

PART I

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Intervention and debate

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## Introduction to armed humanitarian intervention

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The chapters in this volume address normative issues concerning military interventions for humanitarian purposes. The modern debate about such interventions moved to a high point in the 1990s with a series of interventions and non-interventions, including Somalia (1993), Rwanda (1994), Srebrenica/Bosnia (1995), and Kosovo (1999). This debate led to the development of a promising doctrine called “Responsibility to Protect” (RtoP). The RtoP rationale was implemented in 2011 when the UN Security Council approved military intervention in Libya, and this intervention again spurred debates about armed humanitarian interventions. The intervention in Libya provides the reference point for many of the chapters in the present collection.

### **Terminology and the concept of armed humanitarian intervention**

The phrase “armed humanitarian intervention” (AHI) denotes a military intervention into the jurisdiction of a state by outside forces for humanitarian purposes. The humanitarian goal is to protect or rescue innocent people (i.e., non-combatants) from ongoing or imminent, grave, and massive human-rights violations – that is, from mass atrocities. The rationale is not punishment for past wrongs, but prevention. The intervention is conceived to be a last resort for averting or stopping atrocities such as genocide, crimes against humanity, or mass expulsions.

Any of a variety of military actions can be armed humanitarian interventions, such as: supplying arms and military advisors to opposition forces, conducting secret raids, maintaining a naval blockade, protecting safe havens or enforcing no-fly zones, destroying stockpiles of chemical and biological weapons, bombing military installations, or introducing a full-scale ground invasion.

The term “intervention” is sometimes employed in a benign sense to mean simply a “coming between,” as when a military peacekeeping force is placed along a ceasefire line between warring armies. “Intervention” in the context of international affairs, however, usually refers to an action by an outside party that significantly affects the internal affairs of a state without that state’s permission or even grudging acquiescence. The term “armed humanitarian intervention”

is usually extended to apply to military actions by outside forces in a failed state even though there is no legal authority to give or withhold consent. Many types of actions, besides strictly military ones, can count as “interventions,” for instance: transmitting unauthorized radio programs into a country; jamming state-run radio or TV broadcasts; interrupting economic relations (e.g., freezing a state’s international financial assets, imposing trade embargoes); carrying out espionage; providing financial aid to subversive movements within a country; sabotaging infrastructure; conducting cyber attacks; and so on.

The term “humanitarian aid” normally refers to non-military aid. Hence, the term “humanitarian intervention” can refer to a non-military intervention for humanitarian purposes. International relief organizations, for example, often seek to provide food and medicine to people in a foreign state without that state’s permission. Such actions are clearly interventions for humanitarian purposes, but just as clearly, they are not military interventions. Thus, strictly speaking, “humanitarian intervention” should be distinguished from “armed humanitarian intervention.”

All the authors in the present collection discuss intervention in the military sense, but they often use the term “humanitarian intervention” – as do many other writers. The shorter expression is less awkward and, in the context, understood to mean what is more accurately expressed by: “armed humanitarian intervention,” “humanitarian military intervention,” “intervention for human-protection purposes,” “military campaign of rescue,” and the like. There is no harm in using the shorter expression, of course, so long as the distinction is borne in mind.

In earlier times, military conquests in the Americas were often justified as efforts to Christianize and civilize the heathens. In more recent times, military interventions have been justified as a way of overthrowing a noxious regime, promoting communism, installing an Islamic theocracy, or supporting a democratic form of government. While some of these may be laudable goals, none is part of the concept of armed humanitarian intervention. The defining purpose of AHI is solely the immediate one of protecting or rescuing innocent people. Paradigmatically, AHI is strictly neutral with regard to the parties to any conflict. Where a government is attacking its own citizens, for instance, the aim of AHI is only to stop the carnage; it does not include the further goal of overthrowing the offending government or taking sides in a civil war.<sup>1</sup>

Admittedly, states that undertake armed humanitarian interventions usually do so in pursuit of both humanitarian and strategic goals. Indeed, goals of national interest are easier than altruistic ones for political leaders to sell to their domestic constituencies. Nevertheless, for definitional purposes, in order

<sup>1</sup> Military interventions to rescue a state’s own citizens abroad might be thought of as humanitarian operations. Nevertheless, they are traditionally considered to be cases of *national self-defense*, not cases of AHI.

to be truly an armed *humanitarian* intervention, the predominant, immediate goal of the intervention must be humanitarian. Thus, neither the US-led war against the Taliban and Al Qaeda in Afghanistan (2001), nor the US-led invasion of Iraq (2003) can be considered an instance of AHI – even though humanitarian concerns and justifications became more prominent as those wars continued.

### Moral terrain

The key issue concerning the possible moral basis for armed humanitarian intervention is: What responsibility do individuals, or their state, have for the protection or rescue of foreigners?

#### *Does morality apply?*

There is the view that moral responsibilities are limited in scope to members of one's own kin group or tribe. In the modern context, it is sometimes maintained that individuals have moral obligations only to their compatriots and that the state itself has obligations only to its own citizens; neither the state, nor its citizens as individuals, have any moral responsibilities toward foreigners or other states.

This view mirrors that of the Political Realist according to which international relations are an anarchistic state of affairs wherein each state pursues its own "state interests" and where morality does not really apply. The term "state interest" is ambiguous, allowing for narrower and wider, objective and subjective, meanings.<sup>2</sup> But in a narrow and objective sense, the term refers to those interests, or needs, that are essential to the existence and basic welfare of the state. In this sense, it functions to exclude the interests of outsiders. In pursuing its "state interests," a state is not concerned with the interests of any group outside its own jurisdiction – except to the extent that they affect its own vital interests.

The far more usual view is that morality applies to all human beings (some would include animals) and that moral responsibility does not stop at state borders. Memberships in a particular state and most associations (e.g., church, union, corporation, military unit) undoubtedly create special duties to fellow

<sup>2</sup> "Objective interests" are states of affairs important for the actual existence or well-being of the state. Such interests include: the prerequisites of physical survival, military preparedness, economic well-being, and political independence. "Subjective interests" are whatever interests the state wishes to pursue (by its leadership, or by the democratic majority) and could include purely altruistic aid to foreign peoples that has absolutely no effect on the existence or well-being of the state in question. Hans Morgenthau criticized US foreign policy for sometimes putting idealistic moral ventures (subjective interests) above its true (objective) interests.

members – because of particular role-based duties, for example – but these do not preclude moral responsibilities to all others.

*What is the nature of AHI responsibilities to foreign peoples?*

Allowing that morality must encompass all of humanity, what responsibilities are owed to distant strangers? This, it turns out, depends on a wide variety of moral theories.

At one end of a possible continuum is universal utilitarianism. Actions or government policies are right in so far as they promote the greatest good worldwide. All persons are of equal moral standing; the same interests (e.g., to not be killed) are of equal weight for all people. Sacrifice by a person or state is required whenever a greater good for others can be achieved anywhere in the world.<sup>3</sup> At the other end of the continuum might be a theory that assigns only a very few basic rights to strangers, while assigning more, and more stringent, rights to some preferred category of persons (e.g., family and friends, or compatriots). Strangers may have rights not to be physically harmed, killed, or enslaved, but not much else, for example. Even when a favored person and a stranger have the same right, that of the favored person is treated as the more stringent. This idea is reflected in the claim that the life of a fellow citizen is “worth more” than that of a foreigner.<sup>4</sup> Within this general approach, the relationship between favored persons and strangers may be worked out in a variety of ways.<sup>5</sup>

<sup>3</sup> Universal utilitarianism is represented in the archetypal article by Peter Singer in “Famine, Affluence, and Morality,” *Philosophy & Public Affairs* 1, no. 3 (Spring 1972). See also: Peter Singer, *One World*, 2nd edn. (New Haven and London: Yale University Press, 2004).

<sup>4</sup> This moral/political view was famously expressed by Samuel Huntington:

[I]t is morally unjustifiable and politically indefensible that members of the [US] armed forces should be killed to prevent Somalis from killing one another.

S.P. Huntington, “New Contingencies, Old Roles,” *Joint Forces Quarterly* 2 (Autumn 1993), 38–44, 42.

<sup>5</sup> There are at least two possible ways of differentiating moral status between favored persons and strangers (and many permutations):

- (1) Favored persons may have more rights, while strangers are assigned an extremely minimal set of rights.
- (2) Favored persons may not only have more rights, but the rights they have in common with strangers can be more stringent or have more weight. In any conflict situation where a favored person and a stranger both have X as a right, the favored person’s right prevails.

These differences in moral status were reflected in an analogous legal scheme of early slave laws in the United States. Unlike killing an animal, killing a slave was murder; hence, slaves had a legal right not to be killed. Nevertheless, in practice, a slave’s right not to be killed was much less stringent than the same right for a freeman, as reflected in the much lighter sentences (or acquittals) killers received for killing a slave than for killing a freeman. Of course,

We cannot consider here all the possibilities that different moral theories might generate. It must suffice to notice only the most prominent views about responsibilities to foreigners in connection with AHI.

*The duty of non-maleficence.* Some take the view that a state and its citizens have only “*negative*” obligations toward the rest of humanity: the duty to leave others alone. One may not kill foreigners (e.g., wars of conquest), nor harm them (e.g. dumping pollution in their backyard), nor use them for one’s own advantage (e.g., slavery); but one has no positive obligation toward them. That is, the obligations to people outside of one’s own state are only duties of non-maleficence.

On this view, one incurs a “*positive*” duty only under “special circumstances,” such as when:

- (1) one causes the peril the strangers find themselves in (e.g., rapacious economic exploitation of one state by another); or
- (2) positive obligations have been explicitly undertaken (e.g., duties under a treaty); or
- (3) a special relationship has been established that gives rise to the expectation of positive obligations (e.g., possibly the relationship between a principle power and a former colony).

In the absence of any such particular action, commitment, or relationship, the duty toward strangers is simply to refrain from harming them. Special circumstances apart, then, there is no duty to aid or rescue strangers. On the other hand, some writers argue that given the interconnections of all peoples in our globalized world, special circumstances often, or even always, *do exist*.

*Third-party self-defense.* Many have suggested that AHI should be viewed as a case of “third-party self-defense” or “other-defense.” The basic idea is that if party A is justified in fighting B in self-defense, then any third party C may aid A in A’s defense against B. For example, if some part of a state’s civilian population is being unjustly attacked by its government forces, then another state (a third party) may intervene militarily to defend the population under attack. That is, outside forces may defend the population from the internal onslaught, just as foreign powers may come to the aid of a state that is suffering aggression from another state – provided for as “collective self-defense” in Article 51 of the UN Charter. Third-party rescue is normally thought of as *permissible* but not *obligatory*.<sup>6</sup>

slaves had far fewer rights than freemen over all; and they obviously did not have a legal right not to be enslaved.

<sup>6</sup> There is also the view that the bystander (the third party) must, *as a matter of duty*, go to the defense of a person being unjustly attacked – at least, if he can do so at little cost to himself. This is a minority view; but it is seen to be implied by the duty of beneficence and Good Samaritanism, principles that support a general duty to rescue. While the person under

*The duty of beneficence.* Many thinkers believe that, even apart from any special circumstances, helping or rescuing strangers is a positive duty, at least in some limited circumstances.

A number of writers have suggested that AHI is a moral duty deriving from the notion of beneficence. While the duties of non-malevolence say only that we should refrain from inflicting evil or harm on others, the “duty of beneficence” says that we must do good for others. The duty of beneficence includes actively preventing evil, stopping ongoing evil, rendering aid, and providing positive benefits. In the context of AHI, emphasis is on a duty to prevent, mitigate, or stop evil.

There are two features normally associated with the duty of beneficence. First, the duty is qualified with a cost proviso: we have a duty to do good only when we can do so at little or no cost to ourselves. This is sometimes referred to as the “duty of easy rescue.” A standard example involves a small child drowning in a pond. If a person on shore can easily wade in and save the child, he has a moral duty to do so, even if this means getting his shoes and trousers muddy. On the other hand, if the child is in the middle of a raging river at high flood and the person on shore could easily drown if he tried to save the child, then he has no duty to rescue.<sup>7</sup>

The second associated feature is that the duty of beneficence is usually taken to be a so-called “imperfect duty.” Imperfect duties do not give rise to correlative rights in any particular person or persons. Under the duty of beneficence, one may have a duty to help others, but nobody may demand of that person that he or she be helped as a matter of right. Each benefactor may pick and choose his or her beneficiaries, but no potential beneficiary has any right to demand help from the would-be benefactor. One has a general duty toward humanity to help others, but the particular occasions of performing this duty are left up to the individual. How much time and resources one should spend helping others is also unspecified – some say 10 percent, thus tithing in churches, from “tithe” meaning tenth.

Imperfect duties are sometimes translated into perfect ones by assigning them to particular institutions or individuals. For example, while the duty to rescue may be an imperfect one, rescuing a drowning swimmer may be specifically assigned to a lifeguard.

Starting with a duty of beneficence, the state may have a general duty to undertake armed humanitarian interventions – whether the principle is thought to apply directly to the state or derivatively through the citizens as moral agents who make up the state. As an *imperfect* duty, however, it would

attack has the option of defending him/herself or not, there is no option for the bystander. The bystander has a duty to defend the victim against unjust attack.

<sup>7</sup> Another view is *graduated risk*. While we have a duty to save one person only when it will be at little risk to ourselves, we have a duty to save many people even if it will be a much greater risk to ourselves. But this is decidedly a minority view of the duty to aid strangers.

be up to the state to decide on which occasions it would perform this duty. International institutional arrangements could be set up, of course, to assign which states should undertake which interventions at what costs.

*The Good Samaritan.* Some thinkers find appealing the story of the Good Samaritan and take it as an appropriate model for determining our obligation to aid or rescue those in distress. In the story, a Samaritan comes upon a man who has been beaten and robbed and is lying by the side of the road half dead. The Samaritan bandages the man, transports him to an inn, and prepays the innkeeper.<sup>8</sup> The story suggests that a would-be rescuer has a duty to aid a victim, even if no special circumstances obtain between them.

The story has other implications as well. The Samaritan does not do anything that seriously endangers himself and, presumably, was not required to do so. He is not called upon to fight off the robbers, for instance, or to hunt them down. The Samaritan sees to it that the victim is left in a safe place, but the Samaritan does not acquire a duty to provide for the victim indefinitely or to become the victim's bodyguard, for instance. Neither does he have a duty to patrol the road seeking to apprehend robbers or looking for other robbery victims.

The Good Samaritan may be understood to have a *perfect* duty to render assistance – not an imperfect duty – because he is there, can give aid at little cost to himself, and no one else is present to help. It's up to him! But the duty is limited by time and place to the immediate crisis he happens upon. His duty is a narrowly circumscribed instance of the duty of beneficence. On the other hand, this duty arises each and every time he is confronted by an emergency where he can help at little cost to himself.<sup>9</sup>

*The duties of universal moral rights.* Yet another line of thought involves the notion of universal moral rights. The theory is that everyone in the world has a specific set of basic moral rights, and everyone has a right to enforce his/her own basic rights against all others. Beyond this, all people in the world have a duty to see to it that these rights – rights they all have – are always both respected and enforced. Everyone must respect the rights of others by refraining from interfering with them, and everyone has a duty to help protect and enforce the rights of others. Somewhat like the practice of the “Hue and Cry” of old English Common Law, everyone in the (global) village has an obligation to help catch the villain. All have a duty to protect and enforce the rights of all. Hence, when the rights of some groups are violated, it is the duty of all others in

<sup>8</sup> *The New Testament*, Luke 10: 30–37.

<sup>9</sup> The two qualifications associated with the duty of beneficence (cost proviso and imperfect duty) might come into conflict. The duty of easy rescue arises *each and every time* one is confronted with an easy rescue. Yet the idea of an imperfect duty implies that one may pick and chose on which occasions to render aid. This conflict might be resolved by distinguishing levels of need. Perhaps one must always rescue a person in dire need if it is possible to do so at little cost to oneself, but one may pick and choose whom to aid when the aid required is less significant.



the world, by themselves or through their institutions, to enforce those rights of the victim group.

This theory of universal moral rights obviously lends itself to an analogous line of reasoning about the universal human rights in international law. The international community has an obligation to both respect and enforce human rights. All people and their states, have duties (1) to refrain from violating anyone's human rights, and (2) to protect and enforce everyone's human rights against violations.

#### *Moral conditions for AHI*

Assuming there is a moral case for AHI, certain conditions are normally thought to govern such a military campaign. Most thinkers insist upon all or most of the standard conditions from the just-war tradition, namely: *right authority*, *right intention*, *last resort*, *reasonable prospects*, and *proportionate means*. Rag-tag groups may not go off half-cocked. Any AHI must be conducted under a unified command authority that acts with careful deliberation and circumspection. A body needs a head for coherent action. The immediate intended action must be the humanitarian one of protection or rescue. The intervention must be a last resort, all other measures having been tried or seen to be clearly hopeless. In prospect, the intervention must have a reasonably high probability of success. The intervention must be no more destructive than absolutely necessary to achieve its goal; and, overall, it must be the case that more good than harm will have been achieved by the intervention (i.e., more harm will have been prevented than caused by the intervention).

### Political philosophy and international law

#### *Sovereignty and human rights*

The concept of sovereignty has undergone major changes over the last 400-odd years. It arose and developed along with the rise of the nation-states of Europe and their challenge to the universalist claims of the Catholic Church and the Holy Roman Empire.

Jean Bodin (1530–1596) – often credited as father of the theory of sovereignty – conceived of sovereignty as an indivisible, single locus of ultimate power and authority over a state. It was absolute, slightly constrained only by divine and natural law. Monarchs were the sovereign rulers who were established as God's lieutenants to command all human beings.<sup>10</sup> The sovereign could treat his own people as he saw fit and make war on other states whenever he was so inclined.

<sup>10</sup> Jean Bodin, *Six Books of the Commonwealth* (written in 1576), Book I, chap. 8, available at: [www.constitution.org/bodin/bodin\\_.htm](http://www.constitution.org/bodin/bodin_.htm). According to Bodin, major attributes of

With the growth of democratic movements in the seventeenth and eighteenth centuries, the idea developed that the people were properly the source of sovereignty and not a king. At the same time, the idea of *internal* unitary sovereignty began to break down with the concept of the separation of powers (executive, legislative, judicial). Moreover, the American scheme featured a dual sovereignty, with some governmental functions delegated to the federal government while others were reserved to the individual states.<sup>11</sup> Nevertheless, the *external* aspect of sovereignty remained: there was no higher authority over the state, and a state could act as it saw fit in its relations with other states.

In the nineteenth and twentieth centuries, it became apparent that unlimited sovereignty in the international arena was incompatible with any hope of a world free from the devastations of war. International law began to become more prominent in international relations. After countless peace proposals, especially in the eighteenth and nineteenth centuries, and the failed League of Nations in the early twentieth century, an astonishing series of developments in international law took place following World War II – especially the creation of the United Nations (1945) and the Geneva Conventions (1949). States, or at least their leaders, could be held liable for grave breaches of the laws of war (e.g., Nuremberg and Tokyo trials); and, most importantly, all wars, except those of self-defense, were made illegal. With these developments, the concept of a divided *external* sovereignty emerged. Most issues concerning international relations remained under the control of the individual state, but some things began to come under the control of international society.

Finally, from the latter half of the twentieth century to the present, another concern, besides war between states, has arisen to challenge and modify the concept of state sovereignty: universal human rights. This was first reflected in the Universal Declaration of Human Rights (1948), and then in a series of treaties and conventions.<sup>12</sup>

The ascent of human rights has led to further change in the concept of state sovereignty. Sovereignty still embodies the idea that states are politically equal, independent, and self-governing (autonomous) entities. A condition of state

sovereignty are the power: (1) to make and unmake law, (2) to make war and peace, (3) to appoint the officers of the state, (4) to be the final resort of appeal from all courts, including the power to pardon convicted persons, (5) to make and regulate currency, and (6) to levy taxes and impose dues. For Bodin, all the attributes are essentially contained within the main attribute of making and unmaking law.

<sup>11</sup> James Madison refers to this feature as the “compound republic of America” Number 51 of the *Federalist Papers*. See Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, edited by Clinton Rossiter (New York: Penguin Group, 1961), Paper No. 51, 320.

<sup>12</sup> Key treaties establishing human rights include: the Genocide Convention (1948); the four Geneva Conventions (1949); the International Covenants on Civil and Political Rights, and on Social, Economic, and Cultural Rights (1966); and the Convention Against Torture (1987).

The 20-plus human-rights accords signed during the last half of the twentieth and early twenty-first century cover slavery, refugees, women, racial discrimination, children,