

Is Humanitarian Intervention Ever Morally Justified?

Written by Ahmed Khaled Rashid

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AHMED KHALED RASHID, MAR 13 2012

The issue of humanitarian intervention has been at the forefront of international relations discourse, particularly after the end of the Cold War. It has been a highly contentious subject, having impact on millions of peoples in a number of states and regions around the world. The international actors are yet to come up with a consensus on a set of principles and parameters that define and characterize intervention.

Essentially, the rationale of humanitarian intervention pulls in two directions. On one hand, from a realist perspective, the inviolability of state's sovereign rights is given supremacy. States are forbidden to use armed forces against the territorial integrity of another state, except for self-defence. Therefore, intervention is not permissible. On the other hand, intervention is justified from a more liberal approach to punish wrongs and to protect the innocent. The United Nations on several occasions have authorized use of force, however, in certain cases some states have acted unilaterally. In this context, it is expedient to look closely into the factors that influence such decisions – singling out the underlying the moral dilemma and the relevant political and legal implications.

In this essay, I will underscore the need for the international community to come up with a basic framework favouring humanitarian intervention, based on an emerging norm that places the victims of gross human rights violations at the centre of the decision making process. I want to establish a moral basis for humanitarian intervention, with the objective of halting massive and systematic violations of human rights. I will assert that traditional notions of sovereignty should not be an obstacle to intervention. Ethical obligations should override both sovereign equality claims and state national interest.

Yet, I want to underscore that humanitarian intervention should only be justified under certain situations. I will illustrate certain acceptable conditions of intervention, with particular reference to the agents and circumstances of intervention. The essay will demonstrate that upholding human rights and dignity should be the overarching motive for intervening states and states should not intervene on the basis of self interest only.

The arguments will be anchored on the theoretical approach of constructivism. Corollary to my argument, I will claim that international law ought to accommodate and create provisions for intervention, in light of the conception of United Nations' Responsibility to Protect. I will argue in favour of instituting customary laws vis-à-vis intervention, recognizing the challenges of formal legal codification. I will conclude with a note of caution that in the absence of a framework of humanitarian intervention, more and more humanitarian catastrophe, such as the Rwanda genocide, may be inevitable.

The Moral Basis of Intervention

The phenomenon of intervention is not new. In the sixteenth and seventeenth centuries, moralists justified war as a way to uphold law and protect rights. Rulers were thought to have right if not a duty to enforce certain laws and norm beyond their realm. For example, one kind of oppression that medieval moralists saw as justifying intervention was the mistreatment of Christians by non-Christian kingdoms. Similar principles were applied to the Spanish conquest of America (Nardin, 2002). The most important of these universal laws is natural law – rules of moral behaviour whose content is set by nature. Natural law is understood as comprising precepts that are known by reason and binding on all rational beings. These rules are more general than distinctive norms of particular

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communities and justified the rulers in intervene, punish moral wrongdoing and defend the innocent.

The idea of Common Morality, which stems from natural law, provides a more comprehensive moral basis for humanitarian intervention. It rests on neither positive law nor on customs (Nardin, 2002). The basic principle of common morality states that humans have rights not as member of particular community, but as members of human community and there is a common moral world. It is stripped of religious, legal connotations, customs and mores of particular communities; therefore it is minimal morality. The ideas stem from critical reflection on laws and customs, and based on 'reason'. The assumption is that human are choosing and rational beings. And more importantly there are established standards by which everybody ought to live. Each person must respect the agency of others, the principle of respect, and must support one another in appropriate ways (the idea of beneficence).

These principles provide the basis and moral obligation for people to help one another. The link between common morality and intervention is quite obvious, as most basic human rights are universal moral rights. If oppression goes on in any part of the world, other states have duty as fellow member's of the human community to act. The conception of dignity provides a reference point for us to determine if the transgressions that are going on require some sort of intervention. The idea of beneficence means that other human beings cannot sit idle while injustice of mass scale is going on somewhere else.

A number of philosophers, such as J.S. Mill argued for non-intervention, because intervention undermined the authenticity of domestic struggles for liberty. Mill said that people given freedom by a foreign intervention would not be able to hold on to it (Doyle, 2001). While, these may be valid arguments, they tend to underestimate humanitarian urgency of the situation. Consider the ferocity of the violence in Rwanda against the helpless, unarmed Tutsis, which left nearly a million of them killed in three months. Tutsis had hardly any capacity to organize their struggle for freedom.

Moral principles provide a broad set of goals to guide deliberation, and they prescribe constraints on what choices can be made. However, deciding which of several morally permissible courses of action to pursue in a particular situation requires judgment and prudence, considering the political and legal realities.

Humanitarian Intervention in International Law: the key role of the United Nations

In the realm of international affairs, humanitarian intervention has been defined as 'a deliberate incursion into a state without its consent by some outside agency, in order to change the functioning, policies, goals of its government and achieve affects that favour the intervening agency' (Vincent, 1974).

In general, humanitarian intervention finds scant support in modern international law (Nardin, 2002). It is, however, important to note that legislation of international law takes place formally and informally. New norms and rules evolve through informal arguments, social learning and practices of states and non-state actors. There have been numerous occasions in the international realm since 1990 to substantiate that new norms are emerging that qualify state sovereignty and permit humanitarian intervention. There have been persistent normative debate and reinterpretation of intervention principles that lays the foundation for establishing customary laws favouring intervention. However, the power dynamic behind this process should not leave the less powerful states believing that they have little choice but to allow powerful states reshape laws (Byers, 2002).

Undoubtedly, the more substantive challenge towards a normative shift has been the realist, state-centric view of international relations conceptualized as a struggle for power. It is also empirically established that states have looked to safeguard their vital interests and advantages while dealing with intervention questions. The conception of the Darfur conflict for Russia and China is shaped by these powerful states' strategic interests in oil-rich Sudan. It is not hard to predict that either or both of the two Security Council members may object to intervention in Darfur.

Nevertheless, the way forward for the international community is to focus on ideational and normative structures rather than material structures, in line with constructivist theories of international relations. From a theoretical perspective, constructivism tries to build a bridge between realism and liberalism, drawing from structurationist and

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symbolic inter-actionist sociology, on behalf of liberal claim that international institutions can transform state identities and interests (Wendt, 1992). Constructivism theories broaden our understanding of international law to include issues of identity and purpose. In terms of conceptualizing humanitarian intervention, it makes sense to anchor the core ideals on constructivism because it treats rules, norms and ideas as constitutive, not just constraining. It stresses the importance of discourse, communication and socialization in framing actors' behaviour. (Reus-Smit, 2008). These ideas can be linked well with the transnational forces that significantly influence the international relations discourse today.

The United Nations (UN) is increasingly playing a stronger role in maintaining standards of human security and justice. Yet, dealing with the humanitarian intervention issues have been a challenge for the UN. The UN charter does assert the rights of the states. The number of occasions the UN has justified intervention due to gross human rights violation have been limited. However, the charter also upholds the rights of the individuals. There are several references in the UN charter that justify the view that extreme violations of human rights provide the basis for justifying humanitarian intervention. The major pronouncements of the UN General Assembly on humanitarian assistance referred to the primary responsibility of the states for dealing with the complex crises within their frontiers.

However, we have observed a gradual relaxation of this state centric view. State sovereignty, in its most basic sense, is being redefined –not least by the forces of globalization and international cooperation (Annan, 1999). A 1991 General Assembly resolution states 'the sovereignty, territorial integrity and national unity of states must be fully respected in accordance with the charter of the United Nations. In this context humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country. (Taylor & Curtis, 2008). Article 39 of the UN charter says that 'the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'. The phrase 'threats of peace' is now interpreted broadly to include domestic violations of human rights, civil wars, humanitarian emergencies, allowing the UN and the Security Council to act in appropriate ways.

The Responsibility to Protect, the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) provides the framework for UN to address the question related to humanitarian intervention. The Commission noted that states have the primary responsibility to protect their citizens but if they are unwilling and unable to do so, the 'principle of non intervention yields to the international responsibility to protect' (ICISS, 2001). The document emphasizes prevention measures and permits rebuilding of failed and tyrannical states. The principle of the responsibility to protect was adopted by the UN General Assembly in the 2005 World Summit. In the outcome document of the summit, the General Assembly states that 'if national authorities are manifestly failing to protect their populations from genocide, ethnic cleansing, and crimes against humanity and if peaceful means are inadequate; the international community could take collective action through the UN Security Council according to Chapter VII of the Charter'. The responsibility to protect doctrine discards the notion of a 'right' to intervene, as well as its corollary drawbacks. Rooted in human rights and international humanitarian law, the norm squarely embraces the victims' point of view and interests, rather than questionable State-centred motivations (Arbour, 2008).

The rapidly growing community of NGOs have played an important role in crises related to interventions. NGOs have raised international awareness of tragic situations, demonstrated the need to protect vulnerable populations and aid activities, and occasionally called directly for international military intervention (Roberts, 2000).

Shifting the debate away from the question of whether states have a right of intervention to the question of where responsibility lies of protecting endangered people is consistent with the strong emergence of transnational forces within the UN. The tensions between these transnational forces and the traditionally more dominant intergovernmental aspects are apparent. As a transnational organization, UN represents a common good that transcends the sum of individual state interests. (Cronin, 2002). The transnational face is represented by UN specialized agencies, NGO, bureaucracies, the office of the secretary general. Over the past decades, UN's missions and services have expanded far beyond their original conception to include humanitarian, democratization, promotion of economic development and protection of human rights. UN member states are now widely understood to be instruments at the service of their peoples, and not vice versa (Annan, 1999).

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It is this orientation of promoting cosmopolitan values, such as human rights, that provide the conceptual basis to deal with intervention issues with a bias towards the people and not the state. This observation is consistent with the views of former Secretary General of the UN Perez De Cuellar, who said that UN has to serve two constituencies, the government of the members states and the people for whom the government acts. Therefore, the transnational forces legitimize and if not reinforce, UN's role in humanitarian intervention to protect civilians in any part of the globe.

The challenge in this regard is whether the intergovernmental or the realist face, represented by the sovereign states and the Security Council, will take precedence over the transnational face. The core ideals of intergovernmental arrangements are the distribution of power — sovereignty is regarded as the central feature of the system of states. It is unlikely that the intergovernmental orientation of the UN will diminish; nevertheless there are trends towards a shift towards a stronger transnationalism which lays the basis for leading the intervention measures.

Arguments for Interventions: State sovereignty is not absolute

From a liberal perspective, a starting point for arguments favoring intervention is rooted on humanitarian grounds. Human beings have a moral obligation to halt gross violations of human rights and brutal treatment of innocent people. Quite often it is only through intervention and use of force can standards of civilized conduct can be enforced. On many occasions, the oppression reaches such a stage that there exists no national connection between the population and the state. Hence the argument for national sovereignty is no longer valid in those situations. From a utilitarian perspective, intervention is justified because it can often save more lives than the intervention will cost. If conflicts continue as a result of non-interference, there is a probability of further instability in the neighbouring countries or region. Untended humanitarian crisis can become international security concerns. The United States spent the 1990s conceiving of Afghanistan as a humanitarian disaster zone, failing to notice that it was rapidly becoming a national security nightmare, a training ground for terror (Ignatieff, 2002).

Still, it must be acknowledged that the same set of principles and arguments cannot be applied in all circumstances. It is evident that selectivity in choice of occasions for intervention is both inevitable and potentially justifiable (Nardin, 2002). Often, the intervening forces play a vital role to remove a perpetual or a standing menace to peace, whether a person or a regime (Doyle, 2001). Examples include de-nazification in Germany following World War II, breaking of the *zaibatsu* in Japan or negating the threats posed by Saddam Hussein.

Those who argue against intervention point to the fact that sovereignty implies that states recognize no higher authority than themselves and there is no superior jurisdiction. The UN Charter Article 2(7) is fairly explicit on states jurisdiction — 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII'. Some realist scholars also argue that the international community have no legal jurisdiction over the citizens of another state. The citizens of that state should be able to determine their own future without outside interference.

Furthermore, some of the intervening states had 'self-serving' and imperialistic motives behind the decision to intervene. Intervention may result in short term desired results but cannot ensure sustainable outcomes. The consequences of intervention may well be a weak and fragile government and a population who has been gifted the freedom from tyranny. Foreign politicians and soldiers are likely to misread the situation or underestimate the forces required to change it (Walzer 2002). However, state sovereignty cannot be absolute. The principle of responsibility to protect provides the basic structure for intervening in a state where the state apparatus is unwilling and unable to protect its citizens or a group of citizens.

Conditions and Agents of Interventions

Every violation of human rights is not a justification for intervention. It depends on the nature, scope and magnitude of the problem. Clearly, the circumstances have to be extreme and life and liberty has to be at stake if they are to require the use of force across an international boundary. Certain situation of violations has to have to be dealt with

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locally, by the local stakeholders. Only cases such as genocide, ethnic cleansing or the systematic massacre of a religious or national community, extreme brutality and oppression targeted towards a large population can justify an international response. It has to be clear that it does not seem possible or practical to wait for a local response.

Also, it should be acknowledged that it is not possible or practical to intervene in all the occasions. The risks must be calculated in each one. To be sure, any decision to intervene must be weighed with possible consequences. If intervention leads to greater insecurity and spread of conflicts in the region, it is perhaps expedient to wait for more opportune moments to intervene. Military interventions across international boundaries always impose risks on the intervening forces (Walzer, 2002).

From a moral standpoint, it is important that intervention takes place for the benefit of the oppressed population. A pure moral will doesn't exist in political life, and it shouldn't be necessary to pretend to that kind of purity. As long as it is morally right, any actor can have the agency to act on behalf of that population. Moralists also argue that only the state that respects human rights is entitled to intervene (Nardin, 2002). However, in the political and legal realm, normally the multilateral intervention enjoys more legitimacy. I would argue both moral and politico-legal factors should determine who is justified to intervene. Collective decisions to act may pre-empt unilateral action.

In this context, the UN is the appropriate position to lead the process of intervention. The US intervention in Iraq and NATO's military response in Kosovo crises brought doubts and generated suspicion among other states. Unilateralism is commonly questioned because of a fear of the motives of single states acting alone. Within the UN's General Assembly, there is ample evidence of a commitment to uphold and address the pressing problems that can require the enforcement of intervention. States entrust UN and UN authorized agents to carry out appropriate measures.

The problem arises if UN cannot come up with a consensus on such a decision and meanwhile atrocities are still going on. As suggested before, in such scenario the transnational forces should be given prominence and active role to get out of this paralysis situation. There is a partial consensus among some liberal states that there is a moral right to intervene without Security Council authorization in extreme cases (Bellamy, 2005).

Yet, states involved in the decision process cannot act in its own interests. Some moralists argue that a unilateralist rights and obligations to intervene are instantly restored if collective measures fail. However, such situation must be treated with caution. Exceptions can be made, if it were certain that an intervening country is in position to act effectively, and it does not have ulterior motive in doing so. Still, political motivations are always mixed, whether the actors are one or many. Intervention is sometimes thought of as an imperfect duty – state is not obligated to intervene at a great cost to itself (Nardin, 2002).

A case in point is Bangladesh (formerly East Pakistan) in 1971. Had the UN's Security Council or General Assembly been called into session, it would almost certainly have decided against intervention, because of great powers, USA and China's opposition to Bangladesh's independence. India's decision to intervene in Bangladesh was solely dependent on its own political decision. Nevertheless, it proved to be effective in stopping the atrocities and providing the final push towards Bangladeshi freedom fighter's victory over occupying Pakistani army.

Intervention should not be understood as referring only to use of force (Annan, 1999). In most cases, however, humanitarian intervention involves the use of force, and it is crucial to its success that it be pursued forcefully. The overarching aim is the defeat of the oppressor, who are carrying out the massacres or the ethnic cleansing (Walzer, 2002). Non coercive measures may be pursued at the beginning through diplomatic efforts. Measures such as sanctions have been useful in putting pressure on rouge states. Nevertheless, coercive military is justified when other measures fail. The risk of not using coercion is obvious. This was glaringly exemplified in Bosnia, where repeated failed efforts were made to deal with the disaster without fighting against its perpetrators. UN forces brought humanitarian relief to the victims, provided some degree of military protection for relief workers, but they were mostly unsuccessful to create a few safe zones for the Bosnians.

Conclusions

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Contemporary international law establishes beyond any doubt that serious violations of human rights are matters of international concern (Simma, 1999). Inaction cannot be a viable option for the international community when a group or a community is being systematically persecuted in any part of the globe. In this context, it is commendable that international actors both organizations and states have also began to focus their attention beyond intervention on more comprehensive approaches to post-war state building (Gheciu & Welsh, 2009). This will reinforce the emergence the norms of intervention.

The moral and ethical arguments provide the broad scope for taking action. Sovereignty in and of itself should, at the very least, no longer shield perpetrators from punitive measures (Arbour, 2008).

The details of the procedures and mechanics of intervention lie in the legal and political sphere. UN should have the key role in granting licence for intervention. For upholding the rights of vulnerable, it is imperative that the international actors reach a clear consensus on these points. The ideas of concept of responsibility to protect must be explored further and given a legal framework. The transnational actors such as specialized agencies of UN can have a more formal role in the policy framework related to humanitarian intervention. The expertise and knowledge of these agencies are undervalued and underused.

For a realist, concerns remain that the relaxation of non intervention principle will lead to more military action by individual states. While these concerns can sometimes be valid, they do not provide us a direction towards finding solutions. There is an international community emerging that can override the risks of unilateral intervention. The cosmopolitan actors have been successful in impacting on the setting the agenda for international affairs. After all, as former UN General Secretary Kofi Annan aptly epitomized — ‘the aim of the UN Charter is to protect individual human rights, not to protect those who abuse them’.

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*Written by: Ahmed Khaled Rashid
Written at: University of Ottawa
Written for: Prof Alexandra Gheciu
Date written: December/2010*