

Chapter 1

Introduction

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Foreign interventions have occurred throughout history, but interventions for humanitarian purposes would seem to be a relatively new phenomenon on the world stage. The category of interventions this volume sets out to address is commonly referred to as “humanitarian military intervention.” Such interventions are military ones with a humanitarian purpose. They are intended to rescue and protect people in a foreign territory from gross violations of their basic human rights. Thus, they are in contrast to those interventions that are in defense of people in the home territory of the intervenor, which are usually regarded as acts of self defense. Also, humanitarian military interventions are “humanitarian” in the sense that they are undertaken out of a concern to help, rather than out of any interest in political domination, territorial acquisition, or the like.

THE CONCEPTUAL TERRAIN

“Humanitarian aid” usually has meant non-military aid, such as food and medical supplies, given to a country in crisis – whether because of natural disasters like famine, flood, or earthquake, or because of disasters like war, tyrannical oppression, or revolution. “Intervention,” in the context of international affairs, usually means a coercive action of some kind by an outside party (or parties) that takes place within a sovereign state. To be an intervention, the action must be coercive; it normally does not include actions that are desired or requested by the host country. Many types of actions, besides military ones, can be coercive and may count as “interventions,” including: espionage; discriminatory economic policies such as trade sanctions and embargoes; selective foreign aid (that is, granting or denying foreign aid); financial aid to subversive

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movements within a foreign country; the arming, supplying and training of rebel forces; and so on. "Military intervention," of course, means outside coercion brought to bear upon a state by military means. The intervenors may actually engage in hostilities, but they need not, so long as the presence of their military forces plays a coercive role. Of the many forms of intervention, military intervention is the paradigm, the most controversial and the subject of the essays in this volume.

Putting "military intervention" together with the previous example of food and medical supplies as "humanitarian aid," one might conclude that "humanitarian military intervention" means a military intervention used to deliver and protect foreign aid like food and medical supplies. This, indeed, was the initial purpose of the US military intervention (under United Nations auspices) in Somalia in 1993 – to secure the delivery of food to a starving population suffering from famine and the anarchism of civil war among local warlords. Nevertheless, most writers understand "humanitarian military intervention" to include more than the delivery of food and medicines.

States undertaking humanitarian military interventions typically do so in pursuit of a mixture of both humanitarian goals and goals of national self-interest. Some have suggested, therefore, that to be a truly humanitarian military intervention, the overriding reason for the intervention must be humanitarian. Thus, the US-led war against the Taliban and Al Qaeda forces in Afghanistan or the US-led invasion of Iraq would not be considered a case of humanitarian military intervention, even though humanitarian concerns may have played some role. A true "humanitarian military intervention," the suggestion goes, should be understood to mean a military intervention that has humanitarian goals as its central and predominate purpose.

This is helpful, but it seems to be too broad. For example, some have maintained that no vital US interests were at stake in the Vietnam conflict and that whatever US interests may have been at stake were of only indirect, secondary importance. On this view, the main goal was to make South Vietnam safe from communism, thus securing liberty and human rights for its people. Indeed, President Lyndon Johnson presented the war in this light in 1965:

To any in Southeast Asia who ask our help in defending their freedom, we shall give it.

In that region there is nothing we covet, nothing we seek – no territory, no military position, no political ambition. Our one desire – our one determination – is

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that the people of Southeast Asia be left in peace to work out their own destinies in their own way.¹

If this sort of view is taken of the US goals in Vietnam, then the US military involvement could be regarded as a “humanitarian military intervention” in a civil war. Yet most commentators and scholars would not put that label on that conflict.

The need for a more precise definition of “humanitarian military intervention” is obvious. It cannot simply mean “morally justified,” as in the expression, “a morally justified military intervention.” Although most would agree that the United States’ involvement in World War II was morally justified and, perhaps, a moral duty, few would characterize it as a “humanitarian military intervention.” Furthermore, it cannot literally mean the same thing as “morally justified,” as there is always the logical possibility that some humanitarian interventions may *not* be morally justified, all things considered, even if motivated by purely humanitarian purposes. In practice, “humanitarian,” in the context of military interventions, usually refers to only certain kinds of moral concerns, such as protecting the welfare of some group of people, where this involves preventing widespread human-rights violations, preventing genocide, or preventing mass expulsions.

Usually, “humanitarian military intervention” has been used to refer to discrete events of limited duration. It is a response to an emergency situation; once the emergency has passed, the intervenors pack up and move out. One objection to this understanding is that this “fire-fighting approach” is ill conceived for handling more structurally entrenched crises. The concept of humanitarian intervention needs to be expanded, according to this objection, to include long-term commitments of resources and sustained campaigns, rather than the more limited crisis-focused efforts that are usually labeled “interventions.”

It is not obvious, however, that any clarity of thought is gained by expanding the definition of “humanitarian military intervention” in this way. Nevertheless, the objection does indicate an important issue, which is that the justification of a case of humanitarian military intervention must inevitably depend to a very great extent on what comes next. Will there be follow up? Stopping the evil should lead to making the peace, which should lead to peacekeeping, which, in many cases, should lead to nation building or rebuilding. Obviously, a military intervention that merely stops the current violence, without more, may simply postpone further violence to a later date. It may even make things worse by giving

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warring parties time to regroup and rearm. Hit-and-run interventions may be worse than no intervention at all.

RECENT DEVELOPMENTS

On March 24, 1999, the North American Treaty Alliance (NATO) began a bombing campaign against Yugoslavia that continued without interruption for over two months. The express purpose was to halt the “ethnic cleansing” of ethnic Albanian citizens, which Yugoslav forces were then undertaking in Serbia’s southern province of Kosovo. The NATO campaign to stop the killings and mass expulsions was deemed a humanitarian military intervention.

NATO’s intervention to halt ethnic cleansing in Kosovo was not the first military campaign to be called a “humanitarian intervention,” but it is regarded by many observers as a crucial point that marks a sea change in the normative context of international relations. Accordingly, it is this particular intervention which serves as the focal example for many of the articles in the present collection. Whether Kosovo indeed represents a major precedent ushering in a new era of military interventionism or merely an incidental aberration in the course of global affairs remains to be seen. How influential a precedent it really becomes, however, may depend, in part, on current assessments and evaluations of humanitarian military intervention – the subject of this anthology.

Worldwide, there has been a significant increase in the number of intrastate conflicts since the end of the Cold War. In some cases, the violence has arisen in the clash of ethnic, religious, or nationalistic allegiances. In other cases, it has been the result of battles among warlords within malfunctioning states or “failed states,” states that have degenerated into anarchy. In the Balkans, old ethnic and nationalistic animosities and passions seemed to be released from a kind of suspended animation in the deep freeze of the Cold War. The nationalism that had been suppressed in Tito’s Yugoslavia sprang forth with full force and fury.

At the same time, the influence of the idea of human rights has gradually spread and strengthened since World War II. The idea that universal rights attach directly to individuals has become a compelling counterweight to the notion of state sovereignty both within the structure of international law and within moral perspectives on international relations more generally. In recent years, the spread and promotion of human rights has owed as much to international non-governmental

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organizations (NGOs), like Amnesty International and Human Rights Watch, and to local human-rights groups as it has to state governments or the United Nations itself.

One consequence of these developments has been an increase in the number of military interventions conducted for humanitarian purposes. The occasions for interventions has increased at the same time that the humanitarian justification for such actions has become more acceptable. The importance of this appearance of humanitarian military interventions is difficult to overestimate. The traditional model of an international system based on equal and sovereign states has begun to break down over the past few decades. As the presumption of non-interference in the internal affairs of a sovereign state has weakened, a presumption in favor of the legitimacy of humanitarian military intervention has strengthened.

NORMATIVE ISSUES

In Rwanda in 1994, a Hutu majority went on a killing rampage against the Tutsi minority, with the support and encouragement of the Hutu government. Neither the United States nor any of the other major powers undertook military intervention, and most of the international UN peacekeepers on the scene at the time were recalled. As a result, a full-fledged genocide erupted, bringing about the deaths of some 800,000 Tutsis. Millions more became refugees.

For most observers, Rwanda stands as a horrific moral failure and marks a huge inadequacy in the world order of international law. After Rwanda, something of a consensus developed, namely, that a state's sovereignty should not shield it from outside military intervention when it brutalizes its own people, certainly not when a genocide is taking place.

When the NATO bombing occurred in Yugoslavia in 1999, therefore, it raised in a dramatic way a host of pressing and difficult normative questions (both moral and legal) about humanitarian military intervention. Granted that a state's sovereignty should not provide complete immunity from foreign military intervention in extreme cases like Rwanda, what exactly should be the conditions under which such interventions may and may not be undertaken against a sovereign state? Who may undertake them? Who should authorize them? What adjustments are required in the concept of state sovereignty, and what should be the rights and duties of states that are in a position to undertake interventions?

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The NATO bombing over Kosovo became the catalyst for an effort, now on-going, to work out the moral and legal contours of humanitarian military intervention – an effort that is joined by the contributors to this volume. In the opening article, in Part I, Stanley Hoffmann notes certain important changes in the international system, including the phenomenon of state disintegration; and he recognizes the shift in human consciousness away from the idea of unfettered sovereignty. He then takes up neo-realist arguments against humanitarian military intervention and shows that the neo-realist position can be refuted on both empirical and moral grounds. Turning to the effort to develop appropriate guidelines for humanitarian military interventions, Hoffmann elaborates the enormous obstacles to successful and ethical interventions with armed forces. He implies that the task is hopeless. Yet, with a nod to Samuel Beckett, he urges that, while we can't go on, we must go on. We must work out the conditions for humanitarian military interventions as best we can if we are to be saved from future Rwandas and if we ever hope to arrive at a new, more humane, world order.

In the view of many commentators at the time, NATO's action against the Federal Republic of Yugoslavia (FRY) was a clear violation of international law, as well as being contrary to NATO's own charter. However, in public statements, the US Administration skirted the legal issue entirely, and, instead, emphasized the moral need to stop the ethnic cleansing. The Administration was careful to pitch US and NATO action as being justified in terms of "moral imperatives" and not in terms of standards of international law. As the bombing began, President Clinton stated the goals of the NATO campaign in a TV speech (March 24, 1999), saying in part:

We act to protect thousands of innocent people in Kosovo from a mounting military offensive . . . We act to prevent a wider war, to defuse a power keg at the heart of Europe, that has exploded twice before in this century with catastrophic results. By acting now, we are upholding our values. Ending this tragedy is a *moral imperative*. [emphasis added]

Later, during the NATO bombing, on May 23, President Clinton published a letter in the *New York Times*, entitled "A Just and Necessary War," in which he again defended the NATO operation for moral and strategic reasons. European leaders made similar statements but stressed even more strongly that NATO's intervention was necessary to prevent a humanitarian catastrophe. The British Prime Minister, Tony Blair, for instance, published an article in *Newsweek* in which he stated:

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We need to enter a new millennium where dictators know that they cannot get away with ethnic cleansing or repress their peoples with impunity. In this conflict we are fighting not for territory but for values. For a new internationalism where the brutal repression of whole ethnic groups will no longer be tolerated. For a world where those responsible for such crimes have nowhere to hide.²

Accordingly, the legal issue was set aside and the central issue became the moral rightness of the bombing. Regardless of whether the bombing was consistent with international law, was it right as a moral matter? In seeking to answer this moral question, one is led to other, more general questions. For example, how are decisions about humanitarian military interventions to be made? What moral factors should be considered? Are such interventions morally obligatory, and if so, what are the limits of such obligations? If they are supererogatory, then should anything at all be done; and if so, by whom? If Kosovo was a legitimate intervention, why not interventions in other crisis spots around the world?

One of the complaints, widely expressed at the time of the Kosovo crisis, was that exercises in humanitarian military intervention appeared to be inconsistent. If Kosovo, why not Rwanda? If East Timor, why not Tibet or Kurdistan? Chris Brown, in Part I, addresses this charge of inconsistency. He argues that the charge often arises from a misunderstanding of moral reasoning as merely involving a mechanical application of moral rules. For example, critics Noam Chomsky and Edward Luttwak both make this mistake, according to Brown – though Brown believes Chomsky's real point, behind his rhetoric about selectivity, is that none of the interventions made by the West are actually humanitarian in motivation.

Beginning with a sympathetic consideration of criteria laid out in a speech by Tony Blair, Brown suggests that the development of practical judgment is crucial to moral reasoning. Brown takes his lead from Aristotle and maintains that what is needed is an agent-centered morality that emphasizes cultivating one's facility for making moral judgments. A naive, rule-based model of moral reasoning is inadequate. Brown considers an interesting set of triage rules for deciding the sorts of interventions that should be undertaken but claims it is not sufficiently subtle for adequate moral decisions. He also points out that while rule-based moral theories like Kantianism and utilitarianism provide general principles and summaries of past experience, they are only starting points for moral reasoning. This is so because they require subtle

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judgment for their application to specific cases that always involve a complex of morally relevant details.

The starting point for deciding the morality of a particular military intervention might well be the criteria of the Just War tradition. Even here, however, many subtle and sophisticated judgments must be made in applying and evaluating the criteria. In particular, Brown emphasizes that different *kinds* of judgments must be called into play, including mental, legal, diplomatic, strategic, and military, as well as more straightforwardly moral judgments.

Humanitarian military intervention also raises normative issues at a number of levels, from practical and operational issues to broad questions of political philosophy. The authors of Part II take up some of these issues by referring to the just-war tradition from a broadly liberal perspective. Beginning with *A Theory of Justice* (1971), the work of John Rawls has been tremendously influential in Anglo-American political philosophy; and in his *The Law of Peoples* (1999), Rawls develops principles he believes should govern the international relationships among different peoples worldwide. Hence, Rawls is a natural starting point for a consideration of humanitarian military intervention from the point of view of political liberalism. Michael Blake's contribution to the present volume is critical of Rawls' contractarian political theory, a theory that involves a hypothetical contract among peoples (or states) instead of among individual persons. Blake believes Rawls' misconceived approach leads to a misguided toleration of illiberal states and to an overly rigid commitment to respect for state sovereignty. Some forms of toleration are fine, but a liberal theory cannot be neutral towards all forms of toleration without becoming neutral towards its own validity. Accordingly, we need not be so respectful of the sovereignty of illiberal states as the Rawlsian approach implies. Nevertheless, according to Blake, even from a more acceptable (non-Rawlsian) liberal viewpoint, humanitarian military interventions should be undertaken, and state sovereignty violated, only very rarely. Blake goes on to spell out a series of prudential and just-war types of considerations for avoiding interventions in all but the most egregious cases.

Many writers and commentators, besides Blake, have drawn on the just-war tradition as a framework for thinking about the moral evaluation of humanitarian military intervention. In the present collection, George Lucas takes up a careful consideration of the just-war doctrine itself. He points out that humanitarian interventions are very different sorts of military operations from those called for in traditional wars.

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Thus, the standard application of just-war doctrine fails, according to Lucas, because the use of force in humanitarian cases is much closer to the use of force in domestic law enforcement and thus subject to more stringent restrictions than *jus in bello* conditions normally require. Consequently, one needs to rework the criteria of the just-war doctrine to develop a just-war sort of theory that applies specifically to humanitarian military interventions. This is precisely what Lucas does. Building on suggestions of Stanley Hoffmann, he develops criteria for what he calls *jus ad interventionem*.

The development of guided missiles, high-altitude precision bombing, unmanned combat aircraft, and other modern weaponry has created the possibility of engaging in “immaculate war-making,” or what has also been termed “riskless war.” But is this a blessing or a curse in connection with humanitarian military interventions? On one hand, it seems a blessing. If a country can undertake a military operation without any significant risk to its own personnel, then the operation is similar to sending food and medical relief to earthquake victims somewhere in the world. There is the financial expense, but little risk of lives being lost. Under these conditions, it must be much easier politically for a government to convince its citizenry that the country should do the right thing. On the other hand, riskless war may be a curse. For one thing, if the risks are minimal, a country may all-too-readily jump into a military intervention that is not really justified. For another, by choosing a form of military action that insures maximum protection for one’s own forces, one almost inevitably introduces greater costs to civilians on the other side; but this hardly seems like taking the moral high road. Implicit in this latter worry is the just-war principle of discrimination, which makes a moral distinction between combatants and non-combatants. The principle requires that non-combatants never be directly targeted but that if non-combatant casualties are unavoidable, then a certain proportionality must be maintained.

Addressing a closely related issue in his article, Henry Shue applies the just-war principle of discrimination to criticize the practice of attacking “dual-purpose” installations and infrastructure, targets that serve both military and civilian needs. The NATO bombing within Serbia was mostly aimed at such dual-purpose targets. The problem is that while bombings of dual-purpose infrastructure attack facilities that contribute to the enemy’s military effectiveness, they also wreak hardship and death on the civilian population. Dual-purpose targets seem to be a hybrid or cross between traditional military targets of “denial” bombing

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and civilian targets of “punishment” or “strategic” bombing. Under the principle of discrimination, military targets are legitimate, while civilian targets are not. So-called strategic bombing, in fact, has rarely, if ever, effectively contributed to military victory, Shue argues. But how should dual-purpose targets be regarded morally and legally?

Although dual-purpose targets are legal under current international law, Shue believes the relevant laws of war should be changed on moral grounds, because the present legal understanding undermines the purpose of the combatant/non-combatant distinction. Accordingly, he proposes an important modification to the rules.

Somewhat surprisingly, Shue believes the practice of attacking dual-purpose targets can be defended by appeal to double-effect analysis. Nevertheless, he argues, dual-purpose targets that serve predominantly civilian functions crucial for civilian life are morally illegitimate and should be made illegal. Shue also addresses the worry that, if international law is changed as he proposes, the possibility of bluffing an opponent into surrender by threatening civilian devastation is seriously reduced. Yet, some have argued, this was exactly how Milosevic was brought to terms. In the end, Shue maintains that the NATO bombing was immoral partly because the attack included vital dual-purpose targets and partly because one of the avowed intentions of the bombing campaign was to inflict misery on the Serbian civilian population – as a means of provoking political opposition to coerce the Milosevic regime to surrender.

One challenge to the just-war distinction between combatants and non-combatants is the theory of collective liability developed by Erin Kelly. Applying her theory to interventions, a military attack on non-combatant (as well as combatant) members of a group or society can be justified so long as all the members in question are “collectively liable.” Essentially, Kelly’s theory implies that non-combatant members are liable to life-threatening attack because of serious and wide-spread human-rights abuses when:

(i) The group or some of its members are causally responsible for horrendous human rights abuses (via the political and social arrangements they impose or administer).

(ii) The passive, non-combatant members of the group receive benefits from these political and social arrangements.

(iii) The non-combatant members of the group have had an opportunity, weakly construed, to refuse the benefits that accrue to them as the