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BOSNIA AND SOMALIA: STRATEGIC, LEGAL, AND MORAL DIMENSIONS OF HUMANITARIAN INTERVENTION

Many legal scholars favor intervention against states that perpetrate massive human rights violations; their arguments are based upon moral principles and international standards of justice. But at present, policymakers and government leaders often allow their political interests to outweigh these other considerations. In affirming respect for the sovereignty of states, they fail to acknowledge that sovereignty is not necessarily absolute, and they ignore other provisions of international law that in some situations should be given priority. This short-sighted position has prevented the United States and Western Europe from mounting an effective cooperative effort to deal with the Bosnian conflict.

A number of newspaper columnists have contributed to the paralysis. Aware that the crisis in Bosnia has reached a point where a military commitment would be required to end the campaign of ethnic cleansing, they evoke the image of young Americans dying for the sake of nebulous policy objectives. But the sensible way to meet this concern is not to rule out intervention, but rather to insist that it combine precise policy goals, clear strategic objectives, and tactics that are suited to the desired end-

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state of the military involvement. It is illogical to conclude on the basis of an extreme case requiring an extensive military commitment that all forms of intervention are misguided in principle or are someone else's responsibility. If a coherent strategy for intervention had been in place from the beginning, the Bosnian crisis might never have assumed the proportions of genocide.

A multitude of ethnic conflicts may develop in the former Soviet Union and elsewhere in the next decade. Responses to these conflicts will, in turn, set the stage for the twenty-first century. In the early phases of ethnic conflict, will global leaders stand idly by while would-be dictators fight to expand their power base by killing their citizens, crossing internationally recognized boundaries, inflaming irredentist passions, and implementing ideologies of ethnic superiority?

An intervention must combine precise policy goals, clear strategic objectives, and tactics that are suited to the desired end-state of the military involvement.

It may prove to be a costly mistake if the last superpower and its friends (and sometime allies) become isolationist paper tigers once again. Explosions of ethnic passion rarely remain internal affairs. From a strategic perspective, it is clear that a future diffusion of ethnic passion, hatred, and rebellion will eventually call for much greater military measures than a maximum collective show of force with a minimum use of weapons in Bosnia. Failure to exert our capabilities may mean that we will lose our chance to build a world free from the forces that create global instability. From a cost-benefit perspective — as abhorrent as that may seem, when we consider the loss of lives in Bosnia and similar theaters — early warning measures, a clear policy position, and a strategy with civil and military components are the best guarantees to forestall adventurers of the caliber of Saddam Hussein and Radovan Karadzic. From an American perspective, to be able to intervene with the knowledge that the U.S. is proceeding on a clearly plotted course that is strategically sound, morally correct, legally justified and internationally supported makes the task easier for the young men and women who have joined the military in order to fight for their country's just cause. Indeed, the more clearly designed the policy and tactical objectives are, the greater the likelihood that few if any American lives will be lost—provided action is taken swiftly in response to early signs of impending disaster.

The Legal Foundations of Humanitarian Intervention

Hersch Lauterpacht, one of the great scholars of international law, once asked whether law can promote the "realization of socially obtainable justice." My own answer is a qualified yes. We can achieve minimum standards of justice by affirming such essential goods as the right to live, and by enforcing sanctions against those who deprive people of those essential goods. Mass murder is unacceptable in all national legal systems and, in principle, states should apply their domestic laws to their own and others' external behavior. In other words, foreign policy should reflect the standards of national morality defined by domestic law.

In accordance with this principle, the Genocide Convention forbids governments to take steps to destroy any distinct national, ethnic, or religious group. Article 3 of the Universal Declaration of Human Rights asserts that "everyone has the right to life, liberty, and security of person." The large number of signatories to the human rights and genocide conventions attests to the fact that international morality in regard to the protection of fundamental human rights coincides with national moralities. These treaties constitute, as Lauterpacht writes, "a recognition of fundamental rights superior to the law of the sovereign State."

Thus, when basic rights are violated to the degree we see at present in Somalia and Bosnia, international responses should follow, under the leadership of a United Nations that asserts and, ideally, enforces codified standards of morality. The most common argument against such action is based on Article 2, paragraph 7 of the U.N. Charter, which prohibits intervention in matters that are within the domestic jurisdiction of any state. In contrast, Article 34 identifies a competing principle by empowering the Security Council to investigate disputes that cause international friction, while Article 51 and Chapter VIII of the Charter offer regional organizations the legal justification for collective intervention.

The Bosnian situation is illustrative. If one accepts Bosnia's claim to being an independent state (as the U.N. did when it granted Bosnia a seat in the General Assembly), then under Article 51, the Bosnians have the right of self-defense, including the right to ask for outside help and to invite intervention by individual states, regional organizations, or the U.N. If one denies that Bosnia is an independent state (as does what remains of the federal Yugoslav government), then the situation is one of civil war between a state and a secessionist region. In this circumstance, the Security Council is empowered to execute collective

measures, on the grounds that the situation is causing widespread abuse of human rights and international friction. Accordingly, in response to Serbian atrocities in Bosnia and Croatia, the first act of the General Assembly in the fall 1992 session was to deny membership to Serbia/Montenegro as the successor state to Yugoslavia.

Once it is established that international standards of human rights are being violated, the right to impose such standards should prevail over assertions of national sovereignty. But the path that leads from recognizing that a crime against humanity is being committed to the prescription of appropriate responses and sanctions is fraught with political difficulties. In principle, the U.N., as a collective body representing the great majority of states, is the entity that should delegate authority for any kind of intervention to willing and capable member states. Ideally, all full members would bear both the responsibility and the costs of the actions undertaken, even if the burden of action fell to the United States as perhaps the only country presently able to take a strong stand on such matters. Specific actions to be taken would be decided by the Security Council with the assistance of the Military Staff Committee (see Article 46).

The targets of international sanctions can be expected to complain that they are being victimized by a new brand of imperialism under the guise of the new world order. Given the archaic structure of the Se-

curity Council, in which the former imperial powers play a larger role than other states, such claims may have some *prima facie* plausibility. But such a claim by weaker states at no time and in no place mitigates the crimes of mass political murder, ethnic cleansing, or complicity in mass starvation of ethnic rivals.

What has been lacking, time and time again, on the part of states with the capacity to act is the political will to take a strong stand and accept the consequences of boldness. Standards of international morality and order are not achieved through timidity; precedent is never set through inaction. Violent ethnic conflicts in the Third World have steadily increased in frequency and intensity since the 1960s, as Ted Robert Gurr has demonstrated in a study tracking some 200 minorities during the entire post-war period. The disintegration of the Soviet, Yugoslav, and Ethiopian states has released the evil genies of nationalist xenophobia and ethnic hatred in vast new areas. Genocides — directed against people on the basis of their ethnic, racial, or social identity — and politicides — directed against people on the basis of their political beliefs — often follow war and revolution in poor countries. In my own work, I have identified more than forty such episodes since 1945 and have shown that they caused greater loss of life than all the wars fought *between* states during that period. For this reason, it is essential to demonstrate



that building states on mass graves violates the moral standards of global society, and must lead with some certainty to sanctions proportional to the crimes.

In the absence of a formal international authority to monitor and police the human rights performances of states, communal and nationalist contenders seeking territory or autonomy often press their claims by force. Intimidation of opposing forces within states and assaults on less powerful neighbors are becoming more common, most acutely so in Eastern Europe. Yugoslavia in particular has regressed to a nineteenth-century mentality. Myths and memories of old injustices are invoked to mobilize young Serbs and Croats for war against one another, and together against Muslims. The territorial ambitions of the contenders take no account of Yugoslavia's carefully balanced heterogeneity; a resurgent nationalism calls instead for the creation of fictive homelands, purified of "alien peoples." The claims being made by the most militant of Serbs are reminiscent of Nazi ideology, and one can well imagine that in the future, nationalist Serbs, if unchecked, will assert their racial and cultural superiority over competing ethnic groups in a greater Serbia extending from Macedonia to Austria.

Civil Wars, Rebellion, Repression

Bosnia, Somalia, and Iraqi Kurdistan exemplify three distinct types of crimes against humanity in which the international community has a legal and moral imperative to intervene. Bosnia is a case that combines elements of civil and international war. On the civil side, Bosnia-Herzegovina's declaration of independence provoked uprisings by Bosnian Serbs concerned with their status in the new state. On the international side, they were armed by and acted as agents of "greater Serbian" nationalists. Recent events offer clear evidence of direct Serbian military support through air strikes and artillery barrages. The states of the European Community face a double responsibility, first because they helped precipitate the civil war by granting what many observers thought was premature recognition of Bosnian independence, and second because they have ample capacity to act. Yet EC leaders have largely behaved like bystanders, offering verbal condemnation and sending inadequate relief. It is clear that most European leaders find it politically more acceptable to condemn the participants and to talk about eventual war-crimes trials than to risk military casualties by trying to stop the war while it is still in progress.

Meanwhile, new civil wars and acts of aggression tragically similar to events in Bosnia are already under way or imminent in Macedonia, Moldova, the

Caucasus, and some of the new republics of Central Asia. The international community has a compelling legal right and obligation to defend the civilian victims of such conflicts, not merely to provide them with minimal humanitarian assistance. The situation in Bosnia is all the more urgent because actions there will send a message to ambitious and potentially ruthless nationalists in all the states of the former Soviet bloc and elsewhere.

In Somalia, mass starvation is the result of the complete disintegration of political order. The process began in 1988 with a north-south civil war and massacres of northern civilians that attracted virtually no international attention. Since then, feuding clan leaders and warlords have made most of the country into a deadly wasteland in which humanitarian assistance, belatedly supplied, is seized at gunpoint. International pressure and diplomacy might have forestalled the crisis at an early stage. The immediate task must be to protect civilians against mass starvation, followed by restoration of critical elements of the transport infrastructure and preparation of the groundwork for an interim government. None of these tasks can be accomplished unless peacekeeping forces are authorized to use force. Somalia is a member of two regional organizations with the potential, in theory, to respond more forcefully: the Organization of African Unity and the Islamic Conference. Neither has acted decisively.

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A similar situation existed in Lebanon and has now emerged in Liberia. The Liberian case is instructive: a West African peacekeeping force, operating under international auspices, temporarily stabilized the country and facilitated negotiations among the principal factions. The West African precedent for international intervention has been marred by the recent renewal of fighting in Liberia, but the peacekeeping effort undertaken so far appears preferable to the belated and inadequate international response to the Somali conflict. Other weak African states are at risk of similar crises.

Iraq exemplifies a more common kind of humanitarian crisis. Since the 1960s the Ba'athist regime in Baghdad has repeatedly used deadly force, including

poison gas, against civilian Kurds suspected of rebellion. In the aftermath of the Gulf War, the Kurds revolted again and the Allies eventually responded with humanitarian aid in a Kurdish zone protected by Allied air cover. But for many Kurds, the response came too late. Allied leaders did not act until they were pressured by domestic and regional political considerations. Media coverage of atrocities mobilized public outrage in Western countries, and the Turkish government expressed its concern about the destabilizing effect of a flood of Kurdish refugees on its own Kurdish minority.

The main precedents for humanitarian intervention to end gross human rights violations like those in Iraq are unilateral ones: India in East Pakistan, now Bangladesh, in 1971; Vietnam in Cambodia, in 1978; and Tanzania in Uganda, in 1979. The intervenors' motives in these cases were politically suspect, but, on balance, unilateral action in each instance was better than inaction: it helped to end the killings and, except in Uganda, led to the establishment of regimes with a greater respect for human rights. The establishment of a security zone in Iraq was more easily achieved because it was done under international auspices in a pariah state that had lost credibility and clout in the Arab world; two previous decades of Iraqi abuse of Kurdish villagers had no significant international consequences.

Many future conflicts are likely to require international responses of the kind offered in Iraq. Chronic warfare and repression persist in Sudan and Myanmar (Burma); Ethiopia is at serious risk of renewed warfare that could be forestalled by international action. More distant crises can also be anticipated in such large Third World countries as Nigeria and Pakistan, where there are deep regional cleavages.

An Agenda for Peace: Responding to International Crises

The need for a more active role by the U.N. in such conflicts has been explicitly recognized by the new Secretary General, Boutros Boutros-Ghali. His *Agenda for Peace*, issued on June 17, 1992, focuses attention on threats to international security arising from "ethnic, religious, social, cultural or linguistic strife." The Agenda outlines four kinds of responses: preventive diplomacy, peacemaking, peacekeeping, and post-conflict peace-building. "Peace-building" refers to policies that address the root causes of conflict: "economic despair, social injustice and political oppression." The case of the Iraqi Kurds highlights the need to organize such responses to gross human rights violations at an early stage rather than wait for news of atrocities to create political pressures for

action. The more quickly the U.N. acts, the less devastation communal conflicts will cause, whereas the longer that effective responses are delayed, the more difficult and costly peacekeeping and peace-building will be.

The U.N. Agenda for Peace focuses on threats to international security arising from "ethnic, religious, social, cultural or linguistic strife."

Let me conclude by examining the kinds of actions that the international community has at its disposal for responding to civil wars, repression, and anarchy that threaten the human rights and lives of large numbers of people. All have been used selectively to remedy past violations. The first are lowest in cost, and pose the least challenge to sovereignty. The last constitutes the revocation of a state's sovereignty. Military occupation and trusteeship are, or should be, the ultimate sanctions for states and local leaders that will not desist from mass killings.

1) Issue early-warning assessments of impending or escalating conflicts; send fact-finding missions and widely publicize their results. Establish a U.N.-sponsored news bureau with instant access to satellite telecommunications to assure global distribution of news and reports (a CNN for peace). These policies are particularly appropriate to civil wars and repression in their early stages. Fact-finding reports issued after six months of deadly and widely publicized conflict, as in Bosnia now, are little more than empty gestures.

2) Call on governments and their opponents to seek accommodation, provide international mediation and arbitration, offer political and material incentives to encourage contenders to reach agreements. These actions are well-suited for the early and middle stages of civil wars.

3) Condemn putative violations of international law, issue formal warnings of impending sanctions, set deadlines for corrective action by the perpetrators. Such responses may help restrain states from gross human rights abuses. They are less likely to influence contenders in civil wars, especially those (like the Bosnian Serbs) whose moral and political ties to the international community are weak. More important, these symbolic acts help set the legal and political stage for more forceful international action.

4) Withdraw diplomatic recognition, apply sanctions, embargo military goods, energy supplies, and other commodities that prolong fighting. These actions can be applied to all armed contenders in civil wars,

and against state perpetrators of gross human rights violations. Of these options, embargoes are the most likely to be effective but are also the most difficult to enforce consistently. Implementing them is likely to require higher-order responses.

5) Use limited shows of force such as overflights by military aircraft, the stationing of warships offshore, and the introduction of moderately armed peacekeeping forces with sufficient firepower to defend themselves if attacked. These actions convey strong messages to belligerents and position international forces to respond more forcefully if warnings are not heeded.

The key is to use all means necessary to establish secure zones in which civilians can be supplied and protected.

6) Begin selective applications of force such as interdiction of military movements, air strikes on strategic targets, and the capture and disarming of combatants (individually or in small units). These actions require the international community to "take sides," which is politically feasible when one state or party is clearly the aggressor or perpetrator, as in Bosnia, but which may be impossible in other civil war situations. Selective use of force also poses risks of escalation that may worsen and prolong conflict.

7) Use collective military intervention with the objectives of separating forces, disarming contenders, protecting neutral areas, and establishing secure procedures and zones for delivering and distributing humanitarian aid. This is the most decisive and costly form of international response, and seems to be the only one that might remedy the current situations in Bosnia and Somalia. The key is to use all means necessary to establish secure and defensible zones in which civilians can be supplied and protected. This is an interim strategy that must be complemented by diplomatic and political initiatives aimed at bringing about a political settlement. There is no denying the high-risk nature of such undertakings, but the consequences of inaction will ultimately lead to far greater cost and injustice.

8) Establish interim, internationally sponsored trusteeships, rebuild civil administration and basic services, provide material and technical assistance, supervise free elections. This form of wholesale intervention is equivalent to Allied policies in occupied Germany after 1945 and current U.N.

actions in Cambodia, and is appropriate to Somalia's situation today. It requires a costly long-term commitment. Peacekeeping units must remain in place and be authorized to use force until authority can be transferred to elected local leadership.

Collective Responsibility

The international community has a wide range of options for responding to emerging communal conflicts and humanitarian crises. The choices are not restricted to passivity on the one hand and total war on the other. There are diverse and graduated responses that can be tailored to fit specific circumstances. Many of these responses have had demonstrably constructive effects in the recent past: belligerents have been separated by peacekeeping forces, abusive governments have been discouraged or prevented from continuing gross human rights abuses, humanitarian assistance has been delivered to victims of ongoing civil wars.

The central issue for timely and effective response is political will. The responses can be carried out under the direct auspices of the U.N. itself or under the authority of regional organizations. If international organizations default on their legal obligations to respond because of political paralysis, and if regional organizations are unable to act, then a strong argument can be made that individual states have the right to act unilaterally. But unilateral military intervention should not be used unless and until all collective remedies are exhausted. The intervenor must prove necessity and proportionality: military intervention has to be shown to be imperative and should remain the last resort.

The United Nations was not founded so that it could impede progress by doggedly clinging to standards of absolute sovereignty.

International law provides the justification for all such actions. The U.N. was not founded so that it could impede progress by doggedly clinging to standards of absolute sovereignty. Instead, it was founded to limit the arbitrary rule of "sovereigns" and to imbue the world's citizens with a sense of collective responsibility for one another and for the survival of the species. The official

History of the United Nations War Crimes Commission includes an appendix which is as compelling today as it was in 1948. After observing that "the idea of sovereignty paralyses the moral sense of humanity," the author points out that periods of growth in international law coincide with world upheavals. "The pressure of necessity stimulates the impact of natural law and of moral ideas and converts them into rules of law deliberately and overtly recognized by the consensus of civilized mankind." The humanitarian crises of the post-Cold War world point to the compelling necessity of translating international consensus into prompt and effective collective action.

— Barbara Harff

Barbara Harff is associate professor of political science at the U.S. Naval Academy and the author of *Genocide and Human Rights: International Legal and Political Issues* (Monograph Series in World Affairs, University of Denver, Vol. 20, Book 3, 1984) and a series of theoretical, empirical, and case studies of genocides and politicides since 1945. The examples of present and potential communal conflicts were contributed by Ted Robert Gurr of the University of Maryland, based on his study of *Minorities at Risk: A Global View of Ethnopolitical Conflict* (forthcoming in 1993 from the United States Institute of Peace Press). Rodney Tomlinson of the U.S. Naval Academy provided useful comments. Other sources: Hersch Lauterpacht, *International Law: Collected Papers*, Vol. II, edited by E. Lauterpacht (Cambridge: Cambridge University Press, 1975); Lord Wright, "War Crimes under International Law," Appendix VI to the *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: His Majesty's Stationery Office, 1948).

Tasseled Loafers

Why did the medical researcher switch from laboratory rats to lawyers?

Because it's too easy to get emotionally attached to rats.

Because lawyers breed faster.

Because there are some things that rats won't do.

You find lawyer-bashing in Scripture: "Woe unto you, lawyers!" You find it in Shakespeare: "The first thing we do, let's kill all the lawyers." You find it in a medieval anthem to the patron saint of lawyers:

Saint Ive was a Breton,

A lawyer but not a thief.

A miraculous thing to the people!

It is in Carl Sandburg's 1920 poem "The Lawyers Know Too Much": "Why is there always a secret singing/When a lawyer cashes in?/Why does a hearse horse snicker/Hauling a lawyer away?"

During the recent election campaign, lawyer-bashing emerged as an improbable yet potent campaign issue. Picking up on themes that the Vice President has sounded repeatedly over the past two years, George Bush, in his acceptance speech at the Republican national convention, asserted scornfully that his

Democratic opponent had received the backing of "practically every trial lawyer who ever wore a tasseled loafer."

Sharp lawyers are running wild. Doctors are afraid to practice medicine, and some moms and pops won't even coach Little League any more. We must sue each other less and care for each other more. I am fighting to reform our legal system to put an end to crazy lawsuits, and if that means climbing into the ring with the trial lawyers, well, let me just say, round one starts tonight.

The *Washington Post* subsequently reported that the attack on lawyers had struck a more responsive chord with voters than any other line in the President's speech. As we all know, America has too many lawsuits and too many lawyers.

But do we know this, really? As a long-time critic of lawyers' adversarial excesses, I now find myself in an unaccustomed role: explaining why America needs its lawyers. To see why, we must look closely at the arguments for the "too many lawyers" thesis.