

UNSANCTIONED ARMED HUMANITARIAN INTERVENTIONS: AN ETHICAL DILEMMA

HitakshiMahendru¹

INTRODUCTION

Humanitarian Intervention has been defined as a state's use of "military force against another state when the chief publicly declared aim of that military action is ending human violations being perpetrated by the state against which it is directed." This definition may be too narrow as it precludes non-military forms of intervention such as humanitarian and international sanctions. On this broader understanding, "Humanitarian intervention should be understood to encompass... non-forcible methods, namely intervention undertaken without military force to alleviate mass human suffering within sovereign borders."

In an article entitled "The Short, Unhappy Life of Humanitarian War", Charles Krauthammer writes in scathing terms of humanitarian military intervention and concludes by remarking of the "successful" Kosovo intervention, "This is what happens when you *win*. Which is why there will be no more of it. It is an idea whose time has come and gone." Krauthammer writes from a "realist" perspective, but his view is in striking contrast with Fernando Tesón's passionate defense of humanitarian war from a human rights perspective. Tesón's real enthusiasm for the idea Krauthammer regards as discredited is captured in the following quotation: "[F]oreign armies are morally entitled to help victims of oppression in overthrowing dictators, provided that the intervention is proportionate to the evil which it is designed to suppress."

These contrasting views indicate why the ethics and politics of armed intervention for humanitarian purposes have proved to be among the most theoretically difficult and practically controversial issues facing governments in the past decade. As we begin the second millennium, the problem shows no sign of growing more manageable or, pace Krauthammer, of going away. The names Rwanda, Somalia, Bosnia, Kosovo, Chechnya, and East Timor stood, at the end of the twentieth century, as pointers to future conundrums, tragedies, opportunities, and anxieties for the twenty-first century. Moreover, the U.S. intervention in Afghanistan, though not humanitarian in

¹Law Student, 1st year, Symbiosis Law School, Pune.

purpose, has resulted in the overthrow of a brutal and repressive regime in a way that is likely to encourage the advocates of humanitarian intervention.

Intervention can be defined as an intentional act of one state or group of states or an international agency aimed at exercising overriding authority on what are normally the “internal” policies or practices of another state or group of states. It is crucial here, therefore, that the target state (as I will call it) does not consent to the intervention. So the bombing of Serbia as a means of protecting Albanian Kosovars clearly counts as intervention, whereas the actions of the coalition that went into East Timor with the consent of the Indonesian government do not. The Gulf War is not an intervention because it was not essentially an intrusion into the internal politics of Iraq—though it arguably developed into that with later military efforts to protect the Kurds—but an effort to aid Kuwait (with its consent) against an invasion by Iraq. It is true that some theorists have either ignored or denied the distinction based on consent. Stanley Hoffmann is one who denies the definitional importance of consent.

In his essay “The Politics and Ethics of Military Intervention,” he says that he does not distinguish between cases in which intervention occurs with the formal consent of a government and those in which it does not, mainly because consent is not always voluntary or genuine. Initial consent may turn into resentment and hostility later on. Nor does it fully separate the political from the ethical aspects of intervention, because political actions, even when they are not preceded by any explicit discussion on moral concerns, always raise such issues. Even actions that seem to aim only at the establishment or restoration of order have implications for justice.

In several instances states or groups of states have intervened with force, and without advanced authorization from the UN Security Council, at least in part in response to alleged extreme violations of basic human rights. Fairly recent examples include the intervention after the Gulf War to protect the Kurds in northern Iraq as well as NATO’s intervention in Kosovo and Libya

Four distinct attitudes or approaches to the legitimacy of humanitarian intervention in the absence of Security Council authorizations can be identified:

1. *Status quo*: Categorically affirms that military intervention in response to atrocities is lawful only if authorized by the UN Security Council or if it qualifies as an exercise in the right of self-defense. Under this view, NATO’s intervention in Kosovo constituted a

clear violation of Article 2(4). Defenders of this position include a number of states, most notably Russia and People's Republic of China. Proponents of this approach point to the literal text of the UN Charter, and stress that the high threshold for authorization of the use of force aims to minimize its use, and promote consensus as well as stability by ensuring a basic acceptance of military action by key states. However, Kosovo war has also highlighted the drawbacks of this approach, most notably when effective and consistent humanitarian intervention is made unlikely by the geopolitical realities of relations between the Permanent Five members of the Security Council, leading to the use of the veto and inconsistent action in the face of a humanitarian crises.

2. *Excusable breach*: Humanitarian intervention without a UN mandate is technically illegal under the rules of the UN Charter, but may be morally and politically justified in certain exceptional cases. Benefits of this approach include that it contemplates no new legal rules governing the use of force, but rather opens an “emergency exit” when there is a tension between the rules governing the use of force and the protection of fundamental human rights. Intervening states are unlikely to be condemned as law-breakers, although they take a risk of violating rules for a purportedly higher purpose. However, in practice, this could lead to questioning the legitimacy of the legal rules themselves if they are unable to justify actions the majority of the UN Security Council views as morally and politically unjustified.
3. *Customary law*: This approach involves reviewing the evolution of customary law for a legal justification of non-authorized humanitarian intervention in rare cases. This approach asks whether an emerging norm of customary law can be identified under which humanitarian intervention can be understood not only as ethically and politically justified but also as legal under the normative framework governing the use of force. However, relatively few cases exist to provide justification for the emergence of a norm, and under this approach ambiguities and differences of view about the legality of an intervention may deter states from acting. The potential for an erosion of rules governing the use of force may also be a point of concern.
4. *Codification*: The fourth approach calls for the codification of a clear legal doctrine or “right” of intervention, arguing that such a doctrine could be established through some formal or codified means such as a UN Charter Amendment or UN General Assembly

declaration. Although states have been reluctant to advocate this approach, a number of scholars, as well as the Independent International Commission on Kosovo, have made the case for establishing such a right or doctrine with specified criteria to guide assessments of legality. A major argument advanced for codifying this right is that it would enhance the legitimacy of international law, and resolve the tension between human rights and sovereignty principles contained in the UN charter. However, the historical record on humanitarian intervention is sufficiently ambiguous that it argues for humility regarding efforts to specify in advance the circumstances in which states can use force, without Security Council authorizations, against other states to protect human rights.

What is to be done in a crisis like the genocide in Rwanda, when the international community seeks to stop the killing? Can nations, acting through the UN Security Council, fulfill a "responsibility to protect" innocent civilians? Or is such a doctrine just a Trojan horse for great power abuse?

When nations send their military forces into other nations' territory, it is rarely (if ever) for "humanitarian" purposes. They are typically pursuing their narrow national interest - grabbing territory, gaining geo-strategic advantage, or seizing control of precious natural resources. Leaders hope to win public support by describing such actions in terms of high moral purposes - bringing peace, justice, democracy and civilization to the affected area. In the era of colonialism, European governments all cynically insisted that they acted to promote such higher commitments - the "white man's burden," "la mission civilisatrice," and so on and so forth.

The appeal to higher moral purposes continues to infect the political discourse of the great powers. Today's "humanitarian intervention" is only the latest in this long tradition of political obfuscation. In 2003, the US-UK invasion and occupation of Iraq was labeled "humanitarian intervention" by UK Prime Minister Tony Blair.

Still, should intervention (even multilateral intervention, approved by the Security Council) be excluded in all circumstances is the ethical dilemma we are faced with.

Humanitarian intervention in Libya or just another imperialist campaign?

In 2011, Western politicians such as US President Barack Obama, British Prime Minister David Cameron and other members of the NATO alliance praised what they believed was a successful campaign to oust the murdered Muammar al-Gaddafi. Three years later, this Western intervention has created another failed state, yet Western leaders refuse to admit their mistake. Libya is now run by extremist militias, the same people that were supported and armed by the West to carry out the illegal regime change operation. Right now, Libya's parliament agrees on little, its interim government has no army to enforce security let alone impose its will, and a new constitution meant to forge a sense of nation remains undrafted. For many Libyans, who were duped into trusting and supporting Western intervention, life has now become unbearable. Libya has descended into a scramble over the future shape of the nation, with ex-rebel commanders, former exiles, Islamists, tribal leaders, and federalists all jostling for position.

Libya is now a failed state

In Benghazi, in the country's east, three key ports have been seized by a group of former oil security forces who defected with their leader Ibrahim Jathran, a former Gaddafi fighter, last summer. They want more autonomy for the region. The two most powerful groups in the country are the militias west of the capital, one in the mountain town of Zintan and the other in the port city of Misrata. Bristling with weaponry and a sense of entitlement, the rivals both claim the mantle of champions of the revolution. Each brigade is loosely allied to competing political factions, and neither shows any sign of disarming or falling in behind the government in Tripoli. Ultimately, Libya has no authoritative government or any legitimate institutions.

Violence is also rife in Libya. Car bomb attacks take place frequently. The Libyan future remains highly uncertain at present, with several scenarios plausible: partition based on fundamental ethnic and regional enmities, essentially creating two polities, one centred in Benghazi, the other in Tripoli; a perpetuation of tribal rivalries with governing authority appropriated by various militia, and likely producing a type of low-intensity warfare that creates chaos and precludes both meaningful democracy and successful programs of economic development; or a failed state that becomes a sanctuary for transnational extremist violence and then becomes a counter-terrorist battlefield in the manner of Pakistan, Yemen, Somalia and Mali, the scene of deadly drone attacks and covert operations by special forces.

One fact is clear however – the West opened another can of worms when it intervened in Libya. Similarly to Iraq and Afghanistan, the false feeling of superiority has led the Western powers to

create another state where people have no hope for a better future. If the West was truly serious about humanitarian assistance, it would have pro-actively helped Libya to re-build and get back on its feet. Instead, Libya has been left to wither away by itself, which begs the question – was the Libyan intervention really about protecting civilians, or was it just another geopolitical and imperialist campaign to remove a leader who opposed the Western economic system. Before his bloody assassination, Gaddafi had pledged to fund three ambitious African projects — the creation of an African investment bank, an African monetary fund and an African central bank. Africa felt that these institutions were necessary to end its dependence on the IMF and the World Bank.

It is probable that Gaddafi's plans to disassociate Libya from the IMF was the main reason for Western intervention. We must therefore remember one fact: the Libyan case has illustrated once again that Western interventions cannot be trusted and do not work, and in fact, cause more harm than good. For this reason it is imperative to continue to oppose NATO and any future imperialist campaigns.

US AIRSTRIKES IN IRAQ

The U.S. carried out targeted airstrikes against the Islamic State (also known as ISIS) in Iraq over the weekend, under the guise of 'humanitarian intervention'. According to Barack Obama it was a "necessary" intervention, "When we have the unique capabilities to help avert a massacre, then I believe the United States of America cannot turn a blind eye." The "massacre" which Obama is referring to is the persecution of the Yazidis, a mysterious indigenous Kurdish minority who have historically lived in north west Iraq.

ISIS demanded jizya (tax for non-Muslims under an Islamic state) from the Yazidis, who refused to pay, and as a result, were forced to retreat to Mount Sinjar in western Mosul. Some media outlets are stating the number of Yazidis stranded in the mountains without food and water is 50,000, whilst others have stated no more than 5,000. All of this, unfortunately, only to keep up the American monopoly.

SELECTIVE HUMANITARIAN INTERVENTION

The issue that we should look at is why the U.S. has decided to intervene now? More than 200,000 Syrians have died and millions of refugees are displaced in neighbouring countries.

1,800 deaths in Gaza, thousands injured, their homes in rubble, and there wasn't even a fart from Washington in the right direction, let alone a mentioning of 'humanitarian intervention' against Israel – but that's a separate discussion in itself

It is not ethically correct to compare the death toll, duration of occupation or level of oppression between different conflicts – the killing of innocent civilians regardless of race or religion can never be justified. However, a quick glance at the U.S.' deafening silence over the humanitarian crisis in Syria and the recent Israeli onslaught on Gaza in contrast to its hastening in being the saviour of the Yazidis, is highly suspicious.

The Kurds have been loyal U.S. allies since the invasion of Iraq in 2003. They have received weapons, financial support and its militia-turned-army, the Peshmerga were trained by the U.S. for assisting in the removal of Saddam Hussain. It's also no secret that the administration of G.W.Bush had plans to divide Iraq into three small states based on ethno-religious lines – an independent Kurdistan, a Sunni Arab and Shia Arab state. Many analysts have argued that this plan is already underway with ISIS controlling Mosul, Fallujah and surrounding Sunni majority areas, the Kurds with their autonomous state in the north, and the Shia-led government of Prime Minister Nuri al-Maliki ruling Baghdad and the south of Iraq.

OIL

In reality, it all boils down to oil. The capital city of Kurdistan, Erbil holds 25% of Iraq's oil reserves, and its stability is the nucleus of America's political and economic interests in Iraq. As President Obama pointed out, "The Kurdish region is functional in the way we would like to see." So whilst the U.S. delivers humanitarian aid to the Yazidis and works tirelessly to prevent Islamic extremists from expanding their 'caliphate', in reality what's really going through the mind of the Obama administration is the numerous oil and gas companies drilling away in Kurdistan. With giants like Exxon Mobil and Chevron in the equation, ISIS poses a direct threat to contractors, oilfield service companies, accountants, construction and trucking firms.

Bush used weapons of mass destruction, Saddam harbouring Al Qaeda, the need for "regime change" and democracy when invading Iraq in 2003; and like his predecessor, Obama has used the 'Yazidi genocide' and the prevention of ISIS expansion for 'humanitarian intervention' – when in actuality, it's all about oil and geopolitics. The irony is that Obama had absolutely no

problem with ISIS wreaking havoc in Syria, fighting other rebel factions and single handily stalling the push towards Damascus. The U.S. hardly flinched when ISIS took Mosul, Fallujah and other Sunni areas in Iraq – it only moved when its interests were directly under threat, as any imperial neo-colonial superpower would do.

Some within the Muslim community in the West and the Arab world have not learnt the lessons from Afghanistan (2001), Iraq (2003) and Libya (2011). It's as if Muslims are incapable of dealing with their own problems without calling to America to 'liberate' them, to later regret it when entire cities are bombed to smithereens. Do not misconstrue my questioning of U.S. inaction in Syria and Gaza as an invitation to military intervention, God no! I highlighted these issues earlier in the article to illustrate the hypocrisy and double standards of the U.S when its wars are justified under humanitarian intervention and fighting terrorism.

As well as protecting its economic interests in Iraq and preserving its political ally in Kurdistan, the U.S. is now drawing a red line to let ISIS know where it can and cannot flex its muscle. Time will tell whether ISIS will stay within its remit and avoid picking an uphill battle of self-destruction by threatening American interests in Kurdistan. And if ISIS does stay within its limit, will this represent the beginning of the U.S.' initial plan to carve Iraq into three ethno-religious states, hence 'allowing' ISIS to gain lands currently under its control? Will the old colonial strategy of divide and rule further destabilise an already volatile region, which is yet to find its feet from what was once known as the Arab Spring?

THEORIES OF ETHICS AND HUMANITARIAN INTERVENTION

CONSEQUENTIALISM: Maintains that the majority of an action depends on the nonmoral consequences that the action brings about. Morality of an action consists of the ratio of good to evil that the action produces. We should perform right and only right action in terms of good and evil, as each individual defines good and evil, and right and wrong. There is no objective right and wrong or good and evil. The person defines these. Humanitarian Interventions are ethically justified under consequentialism because countries where these interventions usually take place are going through gross human rights violation and these interventions are done to protect the citizens of the country from the torture hence it

produces a higher good and is justified despite the moral prohibition.

UTILITARIANISM: Utilitarianism states that the moral standard should be promotion of the best longterm interests of everyone concerned. Many utilitarianists say that which is intrinsically good is pleasure and happiness (known as the hedonistic calculus).

Others say there are other things which are intrinsically good such as beauty, power, knowledge, etc.

Humanitarian Interventions are done for the promotion of long term interests everyone concerned. For example, when NATO intervened in Libya it not only overthrew the government which was in the best interest of the citizens of Libya but also made sure that the new government is US friendly and that it increases the amount of oil imports to United States of America. Hence it can be easily stated that it was in the best interest of everyone involved.

CONCLUSION

Notwithstanding all its mysteries, the weep for decimation and murdering with regards to human rights furthermore for aversion of human enduring makes a certain speak to the John Wayne prowling inside every one of us. Furthermore some of the time, infrequently, this request will be honest to goodness. Be that as it may it is tormented by the issues examined previously. Likewise, the attractions of unequivocal roughness as often as possible have a tendency to occupy us from the more key, however less glitzy, errand of re-examining and reproducing our household and universal governmental issues so that our world will be a sort of less risky and exploitative spot for all its tenants. The current drive to take care of the issues of terrorist assaults by "a war against terrorism" may well include the same uneven trust in savage solutions. we can concede the grain of truth in the pessimistic trademark, "In the event that you need peace, plan for war," however the surer way to a more peaceful world is to get ready for peace specifically Past operational and political inquiries, military intercession likewise includes lawful issues, says CFR's Matthew Waxman. "Compassionate/military intercession outside of an UN Security Council order remains a profoundly challenged zone of global law," he says. Furthermore Russia and China have verifiably been hesitant to help any manifestation of intercession. Other than their long-standing strategic distance arrangement in the inside undertakings of different nations, they are "especially stressed that it could make a point of reference for the universal group to

have a say by the way they treat their own, some of the time unsettled, minority populaces," says CFR's Patrick.

The ability to utilize equipped power is likewise inexorably affected not just by the distress of the influenced populace additionally by geopolitical variables, including the importance of the nation to the world group, local steadiness, and the demeanor of other real players, say specialists.

The U.S. part as standard bearer for the R2p idea remains an inquiry. It has been hesitant to focus on a compelling mediation in Syria, restricting itself to advertised arrangements to arm the resistance and working with Russia to attempt to gather a peace meeting uniting the Assad administration and renegades. CFR's Waxman says the U.s. country building encounters in Iraq and Afghanistan have exhibited the on-the-ground difficulties confronted after U.s.-headed mediations. "The United States has restricted force to help set up these nations back together after administrations fall in ways that guarantee that rights and security of the neighborhood populaces are kept up," he says.

President Obama's arrangement in June 2013 of two top authorities who have been straightforward in the past on philanthropic intercession -Susan Rice as national security counsel and Samantha Power as UN diplomat -provoked dialogs about whether he may be flagging eagerness to intercede in humane emergencies. Anyway various experts have advised against taking excessively oversimplified a perspective about the parts Rice and Power will play. "Both Rice and Power have directed their perspectives on U.s. military mediation abroad through the years, in expansive part due to the backfire from the wars in Iraq and Afghanistan, liking to turn to political weight, 'moral suasion,' and different devices," composes the National Journal's Michael Hirsh.

At present, the world group has constrained choices for reacting to philanthropic emergencies. UN General Assembly Resolution 46/182 framed directing standards for states' reaction to humane calamities and was fundamental to the foundation of the workplace of the UN crisis alleviation organizer and the improvement of the Inter-Agency Standing Committee.

Yet the General Assembly determination emphasizes that "the power, regional uprightness, and national solidarity of States must be completely regarded as per the Charter of the United Nations," which makes it hard to work in circumstances where the influenced nation denies access. In such cases, the part of local performing artists and neighbors gets to be discriminating.