Ethics of Humanitarian Intervention: The Circle Closes

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THE CONCEPT OF 'HUMANITARIAN INTERVENTION' first appeared in the literature of international law in the mid-19th century, following in the wake of interventions by European nations in the Ottoman Empire. Here, interventions were sought justified in terms of a state's international liability for acts committed within its own borders. In 1945, the UN Charter fundamentally altered the notion of humanitarian intervention by setting out the conditions under which intervention might take place and, consequently, specifying what types of intervention might not be allowed.

Twentieth-century military interventions can be classed into two groups: those preceding the end of the Cold War (roughly 1990) and those following it. The degree to which the military interventions of the Cold War may be considered to have resulted in humanitarian consequences is contested. In conformity with the rise of the rhetoric of humanitarian intervention, those following the Cold War have been more explicitly humanitarian in purpose. To the first group belong the Belgian and US interventions in Congo (1960, 1964), the intervention by the USA in the Dominican Republic (1965), by India in East Pakistan (1971), France and Belgium in the Shaba province of Zaire (1978), Vietnam in Cambodia (1978), Tanzania in Uganda (1979), France in Central Africa (1979), and the USA in Grenada (1983) and Panama (1989). Post-Cold War humanitarian interventions include Liberia (1990–97), northern Iraq (1991–), former Yugoslavia (1992–), Somalia (1992–93), Rwanda (1994–96), Haiti (1994–97), Sierra Leone (1997–), Kosovo (1999–), and East Timor (1999–).[1]

While the degree of intervention and of humanitarian purpose can be disputed in virtually all of these cases, they share one common criterion: they constitute non-consensual military intervention conducted for alleged humanitarian purposes. The difference between pre- and post-Cold War intervention revolves around the *grounds* on which intervention was considered justified, in other words, the source of the *legitimacy* of the intervention. In the pre-1990 cases, the *right* to intervene on humanitarian grounds was claimed and exercised by one and the same agent, the intervener. The post-1990 cases distinguish themselves by the fact that they are legitimated either by a United Nations no

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longer frozen by Cold War politics (former Yugoslavia, Somalia, Rwanda, Haiti, Sierra Leone, East Timor) or by an international coalition and/or NATO (Liberia, northern Iraq).

'Humanitarian intervention' may thereby be defined as 'coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among inhabitants'.[2] This definition of humanitarian intervention contains two main elements: one purporting to grant a certain number of rights and privileges based on humanitarian principles or human rights; the other specifying the nature and limits of state sovereignty. In other words, the *question* of the ethical status of humanitarian intervention arises from the conflict of two traditions of thought: *human rights* and *state sovereignty*. Both of these traditions arise from one and the same philosophical origin – 18th-century principles of individuality, state, and rights – and both are exhausted at the dawn of the new millennium. The noble trajectory of the notion of individual natural rights embodied in the sovereign nation-state has, so it seems, come full circle.

The tradition of *human rights* has its roots in the Enlightenment tradition of natural law, under the influence of 17th-century philosophers such as Thomas Hobbes and John Locke. These philosophers sought a social and individual basis for rights, in opposition to authority. Such thinking produced momentous documents such as the English Bill of Rights (1689), the American Declaration of Independence (1776), and the French Declaration of the Rights of Man and of Citizens (1788). Ironically, the term 'human rights' has only come into currency in the 20th century, reasserted by the United Nations in the Universal Declaration of Human Rights (UD) (1948). The UD combines the long tradition of thinking on human rights with lessons from the two world wars of the 20th century. It has been followed by a number of attempts at further codifying the basic rights it expresses (the rights to life, to freedom, to own property, to vote, to nationality, and to participation in public life) and expanding them into new articulations and interpretations of these in the form of social, economic, and cultural rights. Thus, a number of international conventions, covenants, declarations, and other treaties have followed in the tradition.

The notion of *state sovereignty* possesses the same righteous pedigree. It developed out of principles contained in the Treaty of Westphalia (1648) – principles which are first fully articulated in Hobbes's *Leviathan* (1651) – before undergoing a series of modernizing mutations through the reinterpretations of Enlightenment political philosophy. At its origin, the concept of sovereignty corresponds to a fusion of the individual and the despotic state in the form of Hobbes's figure of the all-compassing sovereign, Leviathan. Later, it refers to the sovereignty of the state as a legal entity. Finally, in late-modern political thinking, it takes the form of sovereignty of the individual as the foundation of the democratic state.

This form of the nation-state – the late-modern political form par excellence – has thereby achieved fulfillment in two essential senses. First, nearly all humans on the planet, with the exception of permanent refugees, are encompassed within a nation-state. Second, in the post-Cold War environment, the UN Security Council has to a great degree become operational, and the notion of universal jurisdiction only dreamed of for the nation-state has attained at least a virtual form, albeit far from complete, on a global scale. Two four-century-old traditions seem to find mutual fulfillment in our time.

Yet, just as the notion of some kind of global justice and governance appears on the horizon, the double foundation on which it stands is fractured by its own latent contradiction: the realization of universal humanitarian principles comes only at the expense of the nation-state that was its ideological cradle. The humanitarian interventions of the late 20th century have shown, on the one hand, that the nation-state subsists as the universal protectorate of humanitarian rights and, on the other, that humanitarian principles cannot serve as the anchoring point for the sovereignty of the type pledged by the nation-state.

On the one hand, the notion of human rights is fully embodied in the institutional flesh and bones of the UN Charter (1945). On the other, the principle of state sovereignty becomes the universal category for political recognition on the global scale. In short, two fundamental concepts of Western political thought, arising from one and the same congruous tradition – human rights and state sovereignty – return at the outset of the 21st century as the irresolvable *contradiction* of modern global politics. The two traditions have never been more fully developed, and never more completely at odds with one another. The vital debate on the foundations and frontiers of humanitarian intervention – of which this special section on the ethics of humanitarian intervention can only scratch the surface – is perhaps the greatest political question of our time, involving a renegotiation of the fundamental ideas by which modern Western civilization understands itself.

The ultimate link in this development is the Rome Convention on the International Criminal Court (ICC). On 18 July 1998, the Diplomatic Conference concluded with the adoption of the Rome Statute for the ICC. The adoption of the statute represented the culmination of more than a century of previously unsuccessful efforts to establish such an institution. It is at last accomplished at the moment when the traditions of human rights and state sovereignty appear to be definitively at odds with each other. At the time of writing, the overwhelming majority of independent sovereign states have ratified the agreement, in effect renouncing the age-old coupling of state sovereignty and jurisdiction. Over 170 states participated at the Rome Conference, as well as a number of international and nongovernmental organizations.

It remains to be seen whether the clash of these two traditions in political theory is simply a new expression of the status quo politics of 'might makes right' – as the recent political compromise in the UN Security Council over the

jurisdiction of the International Criminal Court would seem to indicate – or whether a new sense of global responsibility is in the ascendant, accompanied by a commitment to seeking out a truly global consensus on matters of justice, human rights, and sovereignty.

NOTES AND REFERENCES

1 International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Research, Bibliography, Background* (Ottawa: International Development Research Centre for ICISS, 2001), pp. 49–126. See also in this issue: Ramesh Thakur, 'Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS', and J. Peter Burgess, 'The Foundation for a New Consensus on Humanitarian Intervention' (Reference Review), *Security Dialogue*, vol. 33, no. 3, September 2002, pp. 323–340 and 383–384, respectively.

2 Adam Roberts, 'The So-Called "Right" of Humanitarian Intervention', *Trinity Papers* 13 (Melbourne: Trinity College, 1999), p. 4; available at http://www.trinity.unimelb.edu.au/publications/papers/TP_13.pdf.