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Is humanitarian military intervention in the affairs of another state ever justified?

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Global Security
Political & International Studies
MA International Relations

January 2008

... if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?¹

Kofi Annan

Since the end of the Cold War, the issue of humanitarian intervention has become the most contentious concept and heated debate in the field of international relations.² This debate between different schools of thought is mainly concentrated on the question of legality and the right of states to militarily intervene in the affairs of another state in cases of massive violations of fundamental human rights guaranteed under international law. The problem arises, however, when humanitarian intervention conflicts with the principles of sovereignty and non-intervention. Although there have been many humanitarian military interventions during the Cold War, it was its demise that provided the opportunity for concerted humanitarian interventions. Some of the interventions had the blessing of the United Nations, others not. Many scholars identify the 1990s as a ‘decade of humanitarian intervention.’³ A decade which started with the establishment of *safe havens* for the Iraqi Kurds in 1991 and ended up with the NATO bombing the Former Republic of Yugoslavia in 1999.⁴

This essay investigates whether humanitarian military intervention in the affairs of another state is ever justified. The concept of humanitarian intervention is analysed both theoretically and empirically with particular emphasis on its legality and legitimacy.

What is humanitarian intervention? Humanitarian intervention is an ambiguous concept. According to J. L. Holzgrefe humanitarian intervention is ‘the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is

¹ Kofi Annan, Former Secretary-General of the United Nations, See full Report ‘We the Peoples,’ The Role of the United Nations in the 21st Century, (2000) p. 48. Available from: <http://www.un.org/millennium/sg/report/full.htm> [accessed 22 November 2007].

² Robert O. Keohane writes, ‘Saying “humanitarian intervention” in a room full of philosophers, legal scholars and political scientist is a little bit like crying “fire” in a crowded theatre’. Robert O. Keohane, ‘Introduction,’ in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 1.

³ See for example Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Polity Press, Cambridge, 2007), p.16.

⁴ Chris Brown with Kirsten Ainley, *Understanding International Relations, Third Edition* (Palgrave Macmillan, Basingstoke, 2005), p. 221

applied'.⁵ Ferdinand R. Teson, a staunch supporter of intervention, defines the humanitarian intervention 'as the proportionate international use or threat of military force, undertaken in principle by a liberal government or alliance, aimed at ending tyranny or anarchy, welcomed by the victims, and consistent with the doctrine of double effect'.⁶ According to Anthony Arend and Robert Beck for an action to count as forcible humanitarian intervention, it must be constrained to 'protecting fundamental rights' and should neither have the blessing of the United Nations (UN) nor the consent of the targeted government.⁷

However, not everyone agrees with this narrow definition of humanitarian intervention. For Oliver Ramsbotham and Tom Woodhouse the concept of intervention should encompass both 'forcible' and 'non-forcible' humanitarian intervention.⁸ Nevertheless, the main problem with the humanitarian intervention is not the lack of consensus in defining the concept,⁹ but rather more contentious issues such as the legality and the legitimacy of an intervention. Moreover, if the humanitarian intervention is just; in what circumstances should the intervention be justifiable?

The interpretation of humanitarian intervention and international law has been a matter of dispute between both camps 'restrictionists' and 'counter-restrictionists'.¹⁰ Restrictionists base their arguments on the principle of sovereignty (the Westphalian system¹¹) and the norm of non-intervention. They point at the Article 2(4) of the UN Charter and argue that military humanitarian intervention is bound to be illegal since the

⁵ J. L. Holzgrefe, 'The Humanitarian Intervention Debate,' in J. L. Holzgrefe and Robert O. Keohane eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p.18

⁶ Ferdinando R Teson, 'The Liberal Case for Humanitarian Intervention,' in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p.94

⁷ Arend and Beck in Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p.46.

⁸ Ramsbotham and Woodhouse define the post cold war humanitarian intervention as '... cross-border action by the international community in response to human suffering, made up of (i) "forcible humanitarian intervention", an expanded version of the classic concept to include collective action as well as self-help and no longer confined to human rights abuse by governments, and (ii) "non-forcible humanitarian intervention" Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p.113.

⁹ Although it would be much easier for the interveners to act when necessary if there was an international agreement on what constitute the concept of humanitarian intervention.

¹⁰ Restrictionists are 'international lawyers who argue that humanitarian intervention violates Article 2(4) of the UN Charter and is illegal under both UN Charter law and customary international law' and counter-restrictionists are 'international lawyers who argue that there is a legal right of humanitarian intervention in both UN Charter law and customary international law'. Nicholas J. Wheeler and Alex J. Bellamy, 'Humanitarian Intervention in World Politics,' in John Baylis and Steve Smith ed., *The Globalization of World Politics* (Oxford University Press, 2005), p. 561; Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p. 61.

Charter forbids the use of force against a sovereign state. The UN charter Article 2(4) states that ‘all members shall refrain in the international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations’.¹² Furthermore, they argue that sovereignty allows states to arrange their internal issues independently and therefore external interference is unacceptable. Restrictionists base their argument on Article 2(7), which states that ‘nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’.¹³

Therefore, according to non-interventionists any interference in the affairs of the sovereign state in the name of ‘humanitarianism’ directly breaches the UN Charter. In fact, realists argue that this could lead to abuse, since interveners only pursue their ‘national interests’ they may use issues regarding human rights as a pretext for intervention in order to achieve their political objectives. Ian Brownlie, a leading restrictionists argues that ‘...humanitarian intervention, on the bases of all available definitions, would be an instrument wide open to abuse...a rule allowing humanitarian intervention ... is a general licence to vigilantes and opportunists to resort to hegemonial intervention’.¹⁴ There is no doubt that the problem of abuse (and selectivity) could damage the already fragile issue of legality and legitimacy, however, this does not mean that force should not be used when governments massacre their own citizens. What would happen if governments use ‘sovereignty as a licence to kill’?¹⁵

The answer to this question is found on the counter-restrictionists stance; they argue that UN charter does not ban the use of force in cases when a state abuses human rights on a massive scale. The legal argument of humanitarian intervention goes back to the seventeenth-century when international lawyers viewed military intervention in ‘lines of

¹¹ The ‘Westphalian system can work only if states recognize each other’s sovereignty’, Chris Brown with Kirsten Ainley, *Understanding International Relations*, Third Edition (Palgrave Macmillan, Basingstoke, 2005), p. 222.

¹² Charter of the United Nations, Article 2(4) Available from: <http://www.un.org/aboutun/charter/> [accessed 2 December 2007]

¹³ *Ibid*, Article 2(7)

¹⁴ Ian Brownlie, quoted in Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p. 64.

¹⁵ Nicholas J. Wheeler and Alex J. Bellamy, ‘Humanitarian Intervention in World Politics,’ in John Baylis and Steve Smith ed., *The Globalization of World Politics* (Oxford University Press, 2005), p. 556.

the just war tradition'.¹⁶ Hugo Grotius, a Dutch jurist in *De Jure Belli ac Pacis*, (1625; On the Law of War and Peace) writes that, 'where a tyrant "should inflict upon his subjects such a treatment as no one is warranted in inflicting" other states may exercise a right of humanitarian intervention'.¹⁷ Thus, it is widely accepted that military intervention is justified where massive violations of human rights occur.

Although Ferdinand Teson acknowledges the fact that international law in general bans the use of force, he contends that 'cases that warrant humanitarian intervention disclose ... serious violations of international law: genocide, crimes against humanity, and so on'.¹⁸ In some cases, Teson writes regardless of what action we take we tolerate the 'violation of some fundamental rule of international law' therefore 'either we intervene and put an end to the massacres, or we abstain from intervening, in which case we tolerate the violation by other states of the general prohibition of gross human rights abuses'.¹⁹ The issue of sovereignty versus human rights is problematic since massive abuse of human rights 'is not only an obvious assault on the dignity of persons *but a betrayal of the principle of sovereignty itself*'.²⁰

Similarly, Julius Stone contends that 'Article 2(4) does not forbid the threat or use of force *simpliciter*; it forbids it only when directed against the territorial integrity or political independence of any state'²¹ hence if a 'genuine humanitarian intervention does not result in territorial conquest or political subjection ... it is a distortion to argue that [it] is prohibited by article 2(4)'.²² Moreover, supporters of humanitarian intervention argue that even within the article itself, there is an exception that 'this principle shall not prejudice the application of enforcement measures under Chapter VII'.²³ Thus, military intervention could be authorised by the Security Council (SC) under Chapter VII of the Charter if (a) SC determine 'the existence of any threat to the peace, breach of the peace,

¹⁶ Anne Wittman, Humanitarian Intervention in a Global Age, *The World Today*, Vol. 64 No. 1, January 2008: p. 27.

¹⁷ Hugo Grotius, quoted in J. L. Holzgrefe, 'The Humanitarian Intervention Debate,' in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 26.

¹⁸ Ferdinando R Teson, 'The Liberal Case for Humanitarian Intervention,' in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 110.

¹⁹ *Ibid.*

²⁰ *Ibid.* [Emphasis on the original]

²¹ Julius Stone quoted J. L. Holzgrefe, 'The Humanitarian Intervention Debate,' in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 37.

²² Ferdinando Teson quoted in *ibid* [emphasis in the original], p. 37.

²³ Charter of the UN Article 2(4), Available from: <http://www.un.org/aboutun/charter/>

or act of aggression’; and (b) the SC deem the measures to be taken as ‘necessary to maintain or restore international peace and security’.²⁴ Counter-restrictionists also point to Article 1(3), 55 and 56 of the UN Charter. Christopher Greenwood rightly argues that ‘it is no longer tenable to assert that whenever a government massacres its own people or a state collapses into anarchy international law forbids military intervention altogether’.²⁵

To sum up the relationship between state and the human rights, Ramsbotham and Woodhouse, suggested four steps that prioritises individual rights before state rights and allow intervention when a state fails to fulfil its duty to protect its citizens: ‘[1] Victim’s right to protection and assistance, [2] host government’s duty to provide it, [3] outside governments’ duty to act in default, [4] outside governments’ right to intervene accordingly’.²⁶ Additionally, in a somewhat more subtle way in 2001, the Canadian sponsored International Commission on Intervention and State Sovereignty (ICISS) encapsulated the sovereignty versus intervention debate in the form of ‘responsibility to protect’.

The core principle of the ICISS is that, ‘State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself’, but, ‘where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect’.²⁷ The report makes it clear that if the state abuses its people instead of protecting them, then the state in question loses its right to sovereignty and international society should intervene. The idea of responsibility to protect also implies a responsibility to prevent and to follow through.²⁸ The United Nations General Assembly adopted the key elements of the report in September 2005.²⁹

²⁴ UN Charter, Chapter VII; Article 39 and 42. See also M. Pugh, ‘Peacekeeping and Humanitarian Intervention’ In Brian White, Richard Little and Michael Smith (Third Ed.). *Issues in World Politics* (Palgrave Macmillan, Basingstoke 2005), p. 127.

²⁵ Christopher Greenwood, quoted in Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p. 143.

²⁶ Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p. 23.

²⁷ International Commission on Intervention and State Sovereignty Report (Online), p. xi. Available from: <http://www.iciss-ciise.gc.ca/pdf/Commission-Report.pdf> [accessed 1 December 2007].

²⁸ Ibid p. 39

²⁹ See Responsibility to Protect-SC, Frequently asked questions, online, Available from:

http://www.responsibilitytoprotect.org/index.php/civil_society_statements/557?theme=alt1 [accessed, 2 December 2007].

Solidarists, in contrast to Pluralists³⁰ and Cultural Relativists,³¹ contend that states have not only the legal right but also a moral duty to intervene where there is an extreme violation of fundamental human rights.³² Allen Buchanan argues that ‘plainly, the strongest justification for intervening ...the moral principle to which such justification appeals is among the most fundamental: the need to protect basic human rights’.³³ Buchanan is right since the failure to protect basic human rights is morally unacceptable.

Unfortunately, the UN failed in its mission both during and after the Cold War. On the other hand with a budget for peacekeeping and humanitarian intervention ‘roughly equal to the budgets of the fire and police departments of New York City (...) it is little wonder that the UN finds it hard to cope with the daunting difficulties of handling international-social conflicts’.³⁴ Although, one can be sympathetic to financial hardships; nevertheless, the real issues undermining the UN’s authority are neither financial nor matters of sovereignty but the lack of *political will* and the abuse of the veto power by both Russia and China.³⁵

The most discussed examples of humanitarian military interventions during the Cold War era are the intervention of India into East Pakistan, Tanzania into Uganda and Vietnam into Kampuchea.³⁶ The Indian military intervention in 1971 into East Pakistan (today’s Bangladesh) brought to an end the Pakistani government’s brutal killings of the Bengali people. Initially India attempted to justify the intervention on humanitarian grounds.³⁷ The Indian ambassador at the UN argued that ‘the “military repression” in East

³⁰ Pluralists assume that humanitarian intervention cannot be allowed in the absence of consensus about what constitutes massive breach of human rights in international society; Nicholas J. Wheeler and Alex J. Bellamy, ‘Humanitarian Intervention in World Politics,’ in John Baylis and Steve Smith ed., *The Globalization of World Politics* (Oxford University Press, 2005), p. 559.

³¹ Cultural Relativists claim that ‘rights and cultures vary’ and there are no universal humanitarian values; Peter Hough, *Understanding Global Security* (Routledge, London, 2004), p. 120.

³² Nicholas J. Wheeler and Alex J. Bellamy, ‘Humanitarian Intervention in World Politics,’ in John Baylis and Steve Smith ed., *The Globalization of World Politics* (Oxford University Press, 2005), p. 559.

³³ Allen Buchanan, ‘Reforming the International Law of Humanitarian Intervention,’ in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 131 .

³⁴ Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p.160.

³⁵ Of course, other members of permanent five have abused the veto power as well; but, most humanitarian intervention resolutions were blocked by China and particularly Russia who threatened the use of veto. This is because of their very poor records on human rights.

³⁶ See for example Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000).

³⁷ For a detailed discussion on the interventions into East Pakistan, Uganda, and Cambodia see Nicholas Wheeler ‘Saving Strangers’

Pakistan was on a sufficient scale to “shock the conscience of mankind”... “What ... has happened to our conventions on genocide, human rights, self-determination, and so on?”³⁸ Nevertheless, ‘this ... was later deleted from the records of the Security Council and replaced by the claim that the intervention was an act of self-defence’.³⁹

Similarly, Idi Amin’s eight years of brutal dictatorship in Uganda was characterised as gross violation of human rights. Hundreds of thousands of people were killed. The exact number of the deaths caused by the Amin regime will never be known. However, ‘the best estimate, from the International Commission of Jurists in Geneva, is that it was not less than 80,000 and more likely around 300,000. Another estimate, compiled by exile organisations with the help of Amnesty International, put the number killed at 500,000’.⁴⁰ The records are more shocking in the case of Cambodia where millions of people were killed by the Khmer Rouge regime. Although there was a gross violation of human rights not seen since the end of the Second World War, the international society did not collectively intervene pushing both Vietnam and Tanzania to act unilaterally. In fact, the Vietnam government was heavily criticised for its intervention while Tanzania who had violated the same rules ‘was treated much more leniently’.⁴¹ Moreover, the Organisation of African Unity (now African Union) in the case of Tanzania was silent although Tanzania breached one of the core rules of the Union - non-intervention principle.⁴²

38 Indian ambassador at the UN quoted in Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 63.

39 M. Akehurst quoted in Charlotte Bretherton, ‘Security after the Cold War: Towards a Global Paradigm?’ in Charlotte Bretherton and Geoffrey Ponton ed., *Global Politics: An introduction* (Blackwell, Oxford, 1996), p. 144.

40 Patrick Keatley, Monday August 18, 2003 *The Guardian* (Online) Available from: <http://www.guardian.co.uk/obituaries/story/0,3604,1020657,00.html> [accessed 20 December 2007].

41 Nicholas J Wheeler and Alex J Bellamy, ‘Humanitarian Intervention in World Politics,’ in John Baylis and Steve Smith ed., *The Globalization of World Politics* (Oxford University Press, 2005), p. 563.

42 The non-aggression principle of the African Union treaty states: ‘a) the use of armed force by a State against the sovereignty, territorial integrity and political independence of another State, or in any other manner inconsistent with the provisions of the Constitutive Act of the African Union and the Charter of the United Nations. b) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such an invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.’ pp. 2, 3. *The African Non-Aggression and Common Defence Pact 20-21 January 2004*:

Available from: http://www.africa-union.org/News_Events/Calendar_of_%20Events/Pacte%20de%20non-aggression/Aggression%20Pact%20amendment%20by%20the%20Libyan.pdf [accessed 29 October 2007].

M. Akehurst in 1984 (based on the above cases) concluded that ‘there is now a consensus among states in favour of treating humanitarian intervention as illegal’.⁴³ Although there were good reasons to claim these interventions on humanitarian grounds, none of them did. Instead, they justified their interventions on self-defence and argued that their actions were legal under the Article 51 of the UN Charter. Nicholas Wheeler confidently argues that ‘India’s, Vietnam’s and Tanzania’s actions *were all justifiable because the use of force was the only means of ending atrocities on a massive scale, and the motives/means employed were consistent with a positive humanitarian outcome*’.⁴⁴

The end of the Cold War saw significant changes in international relations. While the proxy wars and inter-state conflicts considerably declined, the number of intrastate conflicts increased. In cases such as in northern Iraq and Somalia public opinion and the media pushed western governments to take military actions even though no vital national interests were at stake.⁴⁵ Another difference in humanitarian intervention since the demise of the Cold War is that ‘every suggested example of forcible humanitarian intervention between 1991 and 1994 [including military interventions in Kosovo, East Timor, Afghanistan and Iraq] was in one way or another collective. This makes a profound conceptual difference to the whole nature of forcible humanitarian intervention’.⁴⁶ However, the most important change in the 1990s was the willingness of the SC to define intrastate conflicts and humanitarian crisis as a threat to ‘international peace and security’ and that the use of military force is allowed under the Article VII to preserve international peace and security.⁴⁷

The SC resolution 688 condemned the Iraqi government’s oppression against the Kurds in the North stating that the UN ‘condemns the oppression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the

⁴³ M. Akehurst quoted in Charlotte Bretherton, ‘Security after the Cold War: Towards a Global paradigm?’ in Charlotte Bretherton and Geoffrey Ponton ed., *Global Politics: An introduction* (Blackwell, Oxford, 1996), p. 144.

⁴⁴ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 295. [emphasis in the original]

⁴⁵ Nicholas J. Wheeler and Alex J. Bellamy, ‘Humanitarian Intervention in World Politics,’ in John Baylis and Steve Smith ed., *The Globalization of World Politics* (Oxford University Press, 2005), pp. 564, 565.

⁴⁶ Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Polity Press, Cambridge, 1996), p. 109.

⁴⁷ Nicholas J. Wheeler, ‘The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,’ in Jennifer M. Welsh ed. *Humanitarian Intervention and International relations* (Oxford University Press, New York, 2006), pp. 32, 33.

consequences of which threaten international peace and security in the region'.⁴⁸ However, the SC's demand that the Iraqi government should stop its oppression against its own citizens fell on deaf ears. In the mean time, the western governments having been put under enormous pressure by the media and the domestic public opinion were forced to take military action and create 'safe havens' in northern Iraq.⁴⁹ Ultimately, the intervening countries justified their military intervention on humane grounds. President George Bush Sr. stated that 'I want to underscore that all we are doing is motivated by humanitarian concerns'.⁵⁰ Although the intervention in northern Iraq ended in success saving hundreds of thousands of refugees, the western governments made a grave mistake leaving Saddam Hussein in power with capabilities to terrorise his own citizens again (this mistake was repeated in 1999 when NATO left Milosevic in power). The interventions in northern Iraq and in Somalia (where after the loss of 18 rangers the US withdrew its forces) significantly undermine the realist's paradigm that states always pursue their national interests, since both interventions were based on purely humanitarian grounds.

Do states have a duty to 'save strangers'? For Henry Shue systematic killing of people just because they are part of a different race or ethnic group should be stopped and never be allowed to happen again in any form if it is 'humanly possible to do so'.⁵¹ Any such intervention is justifiable. Michael Walzer argues that the duty of humanitarian intervention is justified 'when it is a response ... "to acts that shock the moral conscience of mankind"'.⁵² However, 'The general problem' writes Michael Walzer, 'is that intervention, even when it is justified, even when it is necessary to prevent terrible crimes (...) is (...) a duty that doesn't belong to any particular agent ... People are indeed

48 UN SC Resolution 688 (1991), of 5 April 1991 (online) Available from:

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement> [accessed 20 December 2007]

49 The UK, the USA, the Netherlands and France took part in the 'operation provide comfort' See for example Nicholas Wheeler in Jennifer M. Welsh ed. *Humanitarian Intervention and International relations* (Oxford University Press, New York, 2006), p. 34.

50 President George Bush Senior quoted in Nicholas J. Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,' in Jennifer M. Welsh ed. *Humanitarian Intervention and International relations* (Oxford University Press, New York, 2006). p. 34.

51 Henry Shue, 'Limiting Sovereignty,' in Jennifer M. Welsh ed. *Humanitarian Intervention and International Relations* (Oxford University Press, New York, 2006), p. 23.

52 Michael Walzer quoted in J. L. Holzgrefe, 'The Humanitarian Intervention Debate,' in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, New York, 2003), p. 33.

capable of watching and listening and doing nothing. The massacres go on ...⁵³ since countries capable to stop them take no action because ‘... the likely costs of intervention are too high’.⁵⁴ According to Teson if such a failure occurs then the responsibility lies with the agent. He argues that ‘... the agent who refuses to intervene is responsible for not having done things he could have done to stop the atrocities’.⁵⁵

Not everyone though agrees with this idealist assertion. Samuel H. Huntington took an ‘extreme statist position’ in response to the US intervention into Somalia suggesting that ‘it is morally unjustifiable and politically indefensible that members of the [US] armed forces should be killed to prevent Somalis from killing one another’.⁵⁶ The former British Prime Minister Edward Heath shared similar view as well. Referring to Bosnia Heath argued that ‘...if people wished to murder one another, as long as they did not do so in his country, it was not his concern and should not be the concern of the British government’.⁵⁷ What Heath said was, what most of Europe’s leaders believed⁵⁸ at the time.

In his controversial essay *Give War a Chance*, Edward N. Luttwak contends that intervention in a conflict situation by external powers only intensifies and prolongs struggles in the end. ‘Too many wars nowadays become endemic conflicts that never end because the transformative effects of both decisive victory and exhaustion are blocked by outside intervention’.⁵⁹ What Luttwak is suggesting is that the international community should turn a blind eye as they did in the cases of Rwanda and Srebrenica and do nothing. Unfortunately, Luttwak in his weak argument fails to realise that today’s wars are not fought in a conventional manner but in such a way that the main victims are innocent civilians, mainly elderly, women and boys. For this reason, external intervention is of paramount importance.

⁵³ Ibid, p.27.

⁵⁴ Ibid

⁵⁵ Ferdinando R Teson, ‘The Liberal Case for Humanitarian Intervention,’ in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 122.

⁵⁶ Samuel H. Huntington quoted Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 31.

⁵⁷ Edward Heath quoted in Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Polity Press, Cambridge, 2007), p. 56.

⁵⁸ Richard Goldstone’ chief prosecutor for the Yugoslav and Rwanda tribunals, in Ibid.

⁵⁹ Edward N. Luttwak, ‘Give War a Chance’ , *Foreign Affairs*, July/August 1999 (Volume 78, Number 4)

There is no doubt that the UN's failure to act in Rwanda (where an intervention was essential to stop the genocide)⁶⁰ and Srebrenica (to preserve one of its main principles – the protection of basic human rights) has seriously undermined the UN's authority. Consequently, the NATO member states being aware of what the Serb nationalists were capable of doing (i.e, Srebrenica, where Serb forces slaughtered at least 7,414 Bosnian Muslim men and boys)⁶¹ and faced with Russian opposition, had to act in order to end the suffering of Kosovar Albanians (even without UN's authorisation) and stop the killings and ethnic cleansing. It was crucial this time that NATO preserved its credibility. The then United States Secretary of State Madeline Albright in March 1998 stated that 'we are not going to stand by and watch the Serb authorities do in Kosovo what they can no longer get away with in Bosnia'.⁶² These atrocities were one of the most salient factors that led to the creation of the ICISS. In response to the massacres of the 1990's the ICISS report declared that, 'the most compelling task now is to work to ensure that when the call goes out to the community of states for action, that call will be answered. There must never again be mass killing or ethnic cleansing. There must be no more Rwandas [Srebrenicas nor Kosovos]'.⁶³

The UN's failure to save hundreds of thousands innocent civilians both in Rwanda and Bosnia pressed Kofi Anan (in various speeches during the Kosovo war) to indirectly support an eventual military intervention in response to massive violations of human rights. In his speech at Ditchley Park, Oxfordshire, in June 1998, Annan stated that the 'UN Charter "was never meant as a licence for governments to trample on human rights and human dignity"'.⁶⁴ On 23 September 1998, the SC adopted resolution 1199 under the Chapter VII, expressing deep concern for the deterioration of the humanitarian situation in Kosovo, including reports of violations of human rights and of international

⁶⁰ Since under the 1948 Genocide convention there was an obligation to intervene and stop the genocide, the signatory countries refused to admit that genocide took place in Rwanda. This was because they failed to intervene. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 209

⁶¹ *Ibid* p. 255

⁶² Madeline Albright, Former US Secretary of State quoted in Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Polity Press, Cambridge, 2007), pp. 50, 51; See also, Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 258.

⁶³ ICISS Report, p.70

⁶⁴ Kofi Anan quoted in Sir Adam Roberts, 'The United Nations and Humanitarian Intervention,' in Jennifer M. Welsh ed. *Humanitarian Intervention and International relations* (Oxford University Press, New York, 2006), p. 86.

humanitarian law.⁶⁵ German Foreign Minister Klaus Kinkel argued that Resolution 1199 justified NATO's action: 'Under these unusual circumstances of the current crisis situation in Kosovo, as it is described in Resolution 1199 of the UN Security Council, the threat of and if need be the use of force by NATO is justified'.⁶⁶ What is most striking about Kosovo war is that the UN did not authorise the NATO air strikes but neither condemned nor stopped the action. The SC draft resolution proposed by Russia condemning the NATO bombing and demanding an immediate cessation was overwhelmingly defeated by twelve votes to three. All members of the SC (save Russia, China and Namibia) rejected the draft resolution because they believed that NATO action was justified under humanitarian grounds.⁶⁷

The United Kingdom Permanent Representative to the UN told the SC on 24 March 1999 that: 'The action being taken is legal. It is justified as an exceptional measure to prevent an overwhelming humanitarian necessity, military intervention is legally justifiable'.⁶⁸ Christopher Greenwood QC a prominent British lawyer and professor of international law, argues that in cases such as Kosovo 'customary international law does not exclude all possibility of military intervention on humanitarian grounds by States'.⁶⁹ Since the NATO action was a last resort, Greenwood argues that the use of force was legitimate under the international law and consistent with previous SC resolutions.⁷⁰

The report of the Independent International Commission on Kosovo (IICK) concluded that the NATO action was in a formal sense 'illegal but legitimate'.⁷¹ Illegal because it did not fit within the Charter but legitimate because it was in response to massive violations of human rights.⁷² To those 'struggling to reconcile respect for

⁶⁵ S/RES/1199 (1998), 23 September 1998, Available from: <http://www.un.org/peace/kosovo/98sc1199.htm>, [accessed 22 December 2007].

⁶⁶ Klaus Kinkel, German Foreign Minister during Kosovo war, quoted in Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 260.

⁶⁷ Voting against the resolution were Argentina, Bahrain, Brazil, Canada, France, Gabon, Gambia, Malaysia, Netherlands, Slovenia, the United Kingdom, and the United States. Nicholas J. Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,' in Jennifer M. Welsh ed. *Humanitarian Intervention and International relations* (Oxford University Press, New York, 2006), pp, 44, 45.

⁶⁸ Christopher Greenwood QC, Memorandum submitted to the Foreign Affairs Committee of the House of Commons, 22 November 1999. Available from: <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaaff/28/0020802.htm#n8> [accessed 15 December 2007].

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Tom J. Farer, 'Humanitarian Intervention before and after 9/11.' in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, New York, 2003), p. 68.

⁷² *Ibid.*

international law with the protection of humanity’, Michael Reisman a ‘legal realist’⁷³ is saying ‘Chill out! If the bulk [of IICK] actors in the widened international decision process regard behaviour as legitimate, it is perforce legal’.⁷⁴ Moreover, Holzgrefe argues that ‘any attempt to separate legal questions from moral ones is doomed to failure’.⁷⁵

Well then! Is humanitarian military intervention in the affairs of another state justified? Some scholars and politicians believe that the principles of the *just war* doctrine justify humanitarian intervention. These principles are organised around *Just ad bellum* and *Just in bello*. Peter Hough summarised the criteria of the just war as follows:

- *Just ad bellum* (justice in going to war): (a) must be waged by a sovereign authority; (b) must be a just cause for the war; self defence or the enforcement of human rights; (c) peaceful means of resolving the dispute must have been exhausted; (d) must be likely to succeed.
- *Just in bello* (justice in the conduct of war): (a) means used should be proportionate to the wrong being rectified; (b) unavoidable killing of non-combatants should be avoided; (c) wounded troops and prisoners of war should not be killed.⁷⁶

An ardent supporter of the ‘just war’ doctrine is the former British Prime Minister Tony Blair who, during his speech in Chicago in April 1999 when referring to the NATO air strikes over Kosovo stated ‘this is a just war, based not on any territorial ambitions but on values’.⁷⁷ The moral principles of the just war doctrine probably are the strongest point when addressing gross violations of human rights. But, one of the difficulties is to

73 Legal realism ‘posits a process of interaction between original texts and state behaviour that can lead to changes in law. The “classical view” of international law, by contrast, adopts a close textual analysis and contends that laws can change only through expiration or state consent’. Jennifer M. Welsh ed. *Humanitarian Intervention and International relations* (Oxford University Press, New York, 2006), p. 194; see also J. L. Holzgrefe, ‘The Humanitarian Intervention Debate,’ in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 38.

74 Michael Reisman in Tom J. Farer, ‘Humanitarian Intervention before and After 9/11,’ in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 68.

75 J. L. Holzgrefe, ‘The Humanitarian Intervention Debate,’ in J. L. Holzgrefe and Robert O. Keohane ed., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, new York, 2003), p. 49.

76 Peter Hough, *Understanding Global Security* (Routledge, London, 2004), p. 36.

77 Speech by former Prime Minister Tony Blair, ‘Doctrine of the International Community’ Available from:

<http://www.number10.gov.uk/output/Page1297.asp> [accessed 22 December 2007].; also quoted in Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Polity Press, Cambridge, 2007), p. 57.

envisage the exact outcome of an eventual intervention (The invasion of Iraq in 2003 is an example).

Conclusion

Humanitarian intervention remains a controversial and hotly debated issue in the field of international relations. However, it is evident that military intervention in sovereign states where massive violations of human rights occur is legal and justifiable under international law. Yet, what constitutes massive violation of human rights will continue to be open for debate.

This essay supports the idealist views, who, based on the empirical evidence, have effectively refuted the restrictionists' argument,⁷⁸ with proof that such intervention is justifiable in the absence of SC authorisation.⁷⁹ Likewise, the 'Responsibility to Protect' report adopted by the UN justifies military intervention on humanitarian grounds even without SC's blessing.

India's, Vietnam's and Tanzania's actions 'were all justifiable' according to Wheeler, therefore they should have been couched as humanitarian interventions, since the use of force was the only option to stop the killing.⁸⁰ In addition, both the interventions in Iraq (1991) and in Kosovo were justified by western democracies. Even though the SC failed to authorise NATO's action over Kosovo it did not condemn it. In fact, the SC overwhelmingly rejected a Russian draft resolution demanding the halting of bombing. Hence, the NATO action over Kosovo was clearly legal and legitimate.

In situations such as in Rwanda and Srebrenica (Bosnia), where gross violations of human rights, shook the 'conscience of mankind' an intervention is justified even if it is an assault on sovereignty.

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Bibliography

⁷⁸ Restrictionists argue that only the UN has the authority over the lawful use of force, hence intervention without the UN authorisation is illegal. See for example, Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 41

⁷⁹ Christopher Greenwood QC, Memorandum submitted to the Foreign Affairs Committee of the House of Commons, 22 November 1999.

⁸⁰ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, New York, 2000), p. 295

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