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Humanitarian Intervention: An Exploration of its Justification and Best Practices

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It is a well-worn axiom that the nature of war changed over the course of the twentieth century, most notably since the end of the Second World War. By one estimate, forty million civilians were killed during wars between states and approximately 240 million civilians were murdered by their own governments during the 1900s[1]. That is before one considers the millions of refugees, “the most reliable indicator of suffering in war zones”[2], that those same conflicts created. More than ever before, civilians are being illegally targeted by governments and rebel groups during armed conflict. That phenomenon, in which civilian casualties are a primary strategic aim of warfare, has been named ‘new wars’ by Kaldor[3]. As a result of the development of those so-called new wars, the commission of war crimes, crimes against humanity and genocide has occurred with alarming frequency during the twentieth century, particularly since the end of The Cold War.

The prevention of such suffering and death should be of paramount importance. Instead, the use of humanitarian intervention remains haphazard and the practice itself has been unjustly and incorrectly criticized as illegitimate and ineffective. While some of the contemporary criticisms of humanitarian intervention ring true, the practice itself is justifiable. Humanitarian intervention is justified because the international community has a moral duty to protect common humanity and because there is a legal obligation, codified in international law, for states to intervene against large scale human rights abuses. That obligation should be met in all cases of genocide. In the present global context, NATO and the UN are the two international institutions which are the most apt to carry out humanitarian interventions. However, the global community should be working towards establishing a standing UN army for the purposes of intervening against all cases of genocide.

The Justification for Humanitarian Intervention

The justification for humanitarian intervention rests first and foremost with the argument that there is a moral duty to protect civilians from human rights abuses. That moral duty is derived from natural law, be it determined through religion or political philosophy. The right to life is an important concept of natural law, and it provides the foundation of the justification for humanitarian intervention, because the right to life is a universally accepted norm. “All cultures, be they Islamic, Hindu, Buddhist, secular or Christian, value the sanctity of human life. Similarly, it is difficult to think of any culture that welcomes drought, famine, disease, murder and malnutrition”[4]. Thus, the universality of the right to life is the bedrock of humanitarian intervention. In fact, the right to life is formally or implicitly recognized in every human society, be it through religion or a constitution based on natural law. As such, protection of life is a goal which is justifiable in all corners of the globe. It follows that humanitarian intervention, which has as its central aim the protection of life, is a moral obligation and right in the realm of international relations.

The moral duty for intervention is further bolstered by a large body of political philosophy which argues that states which systematically commit crimes against their own citizens are accountable to the international community. As the Dutch juridical philosopher Hugo Grotius noted, “kings, and those who possess rights equal to those kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard of any person whatsoever”[5]. Grotius’s writings are part of the philosophical canon which provides the

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intellectual basis for humanitarian law. In light of the increasingly globalized nature of international relations, through which humanitarian disasters that occur in one state can easily spill over international borders into another country, the moral imperative of which Grotius writes is entirely justifiable.

The moral justification for humanitarian intervention is intimately linked to the legal principles which further entrench the obligation of intervention. Thus, to separate the moral and legal argument for humanitarian intervention, as many authors have done, is a mistake, because the international laws which provide the legal justification for humanitarian intervention are based in large part on morality. For example, based on the natural right to life, there is no country which legalizes murder (with the possible exception of honour killings and blood feuds in certain nations). Even granting those exceptions, there is no state in which murdering somebody because of their race, creed, or ethnicity is legal. Governments and rebel forces that engage in such depravity are unable to call on any contemporary legal framework to legitimize their actions. As Walzer notes, the proof of that fact is that genocidal forces never seek to justify their actions by reference to their state's legal framework or a set of group norms; they simply deny what they are doing[6]. The fact that the right to life is codified in practically every country in the world is a powerful indicator that humanitarian intervention is legally justifiable. Moreover, the right to life is further codified in two international treaties, namely the *Universal Declaration of Human Rights* and the *Cairo Declaration on Human Rights in Islam*, which between the two of them can claim to be formally recognized by virtually every country in the world. Based on those legal frameworks, the international community is beholden to intervene against states which commit large scale human rights abuses.

From a legal perspective, it is The UN Charter which provides the strongest justification for humanitarian intervention. Specifically, the Charter's preamble and Articles 1(3), 55, and 56 all speak strongly to the importance of human rights. Furthermore, Article 2(4), which limits the use of force by one state against another, leaves room for international actors to engage in humanitarian intervention. "Since a humanitarian intervention seeks neither a territorial change nor a challenge to the political independence of the State involved and is not only not inconsistent with the purposes of the United Nations but is rather in conformity with the most fundamental peremptory norms of the Charter, it is a distortion to argue that it is precluded by Article 2(4)"[7]. Article 39 of the UN Charter further establishes that the Security Council may authorize the use of force in response to "any threat to the peace, breach of the peace or act of aggression"[8]. Clearly then, there is a framework in international law which prioritizes human rights and justifies the use of humanitarian intervention for the purpose of their protection.

Despite the well-founded moral and legal justifications for humanitarian intervention, the practice has traditionally been subject to a large amount of criticism. Some scholars and politicians have argued that humanitarian intervention is an illegal violation of sovereignty, that it does more harm than good and that it is a form of neo-colonialism. Paris writes that recently a group of 'hypercritical' academics and commentators have coalesced around the thesis that humanitarian intervention is fundamentally destructive and illegitimate[9]. Admittedly, humanitarian intervention to date has been somewhat flawed in practice. Yet, those weaknesses can be rectified and they pale in comparison to the number of lives that humanitarian intervention has saved.

Criticism of humanitarian intervention is valid in the sense that it shines a light on the ways in which the practice can be improved and fine-tuned. However, to call for the discontinuation of the practice of humanitarian intervention on the basis of its current shortfalls is to throw the baby out with the bathwater. "Such denunciations of liberal peacebuilding are both unwarranted and imprudent. They are unwarranted because such missions, in spite of their many flaws, have done more good than harm; and they are imprudent because the failure of the existing peacebuilding project would be tantamount to abandoning tens of millions of people to lawlessness, predation, disease and fear"[10]. As such, humanitarian intervention is justifiable.

When Humanitarian Intervention is Necessary

Granted the conclusion that humanitarian intervention is justified, there remains a myriad of logistical considerations which complicate the practice. In particular, a framework for determining exactly when the obligation and right to

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exercise humanitarian intervention is activated is necessary. Humanitarian intervention is justifiable, but one must always be aware that sovereignty and global stability are both very important concepts in the realm of international relations as well. Each state's right to stability and sovereignty must be balanced against the obligation of foreign actors to intervene in the event of severe human rights violations. With that dichotomy in mind, the question of paramount importance becomes, when are human rights violations severe enough to warrant humanitarian intervention?

A reasonable response to that query is that the right and obligation of the global community to intervene is activated when a targeted portion of a state's general population is falling victim to a systematic violation of their right to life – namely genocide. There is an obligation to intervene when the abuses of human rights by a state or sub-state actor become genocidal in nature because mass murder is an unconscionable violation of one of human civilization's oldest and most deeply held norms, the sanctity of life. The international community thus has an obligation and a right to intervene in the event of genocide, because the large-scale extermination of life offends universally accepted rights. Admittedly, the definition of genocide is widely debated by legal scholars. However, a commonly accepted definition, which is codified in the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide* and the *Rome Statute of the International Criminal Court*, defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group”[11]. It may at first seem arbitrary to set the bar for humanitarian intervention at the commission of genocide. However, there are many reasons to draw the parameters of humanitarian intervention in that manner, beyond the moral argument that is made above.

In particular, one must consider strongly the right and obligation that the civil society in every nation has to self-determination. As Walzer notes, what one might call ‘small or medium scale’ violations of human rights are best rebelled against by the population of the country in which they occur, as the civil society of that state is best placed to bring political change to their nation[12]. The civil society in a given state is ideally equipped to understand the local politics and culture which will invariably affect the success of any rebellion against the abuse of human rights taking place there. That reality was recently demonstrated by the Arab Spring uprisings in Tunisia and Egypt, where tyrannical regimes which had systematically violated human rights for years were overthrown exclusively through domestic action.

However, genocides are instances in which the international community is justified in intervening. In the event of genocide, the targeted population's capacity for self-determination, or even the most basic measures of resistance to their aggressors, is severely restricted. In such cases, the victimized group is powerless before the apparatus of the state or the rebel group which is victimizing them, while their fellow nationals are either targeted themselves as sympathizers, or they are participating in the murders. An example of that phenomenon is the recent Arab Spring uprising in Libya, in which the rebels were directly threatened with death and seemed certain to be overrun by the former Libyan dictatorship before the arrival of humanitarian intervention in the form of NATO air strikes. In the event of genocide, therefore, the international community is justified in intervening because the state is unwilling or unable to protect its citizens' right to life and the citizens themselves are equally incapable of assuring their own survival.

A typically Realist objection to humanitarian intervention is that it is an unacceptable violation of sovereignty. Sovereignty is doubtlessly a principle of extreme importance in international relations. In fact, that is another reason that the justification for humanitarian intervention is met only in cases of genocide. “The occasions have to be extreme if they are to justify, perhaps even require, the use of force across an international boundary”[13]. However, important as its existence may be to modern international relations, sovereignty is not an inviolable right. Indeed, “this dominant principle of the international system since the Peace of Westphalia has never been as sacrosanct as its most die-hard defenders claim”[14]. If a government chooses to prioritize its existence over the safety of its own citizens; that government loses its legitimacy, and thus its right to sovereignty[15].

As Francis Deng and his fellow drafters of the Responsibility to Protect doctrine noted, each sovereign has a

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responsibility to protect its citizens from genocide. "Sovereignty carries with it certain responsibilities for which governments must be held accountable. And they are accountable not only to their own national constituencies but ultimately to the international community"[16]. A state perpetrating the act of genocide is practicing such a perverted form of sovereignty that it can be considered criminal. In such cases, the violations of universal human rights which the given government is committing are so severe that the global community would be remiss to remain unmoved, and must intervene with decisive force to stop the killing. The attitude of the international community must be that "when states are unwilling or unable to protect their citizens from grave harm, the principle of non-interference yields to the responsibility to protect"[17]. Humanitarian intervention is thus justifiable in the event of genocide.

Who Should Practice Humanitarian Intervention

Having arrived at the conclusion that humanitarian intervention is justified in instances of genocide, there remains the consideration of who should constitute the intervening force. The two most pertinent considerations surrounding the issue of who should exercise humanitarian intervention are: legitimacy and capacity. That is, which actors are capable of intervening in a neutral manner, devoid of self-interest, and which actors are capable of exercising sufficient force to stop genocide and enforce peace? Despite a mixed record of failures and successes when practicing humanitarian intervention since the end of The Second World War, the international community has grown increasingly adept at using military force to stop or prevent mass atrocities[18]. In the present global context, the two best agents for humanitarian intervention are, in order, NATO and the UN.

Both NATO and the UN are deeply engaged in the international order's common humanity. Common humanity, an ideal which is based on the writings of the German philosopher Immanuel Kant, is a channel through which "remote parts of the world can establish relations peacefully with one another, relations which ultimately become regulated by public laws and can thus finally bring the human species ever closer to a cosmopolitan constitution"[19]. NATO and the UN, although the UN more so than NATO, reflect cosmopolitanism; the belief that all human ethnic groups belong to a single community. Furthermore, both organizations possess the means to regulate the global norms which devolve from cosmopolitanism, such as humanitarian intervention. Finally, both institutions possess the capacity to stop genocide when they act decisively. Those features, combined with a more thorough examination of the relevant characteristics of NATO and the UN, will show why they remain, for now, the *du jour* actors for humanitarian intervention.

NATO and many of its member states have traditionally been hesitant to engage in humanitarian intervention. However, when they do so, the results are predominantly positive. "Indeed, NATO has tremendous military and logistical resources. . . In addition, when NATO does intervene, it tends to do so with the commitment, first, to ensure a rapid resolution to the humanitarian crisis and, second, to ensure long-term peace and stability"[20]. It was such concerted military and diplomatic action by NATO in Bosnia, Kosovo and Libya which curtailed and eventually brought an end to the targeting of a specific demographic in each of those countries.

NATO is legitimate as a neutral and non-partisan force because its decision making process for military matters is conducted by a staff which draws on all 28 member states of the organization. As such, in the event that it decides to instigate a humanitarian intervention, NATO's justification for doing so reflects widespread belief in the military operation and cosmopolitan values. NATO is also highly capable of conducting humanitarian intervention because it possesses a well-established military infrastructure, which allows the organization to intervene with decisive force, regardless of the strength of the aggressor against which it is intervening. The most important factor in any humanitarian intervention is that the killing is brought to a quick and permanent halt. In the current context of international relations, NATO is the actor which is the most capable of accomplishing that objective.

The UN is also a legitimate institution for carrying out humanitarian intervention, although it lacks the capacity to do so when compared to NATO. While the UN Security Council, with its five member states, is responsible for most of the organization's military decisions, the General Assembly also possesses the ability to recommend military action. Thus, when the UN elects to engage in humanitarian intervention, the basis for that decision is not grounded in a

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single state's self-interest, but on cosmopolitan considerations. Unfortunately, the UN has only an extremely basic military infrastructure, which is used exclusively for the purpose of centrally commanding its humanitarian interventions. The organization relies completely on the contribution of soldiers from member nations to staff its humanitarian interventions. Furthermore, in many cases where there is a clear need for humanitarian intervention, the UN is prevented from acting by the conflicting interests of the member states of the Security Council.

Because of those factors, the UN often lacks the capacity to carry out effective humanitarian intervention. However, the UN has recently made some improvements in that regard. For example, the UN has begun to give its mission more military authority to engage with belligerents and enforce peace rather than simply keep it, such as the missions to Liberia in 1997 and 2002 did with positive results. Another welcome development, at least during its existence from 2000-2009, was the recently dissolved Stand-By High Readiness Brigade. The brigade consisted of a regiment of soldiers under the command of the UN, for the purpose of rapid deployment to conflict zones. The brigade was used with much success during the mission to Ethiopia and Eritrea in 2000. The UN can be deservedly criticized for too often not acting to halt crimes against humanity. Also, the organization's interventions in the cases that it does act are sometimes disorganized and militarily impotent. That said, the UN does not receive enough credit for the many humanitarian successes that it has engineered, in Liberia, the Balkans, Burundi, Côte d'Ivoire and Haiti to name a few. The UN is capable of legitimately and effectively stopping genocide when it acts decisively.

NATO and the UN are thus the most capable and legitimate organizations for the execution of humanitarian intervention within the current context of international relations. Yet, history has shown that, due to the conflicting interests of their member states and the bureaucratic nature of the organizations themselves, those two entities are too often willing to stand by while genocide unfolds. Furthermore, there are minor issues of legitimacy. Critics of NATO suggest that the organization too often resorts to the overwhelming and imprecise tactic of air strikes to carry out its interventions, which inevitably results in isolated civilian deaths and some damage to national infrastructure. Also, commentators such as Kinloch-Pichat have accused UN humanitarian interventions of being characterized by "a lack of discipline, amoral personal behaviour and the corruption of participating soldiers"[21]. It is thus evident that there is a gap between where the international community is and where it should wish to be in terms of having a designated military force for the purpose of humanitarian intervention.

In the present context, NATO and the UN remain the most legitimate and capable actors for humanitarian intervention. However, it is obvious that they each do too little to prevent genocide. The ideal solution to the problem is the creation of a standing UN army, to which member countries would contribute soldiers. "Specialized corps of peacekeeping soldiers and police officers should carry out humanitarian interventions. It would be an advantage if these soldiers were supplied by a variety of countries to be chosen from those with the most consolidated democratic traditions"[22]. The soldiers could be withdrawn from any mission which a contributing nation takes issue with and the force would be augmented for each operation by additional soldiers from states in favour of the intervention. However, the deployment of the standing army would be at the discretion of the UN Secretary General, who would exercise that discretion in the event of genocide. Such an 'emergency army' would be legitimate in light of its cosmopolitan makeup and non-partisan command structure. Furthermore, the armed force would have a strong capacity for humanitarian intervention, because its members could be specifically trained for such operations. A standing UN army for humanitarian intervention is the ideal towards which the international community should be working, while NATO and the current UN structure will suffice for now.

Conclusion

The debate surrounding humanitarian intervention will always be contentious, as the discussion has implications for the value that the international community places on human life. As Ignatieff asserts, the inability of the global community to respond to every violation of human rights means that intervention to stop genocide will never rest upon an unassailable intellectual foundation[23]. However, that fact does not constitute justification to forgo intervention altogether. By contrast, the international community must intervene with force against all actions of genocide. The universal acceptance of the right to life obliges that we do no less. "Without intervention and the threat of intervention

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... it is certain that autocratic national elites will murder and torture on a massive scale. From an impartial point of view, the benefits obviously outweigh the risks"[24]. Contemporarily, NATO and the UN constitute the most legitimate and capable institutions for the exercise of humanitarian intervention. However, the international community should be working towards the establishment of a standing UN army for the purpose of humanitarian intervention. Such an institution would save countless lives by practicing the justifiable act of humanitarian intervention.

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[4] Caney, 1997, p. 34

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[9] 2010

[10] Paris, 2010, p. 338

[11] 1948

[12] 2002

[13] Walzer, 2002, p. 29

[14] Weiss, 2007, p. 94

[15] Caney, 1997 & Tésón, 2003

[16] Deng et al., 1996, p. 1

[17] ICISS, 2001, p. xi

[18] Western & Goldstein, 2011

[19] Kant, 1999, p. 329

[20] Pattison, 2008, p. 408

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[23] 2002

[24] Philips, 2003, p. 87

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