from above', but the wars in Afghanistan and Iraq also in many ways deepened tensions between the Islamic world and the West. If liberal values such as human rights and multi-party democracy are not universally applicable, it is difficult to see how consistent standards can be established for interventions that have a humanitarian or moral basis. Such problems help to explain why it has been more difficult to mobilize support for humanitarian intervention since 2001. This is demonstrated by 'non-interventions' in places such as Darfur, Zimbabwe and Burma. The UN has left the task of peacemaking to a relatively small African Union Force. More systematic and concerted intervention has been prevented by the opposition of China and Russia, a lack of public support for intervention in the USA while the wars in Iraq and Afghanistan persisted, and the UN's lack of resources and political will.

In Zimbabwe during the 2000s, the regime of President Robert Mugabe presided over a country whose economy was in tatters, where poverty and unemployment were endemic and political strife and repression were commonplace. However, it has proved difficult to mobilize support for western intervention, not least because such action would have been perceived as a return to colonialism in many parts of Africa, and because of the opposition of South Africa, the major power in the area. In Burma, also known as Myanmar, a military junta has been in power since 1988, which has been accused of gross human rights abuses, including the forcible relocation of civilians, the widespread use of forced labour, including children, and the brutal suppression of political opposition. Nevertheless, despite widely being regarded as a pariah state, pressure for intervention in Burma has been restricted by the fact that it is not a threat to regional stability and by China's outright rejection of any form of Western action.

Overall, the sceptical position has proven more accurate than the optimistic one in relation to humanitarian intervention after 9/11. Humanitarian justifications are being used with greater frequency to justify a wide range of military operations, but the developing consensus on a new norm charted in the previous section has been set back by the perceived abuse of humanitarian claims in relation to Afghanistan and especially Iraq. Many governments, especially in the NAM, have reacted to this by reaffirming state sovereignty. This worrying development was manifested in international society's failure to prevent or end the humanitarian catastrophe in Darfur. Yet at the same time, the inroads that humanitarian concerns have made into the sovereign prerogatives of states can be seen in the agreement at the 2005 UN World Summit to the idea of the 'responsibility to protect'. The next section will explore how far this offers the basis for a new global consensus on the use of force to protect endangered peoples.

### The Responsibility to Protect

*The Responsibility to Protect (R2P)*, the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) has laid down conditions for humanitarian intervention. Considerable attention has focused on the attempt to establish when, if ever, humanitarian intervention is justifiable. This reflects the fact that the case for humanitarian intervention requires that just war theory is extended in bold and challenging ways. The moral challenges posed by humanitarian intervention include the following:

- It violates the established international norm of non-intervention, based on the idea of the 'inviolability of borders'. It is therefore difficult to reconcile humanitarian intervention with the conventional notion of state sovereignty, under which states are treated as equal and self-governing entities, exclusively responsible for what goes on within their borders. Any weakening of state sovereignty may threaten the established rules of world order.
- It goes beyond the just war idea that self-defence is the key justification for the use of force. Instead, in the case of humanitarian intervention, the use of force is justified by the desire to defend or safeguard others, people from different societies. Humanitarian intervention is therefore rooted in cosmopolitan ethical theories that allow states to risk the lives of their own military personnel in order to 'save strangers'.
- It is based on the idea that the doctrine of human rights provides standards of conduct that can be applied to all governments and all peoples. This may, nevertheless, take insufficient account of ethical pluralism and the extent to which religious and cultural differences across the world establish contrasting moral frameworks.
- It may allow the 'last resort' principle, basic to most versions of a just war, to be downgraded. Faced with the imminent danger of genocide or an ongoing humanitarian emergency, it may be morally indefensible to waste precious time exhausting all non-violent options before force can be justified. Instead, force may become a 'first resort' response.

In view of such considerations, military intervention for humanitarian purposes must always be an exceptional and extraordinary measure. Without clear guidelines about when, where and how humanitarian intervention can and should take place, states will always be able to cloak their expansionist ambitions in moral justifications, allowing humanitarian intervention to become a new form of imperialism. Two key issues have attracted particular attention: the 'just cause' that warrants military intervention, and the 'right authority' that legitimizes the intervention in practice.

Although it is widely accepted that the doctrine of human rights provides amoral framework for humanitarian intervention, human rights do not in

themselves provide adequate guidance about justifications for intervention. This is because human rights are many and various – the UN Universal Declaration of Human Rights (1948), for instance, contains 29 Articles – meaning that the ‘violation of human rights’ would legitimize intervention in a bewildering range of circumstances. A better guide is provided by the idea of ‘crimes against humanity’, a notion that emerged through the Nuremberg Trials at the end of WWII. However, the most widely used justification for humanitarian intervention is to stop or prevent genocide, viewed as the worst possible crime against humanity, the ‘crime of crimes’. Nevertheless, it is difficult to see how genocide could provide a consistent and reliable ‘just cause’ threshold for humanitarian intervention. This is because genocide is usually viewed as a deliberate act, if not as a planned programme of slaughter and destruction, while many large-scale killings arise through random acts of violence or the total breakdown of political order without any party having ‘genocidal intent’.

*The Responsibility to Protect*, the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS), attempted to resolve the tension between the competing claims of sovereignty and human rights by building a new consensus around the principles that should govern the protection of endangered peoples. The principle of responsibility to protect was adopted by the UN General Assembly at the 2005 World Summit, a move described as a ‘revolution ... in international affairs’ by one commentator<sup>53</sup>. But what is the ‘responsibility to protect’, how was it adopted, and what does it mean for the future of humanitarian intervention?

The Commission argued that states have the primary responsibility to protect their citizens. When they are unable or unwilling to do so, or when they deliberately terrorize their citizens, the ‘the principle of non- intervention yields to the international responsibility to protect’<sup>54</sup>. The report broadens this responsibility to encompass not only the responsibility to react to humanitarian crises but also the responsibility to prevent such crises and the ‘responsibility to rebuild’ failed and tyrannical states. This reframing of the debate away from the question of whether states have a right of intervention towards the question of where responsibility rests for protecting endangered peoples formed the basis of an attempt to generate a new international political consensus supporting what the ICISS report calls ‘intervention for human protection purposes’<sup>55</sup>.

Two crucial motivating factors behind the setting up of ICISS were the aspiration to avoid future situations like Kosovo, where the UNSC was paralyzed by division among the five permanent members of the UNSC (P-5), and future situations like Rwanda, where the world stood aside as genocide unfolded.

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<sup>53</sup> Traedell Lindberg, *Protect the People* (Progress Publishers 2015)

<sup>54</sup> International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect* (ICISS 2001)xi.

<sup>55</sup> International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect* (ICISS 2001)xiii.

There are two competing accounts of the causes of deadlock in the UNSC over Kosovo. On the one hand, there are those like British Prime Minister Tony Blair, who argued that it was caused by 'unreasonable' threats of veto on the part of Russia and China<sup>56</sup>. This position was endorsed by the two co-chairs of the ICISS when they described the UNSC's failure to authorize armed intervention in Kosovo as a failure 'to

discharge its own responsibility to protect in a conscience-shocking situation crying out for action'<sup>57</sup>. The alternative position holds that Russia and China had genuine concerns about the use of force, based on their view that the level of killing and ethnic cleansing was not bad enough to warrant intervention. To build an international consensus that would help prevent future Kosovos, therefore, the ICISS needed to make it more difficult for members of the UNSC to use the veto capriciously, but also to make it harder for states to abuse humanitarian justifications. The principal device for achieving this goal was a set of criteria that governments and other observers could use to evaluate whether military intervention would be legitimate on humanitarian grounds. The ICISS argued that if states committed to these principles it would make it easier to build consensus on how to respond to humanitarian emergencies. On the one hand, it would be harder for states like China and Russia to oppose genuine humanitarian intervention because they would have committed themselves to the responsibility to protect in cases of genocide, mass killing, and large-scale ethnic cleansing (the thresholds established by the ICISS that justify military intervention). On the other hand, it would be harder for states to abuse humanitarian justifications because it would be very difficult to satisfy these criteria in cases where there was not a compelling humanitarian rationale to act.

Preventing future 'Rwandas' can be boiled down to overcoming a single obstacle: how to persuade states, particularly powerful states, to risk troops and treasure to save strangers in distant lands where few strategic interests at stake. Overcoming this obstacle requires that two fundamental problems be addressed: first, identifying precisely which actors should assume the responsibility to protect, and second, persuading those actors to accept the obligation to use force for 'human protection purposes'.

According to the ICISS, the UNSC has the primary responsibility to act. The report argued that if it failed to live up to this responsibility, there was a danger that other states might choose to take the law into their own hands with negative consequences for both order and justice. The Commissioners warned that: 'if the Security Council fails to discharge its responsibility in conscience-shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations. If collective organizations will not authorize collection intervention against regimes that flout the most elemental forms of legitimate governmental behaviour, then the pressures for

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<sup>56</sup> Tessa Dunne, *Moral Britannia: Ethical Dimension in Britain's Foreign Policy* (Oxford University Press 2014)

<sup>57</sup> George Evans and Mercia Sahnoun, *The Responsibility to Protect: A Critique* (2<sup>nd</sup> Edition, Basic Books 2012)108.

intervention by *ad hoc* coalitions or individual states will surely intensify. And there is a risk then that such interventions, without the discipline and constraints of UN authorization, will not be conducted for the right reasons or with the right commitment to the necessary precautionary principles<sup>58</sup>.

In cases where there is majority support for intervention in the UNSC (a resolution supporting intervention for humanitarian purposes has secured nine votes or more), but collective action is blocked by a veto, the ICISS suggested that states seek political support from the General Assembly. If it was not possible to secure a two-thirds majority in that body recommending military action (the legal basis of which would be highly dubious), the report even more tentatively suggested that intervention might still be justifiable if authorized by a relevant regional organizations<sup>59</sup>. This suggests a hierarchy of where responsibility lies, starting with the host state, then the UNSC, the General Assembly, regional organizations, coalitions of the willing, and finally individual states.

How, though, are we to persuade governments to abandon the statism that caused the world to stand aside in Rwanda and Darfur? The ICISS had an answer to this, too. A commitment to the just cause thresholds would create expectations among domestic publics about when their governments ought to act to save imperiled people. Thus, in cases of mass killing and ethnic cleansing, governments would be put under pressure to act because they had already committed in principle to doing so. Although the ICISS marked a bold and important step towards building consensus, there are at least three important problems with the logic that it employed.

### **Agreement on Criteria does not Guarantee Agreement on Action in Real Cases**

States might agree on what criteria to use in making judgments about humanitarian intervention, but the application of the criteria to real cases is always open to interpretation. Skilled lawyers and diplomats will use the criteria to make convincing arguments both for and against particular interventions, as they did in the case of Darfur<sup>60</sup>. In 2005, UNSC members argued about whether or not the Sudanese government had indeed proven itself 'unable and willing' to protect its people. Without an authoritative judge to determine such matters, the criteria can only provide a language for argument and discussion. They cannot resolve differences of opinion.

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<sup>58</sup> International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect* (ICISS 2001) 71.

<sup>59</sup> International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect* (ICISS 2001) 75.

<sup>60</sup> Joseph Baylis and Tolulope Williams, *Globalization, Humanitarian Intervention and the 2005 World Summit* (Polity Press 2013) 232-233.

### **The Criteria are Open to Manipulate by Powerful Actors**

Although criteria reduce the dangers of abuse by establishing the parameters within which Justifying arguments have to be framed, the way the facts are interpreted and the arguments presented are inevitably shaped by power politics. Moreover, the interpretations of powerful states with the capacity to reward and punish others are likely to carry more weight in the deliberations of governments than the arguments of those who lack such sticks and carrots.

### **Assumes that Governments can be Persuaded to Act**

Translating the responsibility to protect from the ideal into reality rests on the notion that governments can be shamed into acting to end genocide, mass killing, and large-scale ethnic cleansing by moral pressure from other governments, their own citizens, and wider world public opinion. There are reasons to doubt that these pressures can really be so effective. Imagine if there had been an ICISS report in early 1994. Would New Zealand, as President of the UNSC for April (the Presidency rotates each month between the members of the UNSC), have been able to 'shame' the Clinton administration into intervening in Rwanda? If this logic holds, why were major public campaigns such as the Save Darfur Coalition unable to persuade their governments to act more effectively? Public opinion can only galvanize action when governments themselves are already predisposed towards taking it. Sadly, few citizens change the way they vote because their government chooses not to intervene to save foreigners.

### **The 2005 World Summit**

In 2005, the UN World Summit adopted a declaration committing all 191 member states to the principle of the responsibility to protect. Some lauded it as a major breakthrough, while others argued that the ICISS report's findings had been watered down to such an extent that it would not, in practice, afford new protections to imperiled peoples. There are some notable differences between the ICISS report and the World Summit text. What are those differences and how did they come about?

The 2001 ICISS report was received most favorably by states such as Canada (the progenitor of the idea of the ICIS5 and the political custodian of the process), Germany, and the United Kingdom (since the 1999Kosovo intervention, the British, led by the Secretary of State for Foreign Affairs, Robin Cook, had been exploring the potential to develop criteria to guide global decision-making about humanitarian intervention). Other supporters of the ICISS report included Argentina, Australia, Colombia, Croatia, Ireland, South Korea, New Zealand, Norway, Peru, Rwanda, Sweden, and Tanzania. The great

powers were much more sceptical from the outset. The United States rejected the idea of criteria on the grounds that it could not offer pre-commitments to engage its military forces where it had no national interests at stake, and that it would not bind itself to criteria that would constrain its right to decide when and where to use force<sup>61</sup>. China insisted that all questions relating to the use of force should be dealt with by the UNSC, a position supported by Russia. Both of these countries argued that the UN was already equipped to deal with humanitarian crises, and that by countenancing unauthorized intervention, the *Responsibility to Protect* risked undermining the UN Charter.

Opinion outside the UNSC was also generally cautious. The NAM rejected the concept. India, for example, argued that the UNSC was already sufficiently empowered to act in humanitarian emergencies and observed that the failure to act in the past was caused by a lack of political will not a lack of authority. Speaking on behalf of the NAM, the Malaysian government argued that the *Responsibility to Protect* represented a reincarnation of humanitarian intervention for which there was no basis in international law.

As a result of these doubts, significant changes had to be made to persuade states to adopt the principle of the responsibility to protect. In particular, the proposal to include criteria governing the use of force was dropped during the negotiations leading up to the agreement at the World Summit. Moreover, and significantly watering down the recommendations in the ICISS report, it was agreed that responsibility to protect intervention required express UNSC authorization. This closed down the possibility of appealing to other bodies even if the will of a majority of Council members was blocked by one or more of the P-5 exercising the veto. Although momentous in that this was the first time that the society of states had formally declared that sovereignty might sometimes give way to concerns about human rights, it is perhaps best understood as a codification of the humanitarian intervention norm that had developed in the 1990s.

## Conclusion

Human rights are supposedly universal, fundamental, indivisible and absolute. Distinctions are nevertheless drawn between civil and political rights, economic, social and cultural rights, and solidarity rights. Human rights imply that national governments have significant foreign domestic obligations, and that justice has acquired a cosmopolitan character. Human rights are protected by an elaborate regime that involves an expanding array of international human

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<sup>61</sup> . John Welsh, *Humanitarian Intervention and International Relations* (Oxford University Press 2014) 108.



rights documents, with supporting UN bodies, a wide range of human rights NGOs and states committed to advancing human rights. Nevertheless, states are also the greatest human rights abusers, reflecting an inherent tension between human rights and states' rights.

Since the 1970s, the universalist assumptions that underpin human rights have come under growing pressure. Communitarians and postmodernists argue that human rights are philosophically unsound because morality is always relative. Postcolonial theorists often view the doctrine of human rights as an example of Western cultural imperialism, even though they may accept the broad notion.

Humanitarian intervention is military intervention carried out in pursuit of humanitarian rather than strategic objectives. It flourished in the 1990s due to the liberal expectations linked to the prospect of a 'new world order' and the (temporary) hegemony of the USA. However, deep concerns have been thrown up about humanitarian intervention by US military involvement in Afghanistan and Iraq. The R2P has laid down conditions for humanitarian intervention, based on a large-scale loss of life, possibly due to ethnic cleansing, where the state in question is unwilling or unable to act itself. Such thinking has often involved attempts to re-conceptualize sovereignty, particularly through the idea of 'responsible sovereignty'. Humanitarian intervention works when its benefits exceed its costs, in terms of lives lost and human suffering. Although this calculation is difficult to make in objective terms, there have clearly been examples of successful intervention. Other interventions, however, have possibly done more harm than good, sometimes because of the intractable nature of underlying economic and political problems.

Globalization is bringing nearer Kant's vision of moral interconnectedness, but as the Rwandan genocide and global inaction over Darfur so brutally demonstrate, this growth in cosmopolitan sensibilities has not yet been translated into a global consensus on forcible humanitarian intervention. Western publics are increasingly sensitized to the human suffering of others, but this media-nurtured sense of compassion is very selective in its response to human suffering. The media spotlight ensured that governments directed their humanitarian energies to the crises in northern Iraq, Somalia, and Bosnia, but during the same period millions perished in the brutal civil wars in Angola, Liberia, and the Democratic Republic of Congo.

Each case has to be judged on its merits, but as the examples of Somalia and perhaps Kosovo demonstrate, interventions which begin with humanitarian credentials can all too easily degenerate into a range of policies and activities which go beyond, or even conflict with, the label "humanitarian". A further fundamental problem with a strategy of forcible humanitarian intervention concerns the so-called 'body-bag' factor. Is domestic public opinion, especially

in Western states, prepared to see their military personnel die in the cause of humanitarian intervention? 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.

Since 9/11, Western states have expressed humanitarian sentiments in relation to many different types of war. While this indicates the growing power of humanitarianism, the downside of this is that states might abuse humanitarian rationales in justifying their use of force, while only selectively responding to humanitarian crises in strategically important areas. For many in the developing world, this is precisely what the United States and the United Kingdom have done in Iraq, damaging rather than furthering the humanitarian agenda.

The paper ended by considering the responsibility to protect, which has sought to reshape the terms of the debate between supporters and opponents of humanitarian intervention. The concept has certainly helped change the political language used to describe and debate humanitarian intervention, and its adoption at the UN World Summit was an important milestone. The real test, however, is whether it will generate a new political will on the part of the major states to incur the costs and risks of saving strangers. The evidence from Darfur is not encouraging in this regard.