

# **Structural Imperatives and The “Globalisation” of Human Rights**

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## **Abstract**

In the post-Cold War era human rights achieved an increased prominence in Western foreign policy rhetoric. The emergence of this ostensible commitment to global human rights has been lauded as the dawn of a more civilised world order where tyrants cannot oppress their citizens with sovereign impunity. Human rights ideologues have targeted the concept of sovereign inviolability decrying it as a barrier to the protection of human rights. The current corpus of international law contains no provision that regulates humanitarian intervention and the practice is thus subjective and necessarily sub-legal.

It is the contention of this paper that the emergence of the belief in the right to intervene in the domestic affairs of other states for humanitarian reasons is a product of the current uni-multi-polar international system more so than any genuine commitment to human rights; human rights discourse has been commandeered to perpetuate hegemony. The ‘consensus’ regarding the failings of sovereignty is inherently false and based on Western notions of a hierarchical international order. As evidenced by the invasion of Iraq the legitimisation of unregulated humanitarian intervention is the undermining of existing international law and the UN. Equitable and inclusive means by which the issue of human rights violations can be addressed have been rejected by Western powers in preference of an ad hoc and inherently sectional *modus operandi*.

## **Introduction**

In the post-Cold War era the issue of human rights has achieved increased prominence in Western foreign policy rhetoric. Liberal notions of the universality of

‘inviolable human rights’ have accompanied the accelerated expansion of globalisation. Interdependency and the diminution of sovereignty within the global economic system has been mirrored in the political sphere with the right to intervene for humanitarian purposes achieving increased acceptance in the West.

The emergence of this ostensible commitment to global human rights has been lauded as the dawn of a more civilised world order where tyrants cannot oppress their citizens with sovereign immunity. In what Hoffman calls “the revolution against unfettered sovereignty”<sup>1</sup> human rights ideologues have targeted the concept of sovereign inviolability, decrying it as a barrier to the protection of human rights. The current corpus of international law contains no explicit provision that regulates humanitarian intervention and the practice is thus subjective and necessarily ‘sub-legal’.<sup>2</sup>

It is the contention of this paper that the emergence of the belief in the right to intervene in the domestic affairs of others for humanitarian reasons is a product of the current uni-multi-polar international system, and the systemic constraints stemming from this power balance, more so than any genuine commitment to human rights. Human rights discourse has been commandeered to perpetuate hegemony.

The ‘consensus’ regarding the failings of sovereignty is inherently false and based on Western, and particularly US, notions of a hierarchical international order. The emergence of a ‘norm’ of intervention and the concept of the inviolability of human rights have achieved prominence because they legitimise the means by which Western states can consolidate their position of primacy. As evidenced by the invasion of Iraq the logical progression of unregulated humanitarian intervention, as conceived by the West, and the US and UK in particular, is the usurpation of existing international law

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<sup>1</sup> Stanley Hoffmann (2003) ‘Intervention: Should it go on? Can it go on?’ in, Chatterjee, D. & Scheid, D. (eds.) *Ethics and Foreign Intervention*, Cambridge University Press; Cambridge, p. 22

<sup>2</sup> Michael Burton (1996) ‘Legalising the Sublegal’, *Georgetown Law Journal*, Vol. 85

and the UN and a regression to the pre-Charter era of stability based on Great Power domination. Genuine means by which human rights can be protected internationally, such as the codification of a right to intervene, the recognition of an international court or the creation of an international police force, are an anathema to the current hegemon.

### **“The Age of Enforcement”**

The dissolution of the communist empire led to the removal of the constraints imposed by bi-polarity and the military balance of power. The new international systemic conditions precipitated calls, in the manner of the Kantian logic of *Perpetual Peace*, for the West to take on a greater role in actively promoting human rights globally by confronting those regimes guilty of humanitarian abuses. This assertion, predominantly made by liberal theorists, enabled the West to contemplate, and execute, interventions with a new legitimacy capable of generating greater domestic and international support than simple *raison d'etat*. The ‘age of enforcement’<sup>3</sup> was said to have begun with the international system undergoing a process of transformation that would make the previous state-centric system more accountable to, and cognisant of, the rights of individuals wherever they resided. Cassese declared, “It is a truism that today human rights are no longer of exclusive concern to the particular state where they may be infringed. Human rights are increasingly becoming the main concern of the world community as a whole. There is a widespread sense that they cannot, and should not, be trampled upon with impunity in any part of the

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<sup>3</sup> Geoffrey Robertson (1999) *Crimes Against Humanity*, London: Penguin, p. xvi.

world”.<sup>4</sup> Mary Robinson, while UN High Commissioner for Human Rights, stated her belief “...that the growth in the human rights movement is one of the most hopeful, optimistic developments of our time”.<sup>5</sup>

The logical conclusion of the development of the conviction that basic human rights must be upheld globally is the legitimisation of humanitarian intervention. It is argued that if states systematically mistreat their citizens others have a right, if not a duty, to intervene. The most obvious manifestation of this concept was the intervention in Kosovo in 1999. This “war fought not for territory but for values”<sup>6</sup> was heralded as a clear demonstration of the West’s new humanitarian dispensation. The intervention, and the perceived dawn of an age of intervention, was heralded as a positive development by human rights campaigners and many academics. Bernard Kouchner, former French Minister for Health and founder of *Médecins sans Frontières*, is indicative of those humanitarian campaigners who have called for greater interventionism.<sup>7</sup> Kouchner was an enthusiastic supporter of the intervention in Kosovo, becoming the first Head of the UN Interim Mission for Kosovo in 1999. He argued, “In a world aflame after the Cold War, we need to establish a forward-looking right of the world community to actively intervene in the affairs of sovereign nations to prevent an explosion of human rights violations”.<sup>8</sup> This ‘forward looking right’ has since manifested itself in the rhetoric legitimising the interventions in both Afghanistan and, more controversially, Iraq.

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<sup>4</sup> Antonio Cassese (1999) ‘*Ex iniuria ius oritur*: Are We Moving Towards International Legitimisation of Forceable Humanitarian Countermeasures in the World Community?’, *European Journal of International Law*, Vol. 10, No. 1, p. 26

<sup>5</sup> Quoted in, David Chandler (2002) *From Kosovo to Kabul*, London: Pluto, p. 5

<sup>6</sup> Tony Blair (1999) ‘A New Generation Draws the Line’, *Newsweek*, April 19, p. 40

<sup>7</sup> The Echo Foundation describes Kouchner as “The inventor of humanitarian intervention”, see [www.echofoundation.org](http://www.echofoundation.org). [Accessed June 2004]

<sup>8</sup> Bernard Kouchner, quoted in David Chandler, *From Kosovo to Kabul*, p. 57

The end of the Cold War ‘spheres of influence’ standoff is thus seen, by elements within the liberal school, to have presented Western states with great opportunities to actively promote the adoption of certain principles. Feste asserts, “[Because] the doctrinal pillar of American foreign policy for more than four decades, was completely outdated and unsuitable... [there is a] need for fresh foreign policy foundations to govern intervention mission objectives”.<sup>9</sup> In addition, greater intervention in global affairs at the micro level of protecting human rights and improving social and economic standards, as well as being morally good, is seen as advancing national security through eliminating the sources of intra-state violence. The 2000 US ‘Interagency Review of US Government Civilian Humanitarian and Transition Programs’ states, “The line separating humanitarian stakes from our other key foreign policy goals has been erased: these issues have become deeply embedded in one another”.<sup>10</sup>

### Selective Humanitarianism

Mastanduno notes, “[In the post-Cold War world] the international constraints have been lifted, and, in the absence of clear signals from the international structure, intervention policy... [has] become more haphazard and episodic”.<sup>11</sup> The haphazard nature of intervention is a consequence of both the lack of codification at the heart of human rights policy and the primacy of self-interest inherent in those states capable of undertaking interventions. This, therefore, explains why NATO intervened in Kosovo, but ignored the situations in the Congo, Turkey and Rwanda, to name but three, which had similarly compelling humanitarian crisis. The self-interest inherent in the

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<sup>9</sup> Karen Feste (2003) *Intervention: Shaping the Global Order*, Praeger: Westport, p. XV

<sup>10</sup> *Ibid*, p. 234-235

<sup>11</sup> Michael Mastanduno (1999) ‘Preserving the Unipolar Moment’, in Kapstein, E. & Mastanduno, M., (eds.) *Unipolar Politics: Realism and State Strategies After the Cold War*, New York: Columbia University Press, p. 144

ostensibly humanitarian interventions since the late nineties has comprised an interest in the maintenance and proliferation of a international system that imbues powerful Western states with a legitimacy to intervene to uphold geopolitical or resource interests on the basis of a nebulous ‘universal morality’ rather than existing international law.

Western interventions in the post-Cold War era have been accompanied by humanitarian rhetoric stressing the universality of their cause. It is difficult to argue that protecting human rights is a bad thing and, therefore, the assertion that one is acting to protect the weak does not tend to provoke strident opposition. Proliferating capitalism, protecting resources or maintaining regional strategic balances, do not generate the same level of domestic or international support as intervening on professed humanitarian grounds. Thus, undertaking an intervention for the expressed purpose of protecting human rights, ie. a humanitarian intervention, has an inherent legitimising effect on the intervention. As noted by the International Commission on Intervention and State Sovereignty, “[The] use...of an inherently approving word like ‘humanitarian’ tends to prejudge the very question in issue - that is, whether the intervention is in fact defensible”.<sup>12</sup>

The rhetoric surrounding human rights based interventions further limits the scope of potential disagreement as the situation is presented as constituting stark choices between good and evil. Advocates of intervention stress moral absolutes; Jonathan Freedland legitimised the intervention in Kosovo by stating, “It became one thing or the other: Either the West could try to halt the greatest barbarism in Europe since 1945 or it could do nothing”.<sup>13</sup> Similarly in his justification for invading Iraq President Bush referred to the ‘evil’ nature of Saddam’s regime and asserted that in

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<sup>12</sup> International Commission on Intervention and State Sovereignty (2001) *The Responsibility to Protect*, Ottawa: International Development Research Centre, p. 9

<sup>13</sup> Jonathan Freedland (1999) ‘Comment: War in Europe’, *The Guardian*, March 26, p. 19

the global fight against terrorism ‘you are either with us or against us’. The onward march of Western humanitarianism is thus portrayed as a morally irresistible crusade, prosecuted on behalf of humanity, signifying a break with old conceptions of realpolitik. The reality is markedly different.

In his analysis of the emerging new order Farer notes, “What has distinguished the new era...is both the relative absence of those constraints on intervention action previously immanent in the polarised environment of intense superpower competition and the maturation of a global human rights network with unprecedented influence over public and elite opinion, particularly in Western nations”.<sup>14</sup> Thus, two catalysts, the dissolution of bi-polarity and the emergence of a vocal human rights network, are responsible for the new era of rights-based intervention, neither of which necessarily point to the evolution of a truly global conception of human rights.

One of the distinguishing features of the increasingly vocal discourse regarding human rights has been the prominence afforded to NGO’s. In 1909 there were 176 NGOs worldwide, by 1993 the figure was 28, 900. In the industrialised ‘North’ the number of development NGOs rose from 1,600 in 1980 to 2,970 in 1993.<sup>15</sup> The growth in the ‘South’ has been even greater. Yet, as Chandler notes, “Analysts of NGO growth have acknowledged that the international agenda of neo-liberal economics and liberal democracy promotion was largely responsible for the ‘associational revolution’”.<sup>16</sup> Human rights NGO’s have achieved a position of perceived independence and political detachment without any comprehensive analysis of the motives, and financial basis, of these groups. Chandler notes, “Statements by human rights NGO’s...and international institutions acting in the name of human

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<sup>14</sup> Tom Farer (2003) ‘The Ethics of Intervention in Self Determination Struggles’, in Chatterjee, D. & Scheid, D. (eds.) *Ethics and Foreign Intervention*, p. 146

<sup>15</sup> Figures quoted in Chandler, D. (2004) *Constructing Global Civil Society*, Hampshire: Palgrave Macmillan, p. 4

<sup>16</sup> *Ibid*, p. 5

rights are often taken at face value as if the nobility of aim confers immunity from sociological analysis or political critique".<sup>17</sup> Many NGO's regarded as authoritative voices on issues of human rights have a conspicuously Western inclination.

The International Crisis Group, for example, describes itself as "...an independent, non-profit, multinational organisation, with over 100 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict".<sup>18</sup> The group produces analysis of various humanitarian crises throughout the world offering recommendations and policy proposals. The organisation's composition and sources of funding, however, illustrate its political and economic base.

The organisation's website provides a list of government departments that provide it with funding. Bar five, all those listed are members of NATO or the EU. The non EU/NATO members are Australia, New Zealand, Switzerland, Japan and Taiwan, each firmly within the Western ideological sphere. Private sector donors include the Gates Foundation and the Ford Foundation. The former affiliations of ICG's board are even more illustrative of the organisation's base. The panel contains the former President of Switzerland, the former Prime Ministers of Belgium and the Netherlands, the former Ministers for Foreign Affairs from Denmark, Poland, Sweden, Finland and Norway, former NATO Secretary General George Robertson, former NATO Supreme Allied Commander in Europe General Wesley Clark, former President of the European Parliament Pat Cox, six former high level US diplomats, the Chairman of Pegasus, a US based multinational oil and gas engineering group, the vice Chairman of Citigroup, the international banking conglomerate and George Soros. Such a clear relationship with the highest political, business and even military offices in the

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<sup>17</sup> Chandler, D. *From Kosovo to Kabul*, p. 12

<sup>18</sup> <http://www.crisisweb.org/home/index.cfm> [accessed October 2004]

Western sphere does not auger well for impartiality or the conceptualisation of truly global approaches to human rights. Yet this organisation's findings and recommendations are regularly referred to as authoritative, and impartial assessments of human rights crises. The establishment of a new, ostensibly universal, human rights paradigm on the basis of the prominence of organisations such as the ICG does not signify the dawn of a new humanitarian era but rather the ascendancy of Western conceptions of human rights and the appropriation of the human rights agenda by advocates and exponents of a very particular political and economic model; a model conducive to the proliferation of the Western system.

### **The Legal Lacuna**

The corpus of international law dealing with human rights has grown rapidly since the end of World War II. The far-reaching tenets of the Nuremberg judgement and its affirmation of the concept of universal justice were soon subsumed by the enormity of the Cold War that prompted a dogged adherence to the balance of power theory and *realpolitik*. As Robertson writes, there was no effort made to prosecute leaders for crimes against either their own citizens or those of different states, “The diplomats who represented national leaders were instructed not to countenance the prosecution of our national leaders; tyranny was a matter for negotiated climbdowns, never for justice”.<sup>19</sup> The growth in human rights legislation continued in the post-Cold War era; Paragraph IV of The Vienna Declaration and Programme of Action adopted by all UN members in 1993 decrees, “...the promotion and protection of all human rights is a legitimate concern of the international community”. This trend, however, has not been accompanied by either a codification, or an emergence of a customary practice,

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<sup>19</sup> Geoffrey Robertson, *Crimes Against Humanity*, p. 220

of how to ensure compliance with these humanitarian standards. As the DIIA note, “There is an asymmetry between the means of enforcement and the potential for violations of international legal norms. Violators of, for instance, human rights norms are protected by the high standards of international law concerning state sovereignty and the non-use of force, whereas enforcement action against them is dependant on political organs and conditions and they need not accept compulsory international jurisdiction”.<sup>20</sup> From a legal and humanitarian perspective, it can be argued that acts such as genocide, cannot be allowed to occur under the protection of sovereignty, but there is a legal vacuum as to enforcement and punishment. The function of law is to put the resolution of issues and differences beyond the corruption of interested parties yet the lack of codification in this area encourages the involvement of states with explicit commitments to pursuing their national interest.

The moralistic rhetoric, emanating from the US and the UK in particular, regarding the preservation of basic human rights globally, targets this acknowledged gap in existing law and their commitment to intervene thus appears as the long awaited remedy to the gulf in international law between human rights legislation and enforcement. Changes to international law occur via consensus and the assertion that a new law of humanitarian intervention has evolved since the mid-nineties has been based on the declared universal acceptance of human rights protection. Yet, the issue of intervention for human rights remains a highly contentious issue outside of the West, if not outside the Anglo-American axis, and particularly in the developing world. Operation Allied Force was opposed by China, Russia and India and immediately after the intervention the 133 states comprising the G77 group of developing states twice adopted declarations unequivocally condemning unilateral

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<sup>20</sup> Danish Institute of International Affairs (1999) *Humanitarian Intervention*, Copenhagen: Danish Institute of International Affairs, p. 97

humanitarian intervention yet this has been largely ignored in Western debates surrounding the status of humanitarian intervention in international politics. The emerging ‘consensus’ among statesmen, academics and lawyers, primarily in the US and UK, that humanitarian intervention is today permissible is a blinkered assessment of the status of humanitarian intervention internationally. As Byers and Chesterman note, “The novel conception of international law that is being constructed and reinforced by a limited number of groups of Anglo-American international lawyers is possible only by ignoring the wider circle of states and international lawyers around the world”.<sup>21</sup> The intervention in Afghanistan in 2001, undertaken in the wake of September 11<sup>th</sup>, mirrored the intervention in Kosovo in the widespread use of humanitarian rhetoric. In 2003 similar tactics were employed during the invasion of Iraq. The failure to find weapons of mass destruction has not prompted supporters of the invasion to regret their actions and the remaining justification for acting is the alleged brutality of Saddam’s regime. President Bush has asserted that he was “forced to act” to “liberate” the Iraqi people<sup>22</sup> and both he and Blair have asserted that they would have launched the operation without the now debunked threat posed by weapons of mass destruction.<sup>23</sup> Outside of the coalition of the willing, this is not a justification that finds much support.

The paralysis inflicted on the UN, by the Security Council veto in particular, has tarnished its perceived ability to protect human rights globally. As the ICISS note,

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<sup>21</sup> Michael Byers & Simon Chesterman (2003) ‘Changing the Rules About Rules? Unilateral Humanitarian Intervention and the Future of International Law’, in Holzgrefe, J. L. & Keohane, R. (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, p. 190

<sup>22</sup> Quoted in, Julian Borger (2003) ‘Bush Rallies Troops for War’, *The Guardian*, 4<sup>th</sup> January, p. 1.

<sup>23</sup> According to Blair, “I can apologise for the information that turned out to be wrong, but I can’t, sincerely at least, apologise for removing Saddam. The world is a better place with Saddam in prison not in power...success for us in Iraq is not success for America or Britain or even Iraq itself but for the values and way of life that democracy represents”. Speech to the Labour Party conference, 28 September 2004. Available at [http://www.labour.org.uk/ac2004news?ux\\_news\\_id=ac04tb](http://www.labour.org.uk/ac2004news?ux_news_id=ac04tb) [accessed January 2004]

“...if the Security Council fails to discharge its responsibility in conscience-shocking situations crying out for action, then it is unreasonable to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations”.<sup>24</sup> Indeed, at its Fiftieth Anniversary NATO announced that “Even though all NATO member states undoubtedly would prefer to act with such mandates [from the Security Council] they must not limit themselves to acting only when such a mandate can be agreed”.<sup>25</sup> The present status of humanitarian intervention will therefore lead to unilateral determinations that ‘something has to be done’ and the ICISS warns, “...such interventions will not be conducted for the right reasons or with the right commitment to the necessary precautionary principles”.<sup>26</sup> Therefore, an acceptance that certain grave violations of human rights are never acceptable demands a means by which these violations can be halted and the perpetrators punished and thus a clarification of a right of intervention devoid of subjective judgements. However, there is nothing to suggest that either the US or the UK have shown support for codifying humanitarian intervention. As Caplan states, “...there is little evidence that the British government or any other major power, is contemplating fundamental UN reform in response to the need to strengthen the organisation’s capacity to cope more effectively with humanitarian catastrophes”.<sup>27</sup> In the case of the US, its policy has been to refuse to support those developments, such as the International Criminal Court, which explicitly seek to base human rights protection, enforcement and punishment in the hands of supra-national bodies with international legitimacy. The ascendancy of these transnational institutions would pose a significant threat to the position currently occupied by the US.

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<sup>24</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 55

<sup>25</sup> Quoted in Richard Caplan (2000) ‘Humanitarian Intervention: Which Way Forward?’, *Ethics and International Affairs*, Vol. 14, p. 31

<sup>26</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, p. 55

<sup>27</sup> Danish Institute of International Affairs, *Humanitarian Intervention*, p. 105

## **The Capacity to Intervene**

The Western appropriation of the human rights agenda, and the selective use of ‘the moral imperative to intervene’<sup>28</sup> is conducive to the maintenance of the Western, and specifically American, position of primacy in the international system. The adoption by Western governments, and coalitions of Western states, such as NATO, of the mantle of human rights defender insures that the debate regarding any given situation is confined to a model that removes Western states as active participants in the genesis of a conflict to a position of detachment from where a judgement, and ultimately an intervention, are sought. Western governments effectively become both judge and potential saviour.

Parties to a conflict appeal to both the West, more particularly the US, and the UN to support their cause; yet the US has considerably more control over the constraints on it intervening than has the UN. The basis for the UN to sanction an intervention lies in the Charter, yet there is no provision within the Charter that sanctions humanitarian intervention. Chapter VII of the Charter, relating to a threat to international peace and security, has been suggested as one possible justification. However, as the Danish Institute of International Affairs notes, “It was hardly the intention of the framers of the Charter that internal conflicts and human rights violations should be regarded as a threat to international peace. There is no evidence that they might have envisaged a competence for the Security Council under Chapter VII to take action to cope with situations of humanitarian emergency within a state

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<sup>28</sup> Justifying NATO’s intervention President Clinton stated, “Ending this war [in Kosovo] is a moral imperative”. Quoted in, Foreign Desk (1999) ‘Conflict in the Balkans’ *The New York Times*, March 25, Section A, p. 15

resulting from civil war or systematic repression”.<sup>29</sup> The provisions of Chapter VII of the Charter do enable the Security Council to sanction military intervention in intra-state conflicts but not explicitly for humanitarian reasons. While the term ‘threat to international peace and stability’ may be malleable, and has been questionably broadened to accommodate certain situations, the inconsistency of application, the lack of explicit legal authorisation and the reluctance to set a precedent when used, militates against the provisions of Chapter VII constituting codified legal legitimacy for humanitarian intervention. Additionally, the determination of there being such a threat is dependent on the permanent members of the Security Council unanimously agreeing. Yet, as Coll notes, “No matter how hideous its human rights violations, a state will almost always be able to find a patron in the Security Council willing to cast its veto on that state’s behalf to protect it against humanitarian intervention”.<sup>30</sup> The UN additionally lacks the financial resources to enable it to undertake an extensive intervention into a hostile environment. The organisation is dependant on member states to finance its operations.<sup>31</sup> The final constraint on the UN to intervene is the willingness of its members to take action. As was so graphically illustrated in 1995 in Rwanda, if there is no state willing to act, the UN’s capacity to alleviate massive human rights abuses is negated. As Barnett notes, “...only an indifferent UN, comprising self absorbed states, could have ignored such an unambiguous moral imperative”.<sup>32</sup>

The key determinants as to whether the US and its allies undertake an intervention are essentially self imposed and tied to self-interest. These states will intervene if it is

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<sup>29</sup> Danish Institute of International Affairs, *Humanitarian Intervention*, p. 62

<sup>30</sup> Alberto Coll, (2001) ‘Kosovo and the Moral Burdens of Power’, in Bacevich, A.J. & Cohen, E.A. (eds.) *War Over Kosovo*, New York: Columbia University Press, p. 136

<sup>31</sup> By 2000 the US owed the UN \$1 billion

<sup>32</sup> Michael Barnett (2003) ‘Bureaucratizing the Duty to Aid’, in Lang, A., *Just Intervention*, Georgetown University Press: Washington, p. 175

in their interests to do so. No state has to date committed itself to a policy of global intervention regardless of personal cost. In outlining the criteria that had to be met before he would commit Britain to any intervention Prime Minister Blair, perhaps the most effusive political leader on the issue of global human rights, listed as his final criterion “Do we have national interests involved?”<sup>33</sup> National interest thus clearly retains a primacy in the determination of when to intervene.

The precise definition of national interests may vary between states and even between regimes within states. Despite the illusion of a sharp divergence between Clinton and Bush’s approaches to international affairs, the difference between the invasion of Iraq and the intervention in Kosovo is only over the issue of state interest and the fact that Clinton succeeded in winning the support of his powerful regional allies whereas Bush did not. Both the Clinton and Bush administrations argued there were humanitarian motives driving their respective interventions, that the UN was paralysed, that they were acting within international law, that there were security concerns for the US involved and that they were acting as part of a coalition. The opposition to the war in Iraq certainly dwarfs the opposition to Operation Allied Force in 1999 but those states which denied the US support for the intervention within the Western sphere did not primarily dispute the assertion that it was legitimate to intervene without UN backing for humanitarian reasons, indeed many, like Germany and France, had acquiesced to this very principle in 1999, the dispute focused on the issue of security intelligence. The humanitarian approach honed in Kosovo was applied to the situation in Iraq though without the same level of success. The support of Britain and those countries newly incorporated into the EU and NATO, such as Poland and the Czech Republic, points to the continuation, in certain quarters, of the

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<sup>33</sup> Tony Blair, ‘Doctrine of the International Community’, 22<sup>nd</sup> April 1999, Available at <http://www.fco.gov.uk> [accessed August 2004]

perception widespread at the time of Kosovo that it was prudent to support the US and the assertion of humanitarianism. The refusal of France and Germany in particular to support the Iraq invasion was borne out of their respective conceptions of their state interests and the emerging desire to create a more independent Europe based on a Franco-German alliance rather than a belief in the inappropriateness of the use of force for humanitarian reasons outside of the UN. Thus, a decision by the hegemon to intervene may appear to have wider support because dependant powers will support it for geopolitical reasons rather than out of conviction. Massimo D'Alema, Prime Minister of Italy, explained that his country participated in Operation Allied Force in order to “count as a major country”. He stated, “If we hadn't done so, we would have ended up weakening the international prestige we had only just required...It isn't written in any official document but in fact, around Kosovo was born a sort of club”.<sup>34</sup> Non-membership of this ‘club’ was judged to be not in Italy's, and many other countries, interests. It is certainly more plausible that Uzbekistan, Eritrea, Colombia and a number of other members of the ‘Coalition of the Willing’ that supported the invasion of Iraq did so out of a concern to be seen to publicly support the US rather than out of a determination to better the lives of Iraqis. As Mastanduno explains, “Multilateral decision-making processes help the United States to exercise its dominant power with legitimacy. They are key instruments of states craft – indeed of realpolitik – for a dominant state that is seeking...to convince other states to cooperate with it rather than to balance against it”.<sup>35</sup> So long as the hegemony exercised by the US does not fundamentally undermine the status of lesser major powers, assent will be forthcoming. In 2003, France and Germany judged that

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<sup>34</sup> Quoted in Diana Johnstone, *Fools Crusade*, p. 260-261

<sup>35</sup> Michael Mastanduno, (1999) ‘Preserving the Unipolar Moment’, in Kapstein, Ethan & Mastanduno, Michael, (eds.) *Unipolar Politics: Realism and State Strategies After the Cold War*, New York: Columbia University Press, p. 157

supporting the proposed invasion of Iraq was not in their interests and they reserved their assent. The convening of a European security ‘mini-summit’ in April 2003 involving France, Germany, Belgium and Luxembourg, each opposed to the invasion of Iraq, suggests that the rationale behind the US seeking to act in concert with its powerful allies in Europe, lest they develop independent, and potentially oppositional security organisations, is correct.

Like the UN, Western states need to assess the likely cost of any intervention yet, crucially, unlike the UN these states are not dependant on others to finance their foreign policy. The factor most likely to constrain them is public opinion. The capacity for the public to mobilise in support of intervention is, to a large extent, determined by the media and NGO’s more so than by governments. Thus, the financing of certain NGO’s by governments and the courting of media support through the use of ‘embedded reporters’ and the selective endorsement of certain media outlets, increases the chances that the public will mobilise only when the state sees it as being in their interest. The media coverage of the interventions in both Kosovo, Afghanistan and Iraq are testament to the impact on the public of a campaign involving a union of aims between governments, media and NGO’s. In each instance the intervention was portrayed to domestic publics in clear moral terms involving the liberation of an oppressed people and a conflict with tyrannical oppressors.

The situation as it presently stands transfers enormous powers to the US and its allies. Intra-state conflicts resulting in human rights abuses are the focus of the UN and the US dominated West, yet of the two the West alone is capable of undertaking an intervention for the reasons outlined above. Therefore, parties to a conflict appeal more to the US and its allies for assistance in their cause than to the UN. Additionally, increasingly NGOs and human rights campaigners have become vocally supporters of

US led interventions rather than UN controlled operations. John O’Shea, Head of the humanitarian organisation GOAL stated in relation to Darfur, “The US as the superpower should take the action on its own...There is nothing that the UN has done since day one that has saved the life of a single person in Darfur”.<sup>36</sup> The solution to humanitarian crises is thus increasingly perceived to be US-led intervention. Parties to conflicts thus plead their case to the West where Western public opinion acts as jury, Western States, and the US in particular, act as judges and the Western military act as executioner.

The situation at present has been shown to have convinced groups involved in intra-state conflicts that it is in their best interests to increase the scale of the humanitarian catastrophe in the expectation that this will compel Western states, via media reportage of the crisis, to intervene on their behalf. Blainey describes the rationale that has prompted separatists to escalate the scale of their conflict as “optimistic miscalculation”.<sup>37</sup> According to Kuperman, “...in the post-Cold War era, a main source of such optimistic miscalculation has been the expectation by subordinate groups that the ‘international community’ will intervene to protect them on humanitarian grounds if their challenge to authority provokes retaliatory violence”.<sup>38</sup>

The most apparent contemporary example of this phenomenon is the KLA and the conflict in Kosovo. While undeniably suffering under Miloševic’s regime, the recourse to war by the KLA was initially unpopular amongst the Kosovar Albanians who overwhelmingly supported the pacifism of Rugova and his LDK party. The rise in support for the KLA derived from the growth in frustration at the lack of tangible

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<sup>36</sup> Deaglán de Bréadún (2004) ‘A Defiant Bush Defends Iraq Strategy Before the UN’, *Irish Times*, September 22, 2004, p. 11

<sup>37</sup> Quoted in Alan Kuperman, (2003) ‘Transnational Causes of Genocide’, in Thomas, R. (ed.) *Yugoslavia Unravelled: Sovereignty, Self-Determination, Intervention*, Oxford: Lexington Books, p. 57

<sup>38</sup> *Ibid*, p. 57

results from Rugova's tactics, in particular the ignoring of Kosovo in the Dayton Accords. According to Hodge, "In effect Dayton told autonomists in Kosovo that the metal in Kosovo was not hot enough to bring about political change. The KLA decided to make it glow".<sup>39</sup> Thus, the KLA adopted a strategy, according to Gow, of "...armed engagement designed to provoke atrocities"<sup>40</sup> that would generate international attention. The KLA could never hope to defeat the Yugoslav army and thus gambled on gaining the support of NATO. The gamble worked and NATO intervened on the basis that they had a "moral duty" to do so.<sup>41</sup>

Kuperman's findings reflect not so much a problem inherent in the principle of intervention but rather in the current ad hoc nature of intervention. The central problem is that the subordinate group believes its only hope is to attract the attention of a Western power through the engineering of a humanitarian catastrophe. This presupposes that it is the West alone that determines when and how to undertake a humanitarian intervention, which is the case under the current unregulated system. If there were legal guidelines as to when and where to intervene for humanitarian reasons, and these were determined by a supra-national entity, then the escalation of a conflict would be both unnecessary and potentially counterproductive. Kuperman suggests, "The West, attempting to deter violence with criticism and threats inadvertently encourages a vulnerable group to escalate its challenge against a more powerful group by raising its expectation of forthcoming military aid".<sup>42</sup> The central problems here highlighted are the lack of a non-partisan authority determining whether intervention is warranted and the inconsistency of response.

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<sup>39</sup> Carl Hodge (2000) Casual War: NATO's Intervention in Kosovo, *Ethics and International Affairs*, Vol. 14, p. 26

<sup>40</sup> James Gow (2003) *The Serbian Project and its Adversaries: A Strategy of War Crimes*, McGill-Queens University Press: Montreal, p. 256

<sup>41</sup> Javier Solana, NATO Press Release (1999) 041, 24 March 1999.

<sup>42</sup> *Ibid*, p. 71

## The Structural Imperative

Following the events of 1989-1992 a consensus began to emerge that, as Layne wrote, "...the Soviet Union's collapse transformed the international system from bipolarity to unipolarity".<sup>43</sup> While the post-Cold War international system is fundamentally asymmetrical the term unipolarity is not completely accurate. The nature of the present system is not one of unipolar dominance but rather of uni-multipolarity. As Huntington explains, "There is now only one superpower. But that does not mean that the world is unipolar. A unipolar system would have one superpower, no significant major powers, and many minor powers. As a result the superpower could effectively resolve important international issues on its own".<sup>44</sup> The US is at the zenith of the international system but this position of primacy is derived from its status as leader of the dominant sub-set of states, what is loosely termed 'the West'. For the US to preserve its eminence within the uni-multi-polar system it must have support at least within its primary catchment area. It cannot sustain its position by acting exclusively unilaterally and against the tenets of international law. Such a policy would sow global resentment, and more damagingly, impact negatively on support from within its immediate group of allies. There is, therefore, a structural imperative on the US to assert that its actions are both benevolent and legal. This need for support explains the US's assertion of universality in its foreign affairs and its professed determination to act in unison with a wider community of states, albeit with the proviso that unilateralism is a reserved right, as a means towards legitimising the assertion of an emerging new international system.

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<sup>43</sup> Christopher Layne (1993) 'The Unipolar Illusion', *International Security*, Vol. 17, no. 4, p. 5

<sup>44</sup> Samuel Huntington (1999) 'The Lonely Superpower', *Foreign Affairs*, Vol. 78/3, p. 35

Thus, the US's unrivalled strength is tempered by the realisation that to act without support would risk creating resentment among the major but lesser powers, particularly within the US's immediate sphere of influence. Thus, cognisant of the benefits of appearing benevolent as opposed to aggressive, there is an attempt to fashion a new conception of international law, specifically as it relates to human rights and the right to intervene, based on an asserted 'consensus', rather than a determination to abandon international law altogether. Whilst humanitarian motives have been commonly cited in defence of interventions since the inception of the UN Charter they have never been asserted as the legal defence for action. As noted by Arend and Beck, "...between 1945 and 1990 there were no examples of a genuinely humanitarian intervention" and during this period there was "...no unambiguous case of state reliance on the right of humanitarian intervention".<sup>45</sup> The intervention in Kosovo in 1999 constituted a new departure because it was accompanied by assertions that a new norm was emerging that provided legal cover for such unilateral humanitarian interventions. This new legal doctrine, described by then President of the Czech Republic Václav Havel as "...a law that ranks higher than the law which protects the sovereignty of states"<sup>46</sup>, based on Western conceptions of international law and human rights, fundamentally undermines the Charter system and increases the asymmetrical nature of the system.

The primacy of the US within the current system is increased by the need for lesser, but regionally major, powers, such as the UK and Japan, to support the US's global strategy. Thus, a decision by the hegemon to intervene may appear to have

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<sup>45</sup> Anthony Arend & Robert Beck (1993) *International Law and the Use of Force*, London: Routledge, p. 137

<sup>46</sup> Speech to the Canadian Parliament, April 29<sup>th</sup> 1999, quoted in, Geoffrey Robertson, *Crimes Against Humanity*, p. 433

wider support because dependant powers will support it for geopolitical reasons rather than out of conviction.

The means by which the US can now intervene with a legitimacy garnered from the new ‘norm’ of humanitarian intervention effectively provides it with the licence to intervene anywhere. There are few states outside the West that could not be accused of human rights abuses and thus be liable to intervention. In his critique of *The Laws of Peoples* by Rawls, Miller highlights the flaw in Rawl’s recommendation, with respect to intervention, that states should not intervene in the affairs of “well ordered states”.<sup>47</sup> Miller points out, “It is perfectly possible that there are no well ordered peoples...virtually all peoples are ill-ordered, including potential interveners as well as plausible targets of intervention.”<sup>48</sup> Without an objective standard of when intervention is legitimate, the exercise of humanitarian intervention will be necessarily subjective, undertaken from a perspective of self-interest, in terms of access to resources or the maintenance of strategic alliances, and unlimited in potential scope. Miller suggests that the growth in humanitarianism as a means of legitimising intervention “...reflects a further special interest guiding the interventions of great powers, namely, an interest in securing and extending their geopolitical power”.<sup>49</sup> He further warns, “...the broadened licence to intervene would expand the global influence over decision making of the major intervening superpowers, and, above all, expand the hegemony of the sole superpower”.<sup>50</sup>

## Conclusion

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<sup>47</sup> Quoted in Richard Miller (2003) ‘Respectable Oppressors, Hypocritical Liberators’ in Chatterjee, D. & Scheid, D. (eds.) *Ethics and Foreign Intervention*, p. 217

<sup>48</sup> *Ibid*, p. 217-219

<sup>49</sup> *Ibid*, p. 228

<sup>50</sup> *Ibid*, p. 230

It is the contention of this paper that the perceived growth amongst Western states in relation to global human rights, and their new willingness to intervene to uphold them, is not indicative of an attitudinal sea-change but rather an awareness of the systemic political benefits to be derived from adopting a rhetorical determination to intervene for humanitarian reasons. The development of the consensus that humanitarian interventions are to be welcomed, if not encouraged, signifies the West's successful appropriation of the human rights agenda. Through the work of heavily financed NGOs and selective media reportage, Western publics, academics and human rights advocates have become convinced of the need for a more interventionist Western outlook. The reluctance to cede the power over when and where to intervene to a transnational body, signifies the US's perception of the present unregulated situation as beneficial to its national interests and specifically its foreign policy. The template established in Kosovo was used extensively to justify the intervention in Afghanistan in 2003 and the invasion of Iraq was similarly heralded as a humanitarian crusade, albeit with an attendant security agenda. As the security threat posed by Saddam and the links with Al Qaeda have proven spurious, the remaining justification has been humanitarian. As Bellamy notes, "Once it became clear that the UN Security Council was not going to authorise the use of force against Iraq, the leaders of all three main interveners began to emphasise the humanitarian necessity of war".<sup>51</sup> US Secretary of Defense, Donald Rumsfeld argued that the invasion of Iraq was consistent with the example set in Kosovo as it was prosecuted, "for the purpose of denying hostile regimes the opportunity to oppress their own people".<sup>52</sup> The use of humanitarian rhetoric to legitimise the invasion of Iraq confirms the fear expressed by Wheeler with respect to the growing acceptance of humanitarian

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<sup>51</sup> Alex Bellamy (2004) 'Ethics and Intervention: The 'Humanitarian Exception' and the Problem of Abuse in the Case of Iraq', *Journal of Peace Research*, Vol. 41, no. 2, p. 136

<sup>52</sup> Quoted in David Chandler, *From Kosovo to Kabul*, p. 1

interventions; “The danger is that US policy makers will come to believe that they can use force without legal or moral censure as long as they couple force with token humanitarianism that will nullify dissent at home”.<sup>53</sup> The invasion of Iraq never received the support the intervention in Kosovo was afforded but opposition to the war was largely based on the security claims rather than the merits of intervening for humanitarian reasons.

During the Cold War US-led Western intervention was legitimised to both domestic publics and international allies on the basis of the threat of communist encroachment and the domino theory. Today these imperatives to intervene have been replaced by the humanitarian imperative and, since September 11<sup>th</sup>, the war on terror. The globalisation of human rights is, therefore, less indicative of the emergence in the West of an awareness of the inviolability of basic humanitarian standards regardless of where one lives; rather it has become a means by which hegemony has been legitimised and consolidated and intervention endorsed.

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<sup>53</sup> Nicholas Wheeler (2003) ‘Humanitarian Intervention After September 11<sup>th</sup> 2001’, in Anthony Lang (ed) *Just Intervention*, Washington; Georgetown University Press, p. 208

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