
LEGITIMACY AND HUMANITARIAN INTERVENTION:

WHO SHOULD INTERVENE?

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ABSTRACT

I consider who should undertake humanitarian intervention. Should we prefer intervention by the UN, NATO, a regional or sub-regional organisation, a state, a group of states, or someone else? This thesis answers this question by, first, determining which qualities of interveners are morally significant and, second, assessing the relative importance of these qualities. The thesis then considers the more empirical question of whether (and to what extent) the current agents of humanitarian intervention actually possess these qualities, and therefore should intervene. Overall, I develop a particular conception of legitimacy for humanitarian intervention. I use this conception of legitimacy to assess not only the current interveners, but also the desirability of potential reforms to the mechanisms and agents of humanitarian intervention.

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ACRONYMS

ASEAN	Association of South East Asian Nations
AU	African Union
DR Congo	Democratic Republic of Congo
DUPI	Danish Institute of International Affairs
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
INTERFET	International Force for East Timor
NGO	Non-Governmental Organisation
OAU	Organization of African Unity
PMC	Private Military Company
<i>R2P</i>	<i>The Responsibility to Protect</i>
RPF	Rwandan Patriotic Front
RUF	Revolutionary United Front
SHIRBRIG	Stand-By High Readiness Brigade for United Nations Operations
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNPROFOR	United Nations Protection Force
UNSAS	United Nations Stand-By Arrangements System

CHAPTER 1: INTRODUCTION

The natural order conducive to human peace demands that the power to counsel and declare war belongs to those who hold the supreme authority (St. Augustine of Hippo in Aquinas 1972, 83).

Since the end of the bipolar, divisive international system of the Cold War, the United Nations and its Security Council have been reinvigorated, and this has been reflected in the number of its peace operations. Military force sponsored by the UN was used only 22 times from 1946 to 1990, but 56 times from 1990 to 2000 (Ku and Jacobson 2003, 17). There has been a similar proliferation in peace operations by non-UN actors, such as regional organisations (Bellamy and Williams 2005).

The events of September 11th, 2001 and the 2003 War on Iraq, however, risked undermining this new-found willingness to undertake humanitarian action. First, in the aftermath of the terrorist attacks on the U.S., a common – and perhaps well-founded – fear was that states would turn inwards, focusing their interests on national security and the ‘War on Terror’ rather than on humanitarian intervention to protect the human rights of individuals in far-off places. Second, the U.S. and U.K.-led operation in Iraq threatened to damage the credibility of humanitarian intervention irrevocably, since one of the justifications offered by George Bush and Tony Blair was essentially humanitarian: to end the violation of human rights by the Ba’athist regime and to bring freedom and democracy to Iraq. That this war had seemingly questionable motives, used force indiscriminately, involved the abuse of civilians, and has led, in effect, to civil war, could have created an unrelenting cynicism and rejection in the international community of any international action for apparently humanitarian purposes. The risk of world public

opinion and elites being against any future international action with a purported humanitarian justification was increased further by the degree of worldwide attention on – and condemnation of – the war.¹

Although these two events have led to a reluctance on the part of western states to participate in peacekeeping operations and perhaps to conduct controversial humanitarian interventions in the future, there have still been a number of humanitarian interventions and peacekeeping missions since (Macfarlane *et al* 2004).² Examples include: intervention in the Ivory Coast by France, the Economic Community of West African States (ECOWAS), and the UN; the ECOWAS and UN action in Liberia in 2003; the European Union (EU) and UN intervention in the Democratic Republic of Congo (DR Congo); the Australian-led peacekeeping mission in the Solomon Islands in 2003; African Union (AU) peacekeeping in Darfur and Burundi in 2003 and 2004 respectively; and the U.S. intervention in Haiti in 2004. In addition, there continue to be calls for humanitarian intervention to be undertaken in a number of other places where the violation of basic human rights currently goes unchecked. More generally, despite recent opposition to the war in Iraq, there has been a growing consensus in the international community that humanitarian intervention can be morally acceptable on occasion. Indeed, it is much harder to find someone who completely supports non-intervention nowadays. The lack of action in Rwanda (or, more accurately, lack of effective action) and the subsequent genocide had a massive impact on the theory and practice of

¹These two events led a leading commentator to conclude that “the sun of humanitarian intervention has set for now” (Weiss 2004, 149).

²Indeed, Gray suggests that there has been a “surge in peacekeeping comparable to that in the early 1990s” (2005, 208).

intervention. Even those who are deeply suspicious of humanitarian intervention and deeply sceptical about its prospects of success will probably still admit that it might, in theory, be justified when a humanitarian crisis is sufficiently serious.

Underlying this apparently increased acceptance of humanitarian intervention has been a gradual change in the concept of sovereignty. As traditionally conceived, the principle of sovereignty emphasises a state's freedom from external interference, so that it can pursue whatever policies it likes within its own boundaries. Although this notion of sovereignty as *authority* provided a legal and normative barrier that weaker states could use to fend off the interference of larger states, it presented the leaders of certain states with what was essentially a free hand to violate their citizens' human rights with impunity. Humanitarian intervention, from this perspective, is unjustifiable. Indeed, a key aspect of the traditional notion of sovereignty is the non-intervention principle. This principle is encapsulated by Article 2 (4) of the UN Charter, which states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

This notion of sovereignty as authority, however, is no longer so sacrosanct (Chopra and Weiss 1992). As the notion of universal human rights has grown in standing in the international community, the concept of sovereignty has been gradually changing to one of sovereignty as *responsibility*, the responsibility to uphold citizens' basic human rights. A key development in this context has been the report by the International Commission on Intervention and State Sovereignty's (ICISS) 2001, *The Responsibility to Protect* (this report is generally referred to as '*R2P*'). Commissioned by the Canadian government in

response to a request from the UN Secretary-General, Kofi Annan, and led by former Australian foreign affairs minister, Gareth Evans, *R2P* argues that if a state does not protect the human rights of its citizens, sovereignty is temporarily suspended, and there is an international responsibility to respond. Accordingly, there is a universal responsibility to undertake humanitarian intervention to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. At the UN World Summit in 2005, the heads of the member states accepted that the international community has a universal responsibility to protect should national authorities be unwilling or unable to protect their populations (UN 2005, 30).³

Yet it remains unclear *who* in the international community has this responsibility. The problem, as Thomas Weiss notes, is that the term international community is vague and “without a policy edge. Using it allows analysts to avoid pointing the finger at which specific entities are responsible when the so-called international community fails to respond or makes a mess of things” (2001, 424). We need then to be more specific: who exactly in the international community should intervene? Should it be the UN, NATO, a regional organisation (such as the African Union), a state or group of states (perhaps with the authorisation of the UN Security Council), or someone else? It is vital that we make this decision if we are to discharge effectively the responsibility to protect. Otherwise, as Alex Bellamy asserts, “there is a real danger that appeals to a responsibility to protect will evaporate amid disputes about where that responsibility lies” (2005, 33).

³See Bellamy (2006a) for a detailed account of how this agreement was reached (and watered down from the original *R2P* concept, away from an obligation to intervene and from action undertaken without UN Security Council authorisation).

But, as things stand, there is not an *obviously* legitimate institution – or, as Bernard Williams (1995, 1) puts it, a *salient* institution – to undertake humanitarian intervention. In (most) domestic societies, the question of who should stop violations of basic human rights (such as murder and rape) tends not to arise because an effective and credible police service exists to tackle these crimes.⁴ But there is no direct analogy to the domestic police in the international system. To see this, consider the following leading candidates for humanitarian intervention, none of which stand out as an obvious choice to intervene given their track records. I will offer only a brief sketch of the current problematic situation here; the problems highlighted will be considered more extensively later in the thesis.

The UN might appear, at first glance, to be the most appropriate agent. Its jurisdiction, as outlined in the UN Charter, is universal and includes matters of peace and security. It is also widely accepted as being able to undertake or to authorise humanitarian intervention legally. Yet two events have cast significant doubts on its ability and credibility as a humanitarian intervener. The first was its failure to act effectively in response to the Rwandan genocide, despite there being a UN force (UNAMIR) of 2,500 peacekeepers in Rwanda to monitor the Arusha peace accords. In February 1994, UNAMIR's force commander, Major-General Roméo Dallaire, obtained death lists of the names of Tutsi and moderate Hutu targets. It was clear that genocide was on the cards, but Dallaire was denied his request for permission to capture and destroy arms caches. Instead, in the middle of the crisis, the size of UNAMIR was decreased, leaving only a token force. This sent a clear message that there was little intention to stand in the way of

⁴Williams (1995, 1) makes a similar point.

genocide (ICISS 2001b, 98). The second infamous crisis on the UN watch was only one year later. This was in Srebrenica in July 1995, which was at the time a UN 'safe haven'. As such, it was supposed to enjoy the protection of UNPROFOR, the UN force in Bosnia. UN member states were, however, unwilling to provide the ground troops necessary for effective protection. As a result, Bosnian Serbs overran Srebrenica and massacred several thousand Bosnian Muslims. Since then, Srebrenica has become synonymous with the gap between Security Council rhetoric and effective action (ICISS 2001b, 93).⁵ There are, then, serious questions about the UN's capacity as an agent of humanitarian intervention. As these two cases demonstrate, its member states rarely give it the resources to intervene effectively and, as a result, it has not been able to muster the force levels required for missions that go much beyond peacekeeping and transitional administration.

In light of these difficulties when the UN acts itself, one alternative is an international mandate by the UN Security Council given to a state, a coalition of the willing, or regional organisation to undertake humanitarian intervention. *Prima facie*, this appears to be the ideal solution to the problem of who should intervene. It seems to avoid the excesses of unilateralism, overcomes the problems with the UN's lack of capability to intervene, and still maintains a sense of internationalism. Indeed, the 1999 UN Security Council-authorized, Australian-led intervention in East Timor appeared to bear out the optimism about this mandate option. Australia provided the necessary troops for successful intervention, suffered little by way of military casualties, received a stamp of international authorisation, and achieved a successful resolution to the crisis.

⁵Overall, as many as 230,000 people died in Bosnia during UNPROFOR's watch (ICISS 2001b, 93).

Yet the UN-authorisation option is perhaps not as good a solution as it first appears. The Security Council's representativeness and functioning (especially the veto powers of the permanent members) are morally problematic, and this means that it is far from obvious that interveners authorised by the Security Council are legitimate. Furthermore, the Security Council often fails to authorise humanitarian intervention when it is desperately needed. The most infamous case of this was its decision not to authorise NATO's 1999 intervention in Kosovo. Both the history of the Milosevic regime during the Bosnian war and its behaviour in Kosovo in late 1998 and early 1999 indicated that another state-sponsored ethnic cleansing was imminent. NATO member states sought Security Council authorisation to undertake what was essentially preventative action, but the mandate was not forthcoming, largely because of Russia's close ties to the Milosevic regime.

Despite the lack of Security Council authorisation, NATO intervention in Kosovo was largely successful in preventing a humanitarian crisis on the scale of Bosnia. There was, however, significant controversy surrounding this unauthorised action. According to some, NATO action significantly risked undermining international law and order, and in particular, the general prohibition on the use of force. Moreover, the means used by NATO, which included cluster bombs and excluded ground troops, seemed to be highly objectionable. Therefore, humanitarian intervention by collective security organisations such as NATO and, more generally, unauthorised intervention (action without the authorisation of the UN Security Council), is also not an obvious solution to the problem of who should intervene.

Intervention by regional organisations has its difficulties as well. Take, for instance, ECOWAS intervention in Liberia in 1990. Although this Nigerian-led operation (ECOMOG) had some success in achieving peace around the capital city and protecting civilians within its control, it was not able to establish security elsewhere (ICISS 2001b, 83; Nowrojee 2004, 5). The Nigerian troops committed abuses against civilians and supplied arms to some of the factions, thereby contributing to the proliferation of the conflict (Nowrojee 2004, 5).⁶

It is a similar story for humanitarian intervention by a state or coalition of states. The French-led operation (Operation Unicorn) in the Ivory Coast, for instance, has struggled to sustain neutrality. The force first incurred the wrath of the rebels for blocking their advances on Abidjan, but more recently pro-government militias have attacked French interests and expatriates, and President Laurent Gbagbo's supporters have claimed that Operation Unicorn has been siding with the rebels. The French have been left with essentially no option but to muddle through. They cannot pull out, since exiting would mean that the Ivory Coast plunges even further into civil war, and they cannot overthrow Gbagbo, for fear of an international outcry.

Therefore, there are a number of potential agents of humanitarian intervention, but there is no stand out candidate. Which of these agents should intervene is far from being a foregone conclusion. The issue is instead surrounded in controversy, complexity, and ambiguity. The UN Secretary-General, Kofi Annan, captures the dilemma we face:

⁶In addition, the legal basis of this intervention was dubious: there was no Security Council authorisation (although it did receive retrospective authorisation) and the ECOWAS treaty did not permit it to deal with internal conflicts (ICISS 2001b, 81).

To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask – not in the context of Kosovo – but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?

To those for whom the Kosovo action heralded a new era when States and groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances? (1999, 1).

Who then should intervene? This thesis aims to provide a detailed analysis of this question. I will consider which agent of intervention should intervene if, and when, there is a humanitarian crisis in the future that requires humanitarian intervention. Should we prefer intervention by the UN, NATO, a regional or sub-regional organisation, a state, a group of states, or someone else?

To make this choice, we need to know which qualities of interveners are morally important. This thesis will therefore determine who should intervene by, firstly, evaluating which qualities of interveners are morally significant. I do this by assessing the relevant factors when deciding who should intervene. This normative analysis forms the bulk of this thesis. Each core chapter examines and evaluates the importance of various potential factors. Some of the issues I consider are as follows. Is it important that an intervener has a humanitarian motive? How much moral weight should be assigned to the importance of an intervener's legal status according to the international law on humanitarian intervention? How important is it that an intervener will be effective and what does this mean in practice? Can an intervener be legitimate if its intervention harms

its own citizens' well-being? How important are the effects of an intervener's action on international peace and security? Is it important that an intervener uses only humanitarian means even if these undermine its effectiveness? Should an intervener be welcomed by those it is trying to save? Must an intervener have the support of its home population before undertaking humanitarian intervention?

Having determined which qualities are morally relevant, this thesis will, secondly, consider the more empirical question of whether (and to what extent) the current agents of humanitarian intervention actually possess these qualities, and therefore should intervene. How effective can we expect UN action to be in the future? Is NATO likely to use humanitarian means? Do regional organisations, such as the AU, have the capacity to undertake representative humanitarian intervention? Are Western states likely to have the support of those suffering the humanitarian crisis?

Overall, this thesis aims to develop a particular normative conception of legitimacy that answers the question of who should intervene. Note here that I shall use the term 'legitimate' to encompass all of the qualities that are morally relevant for identifying an actor as the appropriate intervener. Thus, a 'fully legitimate' actor would possess all of these qualities and the 'most legitimate' actor would possess them in greater measure than any other. With the conception of legitimacy detailed, we will be able to assess whether a particular intervener, such as NATO, is legitimate. In addition, this conception of legitimacy will help to evaluate potential reforms to the mechanisms and agents of humanitarian intervention. Accordingly, this thesis will consider not simply who, out of the current agents of intervention, should undertake humanitarian intervention, it will go on to delineate what sort of agent should *ideally* undertake

humanitarian intervention – an intervener that is fully legitimate according to the conception of legitimacy outlined. Whilst this agent might not be viable in the immediate future, it will help to see what we should work towards.

Throughout the thesis, I do not presuppose that, when a humanitarian crisis arises, there will be a large pool of interveners ready and willing to undertake humanitarian intervention from which we can select. For varying reasons, there is often an unwillingness and a lack of commitment to undertake humanitarian intervention. My aim is to indicate whose intervention we should prefer when a humanitarian crisis arises. I will also indicate who would be the next best choices, if the first choice decides not to intervene. Towards the end of the thesis, I will consider ways of achieving these goals, that is, of improving the willingness and commitment of potential interveners, so that in the future we will have more willing – and better – interveners to choose from.

The importance of the topic

Some question the significance of legitimacy for humanitarian intervention. Darrel Moellendorf (2002, 121), for instance, suggests that legitimate authority is only ‘plausibly good’ for intervention. In his words: “The main reason in support of this condition is the good of international order. A world in which interventions occurred only if authorized would be more orderly than one in which unauthorized, but otherwise just, interventions occurred” (Moellendorf 2002, 121). It is necessary to refute this claim since it challenges the *raison d’être* of this thesis. There are two points to make in response.

First, Moellendorf's criticism of what he calls 'legitimate authority' does not seem to be targeted at the value of having a legitimate intervener, but instead at the value of an intervener receiving UN Security Council (or, more generally, international) authorisation. It is important to note here that 'legality' does not necessarily imply 'legitimacy', as used in this thesis.⁷ It follows that, although the UN Security Council may have the *legal* authority to authorise humanitarian intervention, the interveners it authorises may not necessarily be *legitimate*. Moellendorf's rejection of the importance of legitimate authority is best understood as a rejection of the importance of the former (the importance of legal authority for humanitarian intervention) rather than the latter (the importance of moral legitimacy for humanitarian intervention).

Second, once we accept that legitimate interveners are not necessarily only those that have UN Security Council authorisation, it becomes clear that the legitimacy of the intervening agent is highly significant. To start with, it has a large impact on the justice of an intervention. In this context, consider Allen Buchanan's (2000) assertion of the 'primacy of legitimacy'.⁸ This does not mean that considerations of legitimacy have priority over considerations of justice; rather, "it is simply a denial of the claim that what is just can be determined independent of considerations of legitimacy" (Buchanan 2000, 89 n2).

More broadly, there are a number of reasons, both political and moral, why the topic of this thesis – the legitimacy of the agents of humanitarian intervention – matters. As already indicated, there is no obviously legitimate agent for humanitarian intervention, yet we need to determine who should intervene in order to be able to discharge

⁷See Chapters 2 and 3 for further discussion and analysis of the link between legality and legitimacy.

⁸I discuss Buchanan's account of legitimacy in detail in the next chapter.

effectively the responsibility to protect. Moreover, the moral stakes could not be much higher. Perhaps most significantly, which particular agent undertakes humanitarian intervention has substantial implications for (1) those suffering the humanitarian crisis. Thousands of peoples' lives, security, and future depend on which particular agent intervenes. Yet it is not just those subject to the intervention who are affected by which particular agent intervenes. This may seem quite an obvious point, but who intervenes also has significant implications for (2) those individuals who collectively form the intervener. These individuals may face increased taxation, decreased spending on public services, military casualties, but, at the same time, may enjoy an improved international standing. Moreover, there are (3) significant implications for the international system as a whole as well. On the one hand, a legitimate intervener might improve the standing of the UN and promote the rule of international law. Conversely, an illegitimate intervener might undermine the credibility of the UN, including its status as the locus of decision-making on the use of force, weaken international law and order, and, in particular, state sovereignty and the general prohibition on the use of force. It may also destabilise certain regions and areas, such as by creating refugee flows, and perhaps damage the standing and credibility of the doctrine of humanitarian intervention so that there will be fewer humanitarian interventions in the future. Thus, it is clear that who intervenes is more than a side issue; its political and moral implications are substantial and merit the scrutiny that this thesis provides.

This thesis's focus on the agents of humanitarian intervention distinguishes it from other discussions of humanitarian intervention, which tend to concentrate on whether, when, or why a particular action (humanitarian intervention) is justifiable. For

the purposes of this thesis, I largely assume that humanitarian intervention is justified in certain circumstances, that is, when a serious humanitarian crisis arises. My concern instead is *who* should intervene in these circumstances. More generally, this thesis has an *agent*-based framework instead of concentrating on the *act* of intervention. And whilst there is some overlap between the two questions on certain issues,⁹ my approach concentrates much more on the institutional questions – the qualities needed for an intervener to be legitimate – than most other accounts, which tend not to address directly these questions and which instead devote their energy to the question of just cause.

Indeed, this topic has been overlooked to a certain extent in the literature. Although there is an extensive literature on what constitutes legitimacy within the state (e.g. Christiano 1996; 2004b; Durning 2003b; Green 1988; Raz 1986; 1994; Regan 1989; Simmons 1979), this has not yet been extensively applied to humanitarian intervention. Most discussions of humanitarian intervention concentrate mainly on the legality of the intervention or, as noted, on when, whether, or why humanitarian intervention is justifiable (e.g. Chesterman 2001; Farer 2005a; Heinze 2004; Ramsbotham and Woodhouse 1996; Tesón 1997; Wheeler 2000). And of those who do consider who should intervene, most tend to frame this issue in terms of either unilateral or multilateral intervention, which can be too simplistic and state centric. Instead, I take a broader perspective that looks at the deeper underlying issues of this debate and considers in detail the sorts of qualities we should look for in interveners. Of course, there is also

⁹For instance, in Chapters 4 and 5 I will argue that whoever intervenes must be likely to be effective and ICISS, who in *R2P* presents criteria on when humanitarian intervention is justified, argues that humanitarian intervention must be undertaken only when there is a “reasonable chance of success” (2001a, XII).

some literature that does take this sort of broader perspective (e.g. ICISS 2001b; Reisman and McDougal 1973; Tan 2006; Walzer 2002b), but there is not a detailed and systematic treatment of the agent-based issue of who should intervene and the concomitant issue of legitimacy for humanitarian intervention.

In addition, in the course of this thesis I present my own answers to a number of issues and develop a particular normative (and complete) conception of legitimacy for humanitarian intervention which has not yet been outlined in the relevant literature.

Moreover, a number of the works on humanitarian intervention have a strong focus on the case studies. Their focus is largely on providing descriptive accounts of the previous incidents of humanitarian intervention, offering normative and conceptual arguments only intermittently (primarily at the start and at the end). I will not replicate that model here; the literature on the case studies is already extensive.¹⁰ Instead, I will focus on various approaches to the legitimacy of humanitarian intervention and the related conceptual and normative arguments, making use of examples of previous instances of humanitarian intervention to support my arguments and to repudiate others where necessary.

That said, it might help focus the concerns of this thesis if I list here some of the previous incidents of humanitarian intervention from the past 35 years. These cases are uncontroversially instances of humanitarian intervention: they are both commonly

¹⁰The most informative accounts of the previous instances of humanitarian intervention are Chesterman (2001), Franck (2002), ICISS (2001b), Murphy (1996), Weiss (2005b), and Wheeler (2000). ICISS (2001b) has a particularly detailed list of sources for each case of humanitarian intervention.

regarded in the literature as instances of humanitarian intervention and they fall under the definition of humanitarian intervention provided in Chapter 2.¹¹

- India's intervention in East Pakistan in 1971 in response to severe Pakistani oppression of Bengalis.
- Tanzania's intervention in Uganda in 1979 to tackle the murderous regime of Idi Amin.
- France's 1979 intervention in the Central African Republic that engineered a bloodless coup against the self-proclaimed and brutal Emperor Bokassa.
- ECOWAS intervention in Liberia in 1990 to restore law and order.
- French, British, and American intervention in northern Iraq in 1991 to create safe havens and to implement no-fly zones to protect thousands of endangered Kurds.
- The U.S.-led intervention in Somalia in 1992 to open up humanitarian corridors.
- French intervention in Rwanda in mid-1994 in the aftermath of genocide.
- U.S.-led intervention in Haiti in 1994 to restore the democratically-elected Jean-Bertrand Aristide.
- NATO's bombing of Bosnian-Serb positions in 1995 to end the civil war in the former Yugoslavia.

¹¹The understanding of these previous incidents of humanitarian intervention varies from author to author. Most, however, would agree that these interventions are cases of humanitarian intervention. Other possible cases are more controversial. Three that do not make it on this list are Vietnamese intervention in Cambodia in 1978, U.S.-led action in Afghanistan in 2001, and U.S. and U.K.-led action in Iraq in 2003. These actions did not have a humanitarian intention and so are not cases of 'humanitarian intervention'. See Chapter 2 for further analysis.

- ECOWAS intervention in Sierra Leone in 1997 to restore peace and stability after much fighting.
- NATO intervention in Kosovo in 1999 to protect the Kosovan Albanians from ethnic cleansing.
- Australian-led intervention in East Timor in 1999 after Indonesian brutality.
- UN action (including an EU force) in eastern parts of the Democratic Republic of Congo since 1999.
- U.K. intervention in Sierra Leone in 2000 to strengthen the UN's faltering mission, UNAMIL.
- ECOWAS, the UN, and the U.S. intervention in Liberia in 2003 after the renewal of fighting.
- French intervention in the Ivory Coast in 2003.

The road ahead

Having listed some previous cases of humanitarian intervention, let me now outline how this thesis will proceed. The next chapter defines the terms 'legitimacy' and 'humanitarian intervention'.¹² Since both terms can be employed in a number of different ways, it is essential for the meaning and clarity of what follows to indicate how I use

¹²Note that, despite having listed some cases of humanitarian intervention above, it is still necessary in the next chapter to consider in detail how we should define 'humanitarian intervention'. Also note that, given that these cases are commonly regarded as instances of humanitarian intervention in the literature, they will have some impact on the definition of the term presented in the next chapter.

these terms. In addition, the definition of humanitarian intervention presented identifies four defining qualities that an agent must have in order to be engaged in ‘humanitarian intervention’. These conditions do not prejudice an intervener’s legitimacy, but they do set the boundaries in which the normative debate about who should intervene must take place. To that extent, Chapter 2 starts to answer the question of who should intervene.

But it is in Chapters 3 to 6 that the real normative analysis occurs, i.e., the discussion of which factors are morally relevant when deciding who should intervene. Chapter 3 analyses various readings of the international law on humanitarian intervention and then assesses the moral significance of an intervener’s legal status. Here I consider – and largely reject – a number of possible arguments for the importance of an intervener’s legal status, including the claim that illegal humanitarian intervention is abusive and undermines international order. This chapter also examines – and questions – the intrinsic and instrumental importance of an intervener’s motives.

Chapters 4 and 5 consider the importance of what I argue is a much more significant factor – an intervener’s effectiveness. Chapter 4 outlines and defends what I call the ‘Moderate Consequentialist Approach’. This holds that an intervener’s effectiveness is the primary determinant of its legitimacy. More specifically, I distinguish between three types of effectiveness – internal effectiveness, global external effectiveness, and local external effectiveness – and go on to argue that effectiveness is a necessary condition of an intervener’s legitimacy. To give this argument for an intervener’s effectiveness a more solid philosophical foundation, I apply Joseph Raz’s account of legitimate authority to humanitarian intervention, which, like the Moderate

Consequentialist Approach, takes consequences to be the primary determinant of legitimacy.

Having defended the Moderate Consequentialist Approach in Chapter 4, Chapter 5 considers two possible alternatives to this approach. The first, the ‘Non-Consequentialist Approach’, holds that an intervener’s effectiveness is of little or no moral concern. The second approach considered is one that gives exclusive weight to an intervener’s effectiveness – which I call the ‘Extreme Consequentialist Approach’. To show that this approach is unpersuasive, I outline the importance of an intervener’s following principles of *jus in bello* (principles of just conduct in war). Although the importance of fidelity to these principles can occasionally be outweighed, they still need to be taken into account in a complete conception of legitimacy for humanitarian intervention. This, I argue, is one of the key attractions of the Moderate Consequentialist Approach.

Chapter 6 argues that, in addition to fidelity to the principles of *jus in bello*, there are two further non-consequentialist factors that should affect who intervenes – what I call an intervener’s ‘internal representativeness’ and its ‘local external representativeness’. The importance of these factors, I claim, further demonstrates the inadequacy of the Extreme Consequentialist Approach and, as a corollary, further establishes the persuasiveness of the Moderate Consequentialist Approach.

Chapter 7 begins by bringing together the findings of the previous five chapters to provide a complete conception of legitimacy for humanitarian intervention. This conception of legitimacy, with its emphasis on effectiveness, provides the framework for answering the question of who should intervene. Chapter 7 then goes on to use this

conception of legitimacy to consider, who, out of the currently existing agents of humanitarian intervention (such as NATO, the UN, states, and regional organisations), is the most legitimate and should therefore actually undertake humanitarian intervention. I conclude that, although some agents of intervention possess an *adequate degree of* legitimacy, no current agent is *fully* legitimate according to the conception of legitimacy identified.

For this reason, Chapter 8 considers some proposals for improving the mechanisms and agents of humanitarian intervention so that we can legitimately tackle egregious violations of human rights on a much more frequent basis. More specifically, I evaluate four sets of proposals, before presenting two suggestions for reform, one long-term, one short-term. The thesis concludes by considering how we can realise these reforms.

CHAPTER 2: LEGITIMACY AND HUMANITARIAN INTERVENTION DEFINED

This chapter clarifies the key terms used in the course of this thesis. It is divided into two sections. The first outlines how I will use the term ‘legitimacy’ throughout the thesis; the second examines what is meant by ‘humanitarian intervention’.

The need for such analysis is clear. To start with, the concept of ‘legitimacy’ can be used in a number of different ways, from implying mere legality, to identifying an institution that has the support of its subjects, to denoting morally justified power. It is therefore necessary to outline how this concept will be used. In addition, clarifying how I will use the term ‘legitimacy’ is essential for the understanding of the normative arguments that are made in the later chapters. In particular, the analysis of the concept of legitimacy in this chapter will (1) make clear what exactly it is that we are concerned with when we consider who should intervene, (2) clarify how the various factors in the legitimacy of an intervener hang together, (3) make explicit the relevance of *ex ante* and *ex post* questions of legitimacy in this context, and (4) identify the various types of legitimacy that will be encountered in this thesis.

The term ‘humanitarian intervention’ can also be employed in a number of different ways. For instance, it may be defined broadly to include humanitarian assistance and peacekeeping, or more narrowly to exclude interveners without humanitarian motives, or, alternatively, to include a number of normative criteria so that the rectitude of humanitarian intervention is presumed in the definition. With each subtle and not-so-subtle variation in definition, the scope for the ensuing normative arguments alters. If, for

instance, one includes humanitarian motives in the definition of humanitarian intervention, then one cannot criticise humanitarian interveners that lack a humanitarian motive, since such interveners would not be engaged in 'humanitarian intervention'. It is important, then, also to present a precise definition of what I mean by 'humanitarian intervention'. This definition, first, will set the normative boundaries for what follows. Some issues and arguments, such as those concerned with peacekeeping and non-humanitarian intervention, will be placed outside the remit of this thesis. Second, the definition will identify the defining qualities that an agent must have to be a humanitarian intervener. Therefore, some potential interveners will be ruled out, i.e., (i) those agents not engaged in military or forcible action, (ii) those not responding to a situation where there is grievous suffering or loss of life, (iii) domestic agents, and (iv) those without a humanitarian intention.

I. LEGITIMACY FOR HUMANITARIAN INTERVENTION INTRODUCED

In this first section, I will outline how I will use the term 'legitimacy' in this thesis. I should make clear here that my discussion in this section will relate to legitimacy as a *concept* rather than a *conception*. The difference is that the former (a concept) is normatively neutral, more general, and includes many conceptions, whereas the latter (a conception) is a more specific, normative notion, incorporated with other conceptions within the broader concept.¹³ For instance, John Rawls (1999a, 9) defines the concept of justice as the proper balance between competing claims and a conception of justice as a

¹³The distinction between a concept and a conception is most famously made by Rawls (1999a, 8-9).

set of related principles for identifying relevant considerations which determine this balance. In this chapter, I will be concerned with giving an account of how I use the *concept* of ‘legitimacy’ in general rather than with offering any specific normative argument that defends my particular *conception* of legitimacy. For most of the remainder of this thesis, I will be concerned with analysing different normative arguments and presenting my own particular *conception* of legitimacy.

My use of the concept of legitimacy draws on Allen Buchanan’s account of political legitimacy. This account is normative in that it is concerned with the morality of political power, and, as such, differs from sociological legitimacy. To possess sociological legitimacy (or ‘perceived legitimacy’), an agent needs those who are under its jurisdiction to *believe* that it is legitimate, that is, to believe that its use of power is morally justifiable. As such, sociological legitimacy is explanatory: those utilising this concept (most typically political scientists) examine whether a particular relationship is legitimate according to the beliefs of those subject to it and, if so, why. Normative legitimacy, on the other hand, is prescriptive (and falls within the province of moral philosophy); it does not depend on the beliefs of those subject to power, but is instead determined by whether an agent actually *is* legitimate. This depends on moral considerations, such as consent, procedure, legality, consequences, etc.¹⁴ As Daniel Bodansky notes, there is “a conceptual difference between saying, ‘the Security Council *is* legitimate’, and ‘the Security Council is *accepted as* (or *perceived as*) legitimate” (1999, 602).

¹⁴The distinction between normative and sociological legitimacy blurs if one holds that individuals’ beliefs in legitimacy are morally relevant.

It is also important to distinguish between legitimacy and legality. Sometimes ‘legitimate humanitarian intervention’ is used as a synonym for legal humanitarian intervention. This is especially prevalent amongst international lawyers. There is nothing mistaken in this use of legitimacy when it is used purely terminologically. It is simply one use of the term legitimacy, my use of the term legitimacy to mean morally justified power is another. However, those that use legitimacy in a purely legal sense on occasion drift between using it to imply legality and using it to imply morally justified power. The implicit assumption made then is that which is legal is morally justifiable and that which is illegal is not. By contrast, my use of the term legitimacy does not imply legality (I use ‘authority’ to denote legality). Whether the law is in fact legitimate – meaning morally justifiable – needs to be subject to argument.¹⁵

The implicit assumption made about the moral justifiability of that which is legal relates to another assumption often made about legitimacy. Legitimacy is sometimes treated as equivalent to procedural justice. That is, it is thought to depend, for example, on whether an institution follows procedures that are democratic, have been consented to, and are legal. Legitimacy is then contrasted with substantive justice, which depends, for example, on whether an institution has good laws and is effective (e.g. McDougall 2004; The Stanley Foundation 2004; Kurth 2006). But this purely procedural account of legitimacy rules out a consequentialist understanding of legitimacy, such as that presented by Raz (1986), which, I shall argue in Chapters 4 and 5, is largely persuasive. It is better then to treat legitimacy as involving issues to do with both procedural and substantive justice. The consequentialist conception of legitimacy can then be

¹⁵I consider this issue in detail in the next chapter.

incorporated into our general understanding of legitimacy.

For my account of the concept of legitimacy, I largely rely on the clear, simple, and judicious framework presented by Buchanan (2002; 2004). I should say here that, although I use largely the same *concept* of legitimacy as Buchanan, the *conception* of legitimacy I present later in the thesis differs from his in at least two ways: first, it addresses many issues on which he is silent; and second, it directly conflicts with his own particular normative conception of legitimacy for humanitarian intervention. In other words, I invoke Buchanan here for conceptual, rather than normative, purposes.

Buchanan (2002, 693-694) argues that, in general, any theory of the morality of political power must answer two questions: (1) ‘*the agent-justifiability question*’ – under what conditions is it morally justifiable for some agent or agents to wield political power and (2) ‘*the reasons-for-compliance question*’ – under what conditions do those over whom political power is exercised have sufficient reasons to comply with its demands. Question (1) focuses on the morality of the *agents* wielding power, asking for an account of the qualities they need to be justified in exercising power (Buchanan 2004, 290). Question (2) focuses on the *objects* of political power, asking what sorts of conditions, if any, provide sufficient reason for their compliance with this political power (Buchanan 2004, 290-291).¹⁶

Question (1) concerns legitimacy. For Buchanan, legitimacy is “about the conditions that must be satisfied if it is to be morally justifiable to use force to secure compliance with principles of justice” (2000, 73). It follows that “[w]hether an entity is

¹⁶Although they ask different things, the two questions are obviously linked. The conditions that satisfy the agent-justifiability question are also likely to satisfy the reasons-for-compliance question.

politically legitimate depends on only whether the agents attempting to wield political power in it are morally justified” (Buchanan 2004, 239). So, legitimacy pertains to agents – it is an ‘agent-justifiability question’. Rather than the focus being on whether a particular *action* is justified, the concern is with the justifiability of the *agent* undertaking the act. Hence, to answer question (1), we need to know the qualities of an agent that would mean it could justifiably wield political power.¹⁷ When we apply this understanding of legitimacy to humanitarian intervention, the focus is on the agent undertaking the humanitarian intervention – the intervener. The intervener requires certain qualities to be legitimate. These features make it an appropriate agent to wield political power (i.e. to undertake humanitarian intervention). A central aim of this thesis is to determine what these features are. That is, I will answer the question of who should intervene by assessing the qualities needed for an intervener to be legitimate and then examining which interveners, if any, have these qualities.

Question (1) is where our main interest lies, but to gain a better understanding of the morality of political power in the case of humanitarian intervention, it is worth also addressing question (2). In response to question (2), I suggest that each and every individual has a natural duty to do what he or she can to prevent, halt, and decrease substantial human suffering, such as in cases of genocide and large-scale violations of human rights. The existence of such a duty is highly intuitive. To see this, consider the alternative where there is no such duty and inaction in the face of extreme human

¹⁷This treatment of legitimacy as morally justified power is quite prevalent. However, some, such as Simmons (1999), take legitimacy to be much stronger than this, for instance by implying moral obligation owed to the institution. Buchanan’s (and my) use of the term ‘legitimacy’ is much closer to Simmons’ account of ‘justification’.

suffering is morally acceptable, even if we can prevent it at little or no cost to ourselves. This duty to prevent human suffering is not dependent on high levels of interdependence; instead, it is universal, generated from a fundamental moral premise that human suffering ought to be tackled.¹⁸ To be sure, however, this duty to tackle human suffering is not always an overriding duty; sometimes there are countervailing moral reasons against fulfilling it (for example that its fulfilment would cause more suffering and would undermine valuable personal relationships, such as family relationships).¹⁹

What does this general duty to tackle human suffering mean in practice? First, for those agents that can do so legitimately, the more general duty to tackle human suffering translates into a more specific duty (and a right) to undertake humanitarian intervention. Second, for those agents that cannot intervene legitimately (perhaps because they would not be effective, or lack the resources to intervene, or would not be able to intervene without excessive cost to themselves), there is no duty to undertake humanitarian intervention. (Otherwise, such agents would have a duty to undertake what would be, in effect, illegitimate humanitarian intervention, which seems odd.) Instead, the more general duty to prevent human suffering translates into other, more specific, duties. These might include duties: (a) to work towards becoming legitimate interveners (perhaps by

¹⁸As such, I largely endorse interactionalism over institutionalism (see Pogge 1992). An institutional approach “maintains that principles of justice apply to ‘institutions’” whereas an interactional approach “maintains that principles of justice apply even in the absence of a common institutional background” (Caney 2005, 105-106). For a more detailed defence of how the duty to intervene (which is a corollary of the duty to prevent suffering) can be generated from fundamental moral premises, see Bagnoli (2006).

¹⁹In Chapter 5, I suggest a subtle amendment to the duty to prevent human suffering to make it less demanding for those agents that have already done their fair share.

improving capability); (b) to prevent human suffering in ways that can be done legitimately (such as by using diplomatic pressure and giving aid); and (c) to assist (and not to resist) those that are attempting to tackle human suffering. This last duty means that those in the political community that is subject to the intervener's political power have sufficient reason to comply with its demands. It therefore provides an answer to question (2), '*the reasons-for-compliance question*'. To give an example, a bystander in a target state which is in the midst of genocide has sufficient reason to comply with (and not to resist) an intervener that is attempting to stop the genocide. This is because complying with the intervener would most likely assist in reducing suffering. By complying, the bystander acts on her duty to do what she can to prevent, halt, and decrease substantial human suffering.

Scalar and forward looking

I need to make two additional clarifications about my use of legitimacy. First, I take legitimacy to be scalar, that is, a matter of degree. We can distinguish between an intervener possessing *full* legitimacy and an intervener possessing an *adequate degree of* legitimacy. An intervener possessing an adequate degree of legitimacy is morally acceptable. However, it is desirable to have an intervener with a *more than adequate degree of* legitimacy and, in particular, an intervener that is *fully* legitimate, for the simple reason that such an intervener's use of power would be more morally justified.

A number of different qualities contribute to the legitimacy of an intervener. To be *fully* legitimate, an intervener needs to have all the relevant legitimating qualities. But

an intervener does not have to have all of these qualities in order to have an *adequate degree of* legitimacy. It may, for instance, be effective, representative, and legal, but not use humanitarian means, and yet still be legitimate overall. An intervener can also have varying degrees of the qualities, possessing high levels of one quality but less of another. For example, it may be extremely likely to be globally externally effective, closely follow principles of *jus in bello*, and be highly internally representative, but make only a small effort to be locally externally representative. Any combination of qualities is acceptable, as long as they each contribute enough legitimacy so that, *when added together*, the intervener possesses an adequate degree of legitimacy.

Some characteristics will make a large contribution to an intervener's legitimacy, others will be less significant. But each of the qualities is limited in how much it can contribute and therefore an intervener needs to possess a number of the qualities in order to reach an adequate degree of legitimacy. In other words, most of these legitimating qualities, taken singularly, are not necessary or sufficient conditions for an *adequate degree of* legitimacy. (That said, I argue in Chapters 4 and 5 that effectiveness, given its importance, is a *necessary* condition for an intervener to be legitimate – and can be a *sufficient* condition in certain circumstances.) Hence, this approach is cumulative: the legitimacy of an intervener depends on the combined contribution of the various qualities it possesses.

This approach differs from a categorical approach, such as that sometimes found in Just War Theory. According to some accounts of Just War Theory, war can be justly waged only when eight criteria of *jus ad bellum* (just cause, reasonable prospect of success, right authority, right intention, formal declaration of war, last resort, absolute

justice, and proportional response) are met. If one of these criteria is not met, war should not be waged. In recent years, many theorists have used the same categorical approach for humanitarian intervention. The most significant example is the Canadian government-commissioned *R2P* (ICISS 2001a), which requires an intervener to meet five criteria (just cause, proportionate means, last resort, reasonable prospects, and right intention).²⁰ So, on a categorical approach, an intervener would need to possess all of the relevant qualities in order to be legitimate. If it were to lack even one quality, it could not be legitimate. For example, if intervention is not the last resort, then it should not occur, even though it may be a proportionate response to a just cause undertaken for the right reasons and with a good chance of success. The main difference between the scalar approach I use in this thesis and the categorical approach favoured by some accounts of Just War Theory (beyond the difference in focus – *jus ad bellum* considers *when* intervention is justified; I consider *who* should do it) is that, on my position, fulfilment of *all* the criteria is not always necessary. On occasion, an intervener that lacks one quality could still possess an adequate degree of legitimacy (depending on the other qualities it possesses). Notwithstanding, to be fully legitimate, an intervener will need to possess all of the relevant qualities.

The second clarification is temporal. Two types of question might be raised when considering the legitimacy of humanitarian intervention. One is backward looking (*ex post*) and is concerned with whether an intervener *was* legitimate in a particular case. The

²⁰Other notable examples include Farer (2005a), the report of the UN Secretary-General's High-level Panel on Threats, Challenges and Change (2004, 57-58), *A More Secure World: Our Shared Responsibility*, and Kofi Annan (2005), who, in the report, *In Larger Freedom*, calls for the use of force to meet certain criteria.

other is forward-looking (*ex ante*) and is concerned with whether an intervener *will be* legitimate. My concern is with the forward-looking (*ex ante*) question. The concern of this thesis is who should intervene if there is a humanitarian crisis that requires intervention in the future. As such, this thesis aims to provide practical guidance for the future, that is, it aims to provide an action-guiding moral theory. *Ex post* questions of legitimacy – questions of whether an intervener was legitimate – are not directly relevant, although they can help to provide historical evidence on which to base future decisions, such as an agent's track record of undertaking successful humanitarian intervention.

Chris Brown (2005, 228), however, objects to the *ex ante* approach (and, in particular, to Tom Farer's (2005a) five-part test for humanitarian intervention). He claims that "they are not actually the kind of questions states ask *before* the event in order to decide whether or not to act" (Brown 2005, 228). The role for such questions is not to guide behaviour, but to help us judge a humanitarian intervention after the event (Brown 2005, 228). This objection is mistaken. Some states, such as Canada, the Netherlands, and the U.K. (primarily during Robin Cook's tenure as Foreign Secretary) have been directly concerned with these sorts of forward-looking issues and have produced their own forward-looking tests on when war should be waged.²¹ Other states that are less directly concerned with these issues are still influenced by international moral norms on such matters. For instance, before deciding whether to intervene, these states may act upon the forward-looking questions, not because they believe that this is the right thing to do (although this may influence their decision-making too), but because their international

²¹The Canadian government was responsible for *R2P*. Also see Tony Blair (1999) and the Dutch Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law (2000).

reputation would be damaged otherwise. And even if no states were influenced by the forward-looking questions I am concerned with, it is still conceivable that they could be concerned with these questions. Indeed, we should work towards persuading our leaders to be more concerned with these issues. Moreover, Brown's acceptance that these kinds of questions can help us judge intervention after the event (*ex post*) sits ill at ease with his belief that these kinds of questions do not influence our judgment beforehand (*ex ante*). As Farer responds: "If a test, developed in light of past experience and thought experiments, influences their assessment of acts or omissions that have already occurred, why should we assume that it will not be around to influence decision-making when the next similar case comes down the road?" (2005b, 243).

Internal and external legitimacy

For a fuller understanding of legitimacy for humanitarian intervention, we need to note the two types of legitimacy that an intervener can have. This distinction will recur in various forms throughout this thesis.

The first concerns the intervener's use of political power over those who make up its citizens. This is what Buchanan (1999) calls an intervener's 'internal legitimacy'. It depends on whether an intervener is morally justified with respect to the population under its normal jurisdiction, such as a state's citizens if a state is the intervener. This does not (necessarily) mean that these individuals need to believe that the intervener is legitimate. Instead, an intervener needs to act in a certain way or to have a particular structure that means it is legitimate for these individuals. The second type of legitimacy is what

Buchanan calls ‘external legitimacy’. External legitimacy depends on “whether intervention by one state or by a collection of states can be justified to the state that is the object of intervention, or to the community of states as a whole” (Buchanan 1999, 72). Again, this does not mean that these individuals must believe the intervener to be legitimate; rather, it means that the intervener is structured or acts such that its power over them (its intervention) is morally justified.

It helps to distinguish between two sorts of external legitimacy. The first sort of external legitimacy – what I shall call ‘local external legitimacy’ – depends on whether an intervener is morally justifiable for those in *the political community that is subject to its intervention*, whereas the second sort of external legitimacy – what I shall call ‘global external legitimacy’ – depends on whether it is morally justifiable for those in *the wider international community* (apart from those who have been taken into account under the other two notions of legitimacy). On the one hand, an intervener may successfully halt a massive violation of human rights in a particular community – and therefore possess local external legitimacy – whilst on the other hand its intervention may destabilise the surrounding region, cause widespread loss of life elsewhere, and set a precedent which undermines international law – and therefore lack global external legitimacy.

To illustrate fully the different types of legitimacy an intervener can possess, consider Operation Turquoise, the French intervention in Rwanda in 1994. The *internal legitimacy* of France in this case depended on whether it was morally justifiable in domestic terms, i.e., with regard to French citizens. For instance, two factors that might have influenced the internal legitimacy of Operation Turquoise was whether it took into account the opinions of French citizens on whether they wanted to intervene in Rwanda

and how many French soldiers arrived home in bodybags. France's *local external legitimacy* depended on whether it was morally justifiable for Rwandan citizens. This could be influenced, for instance, by whether Operation Turquoise helped to end the genocide and whether the Rwandans wanted intervention. Lastly, *the global external legitimacy* of France's intervention depended on whether it was morally justifiable for the wider international community. Factors that might influence this include its effects on international law and whether the exodus of the *interahamwe* (the Hutu militia largely responsible for the Rwandan genocide) into eastern Democratic Republic of Congo, and that region's subsequent destabilisation, was caused by Operation Turquoise.

II: DEFINING HUMANITARIAN INTERVENTION

Having seen how the term 'legitimacy' will be used, I will now define 'humanitarian intervention'. This will clarify one of the key terms of this thesis and one that is employed in a number of different ways in the literature. For the purposes of this thesis, the definition needs to accord in reasonable measure with the term as it is used in the relevant literature, in policy-making circles, and in the wider international community.

I develop my definition by analysing the four main aspects of a humanitarian intervention. First, I consider what R. J. Vincent calls 'the activity of intervention' (1974, 7). Secondly, I examine the circumstances of humanitarian intervention, and, after dismissing two leading conceptions, propose that humanitarian intervention occurs in situations of 'actual or impending grievous suffering or loss of life'. Thirdly, I consider who undertakes humanitarian intervention and argue that this must be an outside party.

Finally, I consider at length the crucial question of whether humanitarian intentions, motives, and/or outcomes should be included in the definition of humanitarian intervention.

It is important to distinguish the definitional issue of the qualities that an agent needs to be *engaged* in humanitarian intervention from the normative issue concerning the qualities it needs to be engaged *legitimately* in humanitarian intervention. By defining humanitarian intervention, the ensuing discussion will provide an account of certain qualities that an intervener must have if it is to be engaged in ‘humanitarian intervention’. Let me explain. Some qualities are implicit in the meaning of humanitarian intervention. These qualities are its *defining* conditions rather than its *legitimizing* conditions. In other words, they help to define a humanitarian intervener, rather than what counts as a *legitimate* humanitarian intervener. So, by defining humanitarian intervention, I will, at the same time, outline some of the qualities that an intervener must have. Specifically, I will argue that it needs (i) to be engaged in military and forcible action; (ii) to be responding to a situation where there is impending or ongoing grievous suffering or loss of life; (iii) to be an external agent; and (iv) to have a humanitarian intention, that is, a predominant purpose of preventing, reducing, or halting the ongoing or impending grievous suffering or loss of life. Unless it has all four qualities, an agent cannot be said to be undertaking ‘humanitarian intervention’. This section will therefore begin analysing who should intervene since certain interveners will be ruled out (i.e. those without these four qualities).

This is not to prejudge the *legitimacy* of an intervener: an intervener that is engaged in ‘humanitarian intervention’ according to the definition I outline might still be

illegitimate. To be legitimate, it needs to have a number of other, moral, qualities. Thus, the definition I present is intended to be normatively neutral. This contrasts with a definition of *justifiable* humanitarian intervention, which, by including a number of normative criteria, builds the rectitude of humanitarian intervention into its definition. International lawyer, and former Argentine diplomat, Fernando Tesón (1997, 121-127) provides the best example of a definition of justifiable humanitarian intervention. He argues that, for an intervener to be said to be engaged in ‘humanitarian intervention’, it must, amongst other things, be welcomed by victims of the oppression, use right-inspired means, and be governed by the interplay of principles of proportionality and restoration of human rights: All humanitarian interventions that meet this definition will be justifiable as well. The difficulty with this sort of definition is that it risks twisting the definition of humanitarian intervention so as to exclude morally problematic cases of humanitarian intervention, which, despite their difficulties, are still generally regarded as instances of ‘humanitarian intervention’. As Charles Beitz argues with regard to non-intervention, “if it turns out that there are cases in which some forms of intervention are morally permissible, one should acknowledge that fact rather than conceal it behind a cumbersome and mystifying definition” (1979, 74). Consequently, a normatively-neutral approach to the definition of humanitarian intervention is superior because it is “better to separate questions of definition from questions of political ethics” (Beitz 1979, 74).

(i) The activity of humanitarian intervention

Let us begin by considering what sort of action an intervener must be engaged in. One

option is that its intervention must be forcible (Bull 1984, 1; Chesterman 2001, 3; Holzgrefe 2003, 18; Stowell in Chesterman 2001, 1 n3; Windsor 1984, 50). To be forcible, humanitarian intervention does not have to involve the actual use of force, but it must involve at least the threat of force. From this perspective, then, non-forcible means are excluded. According to Simon Chesterman (2001, 3), these non-forcible means are not part of the notion of humanitarian intervention but should be included instead in the concept of 'humanitarian assistance'.

This position seems commonsensical, but the question arises: against whom must humanitarian intervention be forcible? Many of the narrower definitions of humanitarian intervention argue that it must be contrary to the wishes of the government of the political community that is subject to the intervention. In other words, humanitarian intervention must lack the consent of the government of the target state. The reasoning is that action that has been consented to is not intervention because it does not violate state sovereignty (Chesterman 2001, 3; Coady 2002, 10; Holzgrefe 2003, 18; Roberts 1993, 429). Yet this is unduly restrictive. International action that has the support of the target state's government can still be humanitarian intervention. For instance, the Australian-led 1999 intervention in East Timor, which was consented to by the Indonesian government, is widely (and rightly) regarded as an instance of humanitarian intervention.²² It is important though that the action is against *someone's* wishes, such as militias, warlords, or criminal gangs – particularly those who are responsible for the humanitarian crisis – even if it is not necessarily contrary to the wishes of the government of the political community that is subject to the intervention.

²²That said, the consent of the Indonesian government was largely obtained by duress.

It follows that there is a distinction between humanitarian intervention and certain forms of peacekeeping. The essential problem with the latter is that they are not forcible. The mandate and rules of engagement of these types of peacekeeping missions (i.e. first generation or traditional peacekeeping) are not strong enough for them to be deemed humanitarian intervention.

In addition, humanitarian intervention must be military (Roberts 1993, 445). Otherwise, it would include a vast number of actions that we do not commonly regard as humanitarian intervention. Firstly, economic interventions, such as sanctions, trade embargoes, and boycotts, and, secondly, diplomatic interventions, such as denunciation, the restricting of certain individuals' ability to travel, and the cutting of diplomatic ties would all be included under the definition of humanitarian intervention, and this would sit ill at ease with how the term is employed in the literature.²³

Hence, the activity of humanitarian intervention must involve both a *military* and a *forcible* element.²⁴ This excludes forcible but non-military actions, such as economic sanctions, and military but non-forcible actions, such as certain types of peacekeeping.

²³Indeed, humanitarian intervention is sometimes referred to as 'humanitarian military intervention' in the literature.

²⁴A mission need not be wholly forcible and military, however. It is still possible for NGOs to be agents of humanitarian intervention on this understanding, even though they lack a military (and often a forcible) element. They can be part of a broader humanitarian intervention that involves the use of force by other agents, such as the opening up of humanitarian corridors.

(ii) The circumstances of intervention

When does humanitarian intervention occur? One option is that humanitarian intervention is a response to acts which ‘shock the moral conscience of mankind’ (Walzer 2000a).²⁵ Yet the vagueness of this criterion is its downfall. As Peter Singer argues, the problem with the “appeal to the ‘conscience of mankind’ criterion is that this conscience has, at various times and places, been shocked by such things as interracial sex, atheism, and mixed bathing” (2002, 122-123). Another option is to say that humanitarian intervention is a response to ‘crimes against humanity’. The benefit of this approach is that it allows for more specificity. Singer (2002, 124-125), for instance, goes on to list the definition of ‘crimes against humanity’ given by the 1998 Rome Statute of the International Criminal Court. However, this approach is unduly restrictive, since it limits humanitarian intervention to political acts of killing and inflicting harm.²⁶ It seems that humanitarian intervention can also occur where the political community concerned has attempted, but is unable, to remedy the situation.²⁷

²⁵Note that some of the accounts of the circumstances of intervention surveyed in this section are part of a definition of justifiable humanitarian intervention rather than a definition of humanitarian intervention. Nevertheless, it is insightful to consider these arguments in relation to a neutral definition of humanitarian intervention.

²⁶Heinze (2003) also argues that the rights violations must be politically caused, that is, purposely violated with disrespect by a militia or government (such as ethnic cleansing and genocide), rather than being indirectly denied (for instance, by famine, social injustice, and starvation).

²⁷For further criticisms of limiting the circumstances in humanitarian intervention to politically caused acts, see Mehta (2006, 267).

The literature's favoured line on this is fairly restrictive: it declares that humanitarian intervention must be a response to the violation of basic human rights (e.g. Abiew 1999, 31; Holzgrefe 2003, 18). And this is not the 'everyday' violation of basic human rights; rather, it is reserved for gross or massive violations (Vincent 1986, 127). But this account is problematic since it assumes that humanitarian intervention cannot occur in small-scale cases. The exclusion of small-scale cases assumes that a proportionality requirement should be included in the definition of humanitarian intervention. This is premature. Although there is a good case for insisting that the number of human rights violations must be large for humanitarian intervention to be justifiable (I argue this point in Chapter 4), it is nevertheless possible for an intervener to be engaged in humanitarian intervention even in small-scale cases. For instance, an intervener that responds to a humanitarian crisis in a microstate would still be engaged in 'humanitarian intervention', even though the number of violations of basic human rights would be small. Thus, the case for making *large numbers* of human rights violations part of the definition of humanitarian intervention is unconvincing.

Rather than defining the circumstances of humanitarian intervention as those in which the moral conscience of mankind is shocked, there are crimes against humanity, or there is a gross violation of human rights, I will take them to be circumstances in which there is 'actual or impending grievous suffering or loss of life'. The benefits of this view are that it is neither so indeterminate as to depend on the subjective conscience of humanity, nor so determinate as to include only political acts of killing and inflicting harm. Furthermore, Mark Stein argues that "a suffering-based definition of humanitarian intervention seems more consistent than a right-based definition with the dictionary

definition of the word ‘humanitarian’” (2004, 30). And, although it might not be sufficiently specific for justifiable humanitarian intervention, it is adequate for the purposes here of presenting a neutral definition of humanitarian intervention.²⁸

It is important to re-emphasise that an intervener that is responding to such circumstances is not necessarily legitimate and that humanitarian intervention may be unjustifiable. For instance, one may hold that to violate justifiably another state’s sovereignty or communal autonomy, the situation must be more serious than that required by the definition of humanitarian intervention. The discussion in this section has concentrated on the circumstances in the target state that enable us to say that an intervener is *engaged in* ‘humanitarian intervention’ rather those that relate to its being *justifiably* engaged in humanitarian intervention, which is commonly referred to as ‘just cause’.²⁹

(iii) Who undertakes humanitarian intervention?

An important, but quite uncontroversial, condition for intervention is that it is conducted by an external agent or “an outside party” (Bull 1984, 1). This means that a state resolving its own humanitarian crises and an insurrection by an ethnic group within a state to end a crisis are not examples of a ‘humanitarian intervention’, whereas a state intervening to resolve another state’s humanitarian crisis is. In short, humanitarian

²⁸That said, this definition can be used, for the most part, interchangeably with ‘the violation of basic human rights’ (as long as it is not insisted that the violation is on a large scale).

²⁹In Chapter 4, I suggest that an intervener must have a just cause in order to be legitimate and outline what this is.

intervention must be transboundary. Yet ‘outside parties’ can range from global institutions to multinational companies and private individuals. To narrow this wide array, many theorists contend that only certain forms of agents can undertake humanitarian intervention. Let us now briefly examine and repudiate the two foremost of these arguments.

Stanley Hoffmann (and many others) claim that it is only states, state-based, or state-backed institutions that can intervene (1984, 10). But against this argument, non-state actors, such as non-governmental organisations (NGOs) and private military companies (PMCs) can intervene, have intervened, and do intervene (see Gaer 2000; Singer 2003b). Thus, we would misrepresent the practice of current humanitarian intervention if we restricted the agents of intervention to states or state-based institutions.

Alternatively, some claim that the agent of intervention cannot be an international organisation like the UN because “there can be no such thing as ‘intervention’ by an international organization to which its members have accorded a certain degree of authority” (Luard 1984, 159). From this perspective, the ceding of jurisdiction by states to an international organisation means that the international organisation in question is no longer ‘an outside party’. The trouble with this argument, however, is that, although a state may transfer some of its jurisdiction to supra-national institutions, like the EU or the UN, it retains the vast majority of its powers. These remaining powers mean that intervention by an international organisation should still be regarded as intervention by ‘an outside party’. If a state were to transfer more of its powers of jurisdiction, including its monopoly over the use of force, to an international organisation, then that international organisation might not be conceived as an external agent. But since no state has yet done

this, international organisations still constitute ‘outside parties’ and remain as potential agents of humanitarian intervention.

It is apparent then that there is no need to place any restriction on the sort of agent that can undertake intervention in the definition of humanitarian intervention, apart from the requirement that it is an external agent. All outside parties are potential agents of intervention if they meet the criteria delineated in this section. The fact that many outside parties, such as private individuals, struggle to meet these criteria means that they are not engaged in humanitarian intervention. But if they were to meet these criteria, there seems to be no conceptual reason why they should not be regarded as agents of humanitarian intervention.

(iv) Humanitarian intents, motives, and outcomes

Although the three elements of humanitarian intervention considered thus far – the activity, circumstances, and agent of humanitarian intervention – take up a good part of the debate about defining intervention, they do not exhaust it. The task now is to decide whether, in addition to these three aspects, humanitarian intervention requires a humanitarian intention, a humanitarian motive, and a humanitarian outcome. It is worth noting first that, in practice, interveners tend not to have purely humanitarian intentions, or motives, or to achieve purely humanitarian outcomes; they have – to varying degrees – a combination of humanitarian, security, economic, and political intentions, a mix of altruistic and self-interested motives, and both increase and decrease human suffering. Consequently, our concern should not be with purely humanitarian intentions, motives,

and outcomes, but with *predominantly* humanitarian motives, intentions, and outcomes.³⁰

Given the complexity and importance of this issue, it will help if I begin by clarifying the meaning of each of the three concepts that are central to it. The first is *humanitarian intention*, which means that the intervener has the purpose of preventing, reducing, or halting the humanitarian crisis. Such an intervener acts with the aim of bringing about humanitarian consequences. However, the *underlying reason* for the intervener's having this humanitarian intention does not have also to be humanitarian. It could be, for instance, a self-interested reason. In this context, Terry Nardin argues that "[o]ne should distinguish a person's *goals* – what he or she aims at – from that person's dispositions and desires – *why* he or she is aiming at it. There are good reasons for keeping these two aspects of choice separate" (2006, 10; emphasis added). For example, State A might intervene to stop a humanitarian crisis in State B, but its reason for doing so is because it desires to reduce the number of refugees entering its borders. To be sure, to have a humanitarian intention, humanitarian objectives must not be incidental to the main objective. A war that has a predominantly non-humanitarian purpose, but which has expected humanitarian side-effects, would not be considered to have a humanitarian intention. If State X intervenes in State Y with the purpose of establishing a puppet government in State Y, it would not have a humanitarian intention, even if the establishing of a puppet government increases the stability of State Y and therefore has humanitarian side-effects.

Second, if the intervener is to have a *humanitarian motive*, not only must its intention be humanitarian, but also its reason for having that intention. Hence, its motive

³⁰Mason and Wheeler (1996, 95) make a similar point.

is the *underlying reason* for undertaking humanitarian intervention. In the example above, if State A is to have a humanitarian motive, the reason for its wanting to intervene in State B must be humanitarian. In other words, its humanitarian intention must not be due to some underlying self-interest, such as glory, power, or enrichment; on the contrary, it must be caused by an underlying humanitarian reason, that is, it must be motivated by the desire to save lives and to end human suffering.

Many of the objections against humanitarian intervention overlook this distinction between intention and motive, but it is vital.³¹ In fact, it is one that is commonly made in criminal law. Consider, for instance, a criminal who steals – which is his intention – but receives a lighter sentence because he has the motive of feeding his starving family. Tesón summarises the distinction:

Intention covers the contemplated act, what the agent wills to do. I see a person in distress, decide to rescue her, and do it. The action was an act of rescue. I intended to rescue the person, I committed to doing it, and did it... By contrast, a motive is a *further* goal that one wishes to accomplish with the intended act. I rescue the person in danger, I intended to do it, so mine was an act of rescue. But suppose I did it because I wanted to appear as a hero in the local newspaper. I had an ulterior motive (2005a, 5; emphasis in original).

Third, if a humanitarian intervention succeeds in ending human suffering then it has a *humanitarian outcome*. The intervener need not have a humanitarian motive or intention – for instance, it may intervene only to remove a hostile regime, and do so successfully, but its act may have significant humanitarian consequences.

³¹John Stuart Mill and Jeremy Bentham also make this distinction between intention and motive (Ridge 2002). Also see Nardin (2006, 9-11).

Humanitarian intentions

Humanitarian intervention must have a humanitarian intention. That is to say, to be ‘humanitarian’, an intervention must have the predominant *purpose* of preventing, reducing, or halting actual or impending loss of life and human suffering, whatever the *underlying reasons* – its motives – for wishing to do so. This assertion is well supported by the literature. Ellery Stowell says that humanitarian intervention is the “reliance upon force for the justifiable *purpose* of protecting the inhabitants of another state”; Ian Brownlie states that humanitarian intervention has “the *object* of protecting human rights”; Adam Roberts says that humanitarian intervention has “the *purpose* of preventing widespread suffering or death among the inhabitants” (Chesterman 2001, 1-3; emphases added); and Bhikhu Parekh defines humanitarian intervention as having “a *view* to ending or at least reducing the suffering” (1997b, 5; emphasis added).³²

Those who deny the need for humanitarian intervention to have a humanitarian intention could make the following argument: a humanitarian intention is not required if there is a humanitarian outcome. This argument is unsatisfactory, as demonstrated by the following example. Suppose, in the middle of the night, the electrics in house No. 13 short-circuit, causing a small fire. The battery in their fire alarm has run out and so it does not sound. Soon after, a burglar breaks into the neighbouring house, No. 14, setting off their intruder alarm. It is so loud that it awakens the residents of house No. 13 before the fire in their house has time to spread and put their lives at risk. Indirectly then, the burglar has saved the lives of inhabitants of No. 13. But we would not call his action

³²Also see Murphy (1996).

‘humanitarian’ because, despite it yielding a humanitarian outcome, his *intention* was not to save the lives of the inhabitants of No. 13.

Now, if we apply this same reasoning to international intervention, it is clear that an intervention that does not aim to have a humanitarian outcome cannot be called a humanitarian intervention even if it actually results in a humanitarian outcome. In this context, Tesón (2005a, 8) gives the example of the Falklands war. This resulted in a humanitarian outcome – the establishment of democracy in Argentina – but lacked a humanitarian purpose (Thatcher’s intention was not to free the Argentines) and, for this reason, is not widely regarded as an instance of humanitarian intervention. It is clear, then, that a humanitarian intervention by definition must have a humanitarian intention.

Indeed, this is how we tend to classify actions. As Tesón asserts, the concept of intention “allows us to *characterize* the act, to say that the act belongs to a certain class of acts, such as acts of rescue” (2005a, 5; emphasis in original). That is to say, a chief way to determine what a particular agent is doing – its action – is to look at its intentions. Hence, Donald Davidson asserts that “an action, in some basic sense, is something that an agent does that was ‘intentional under some description’” (in Wilson 2002, 1). Thus, the intention of an intervener is key to determining its action. If an intervener has a humanitarian intention, then, providing that it meets the other defining conditions, it is engaged in humanitarian intervention.

Some who make the distinction between an intervener’s motive and its intention go on to suggest that an intervener’s intention has moral significance. Tesón, for instance, suggests that “[i]ntention, unlike motive, is... relevant... in *evaluating* the action morally” (2005a, 7; emphasis in original). Similarly, Bellamy argues that “the legitimacy of a

humanitarian intervention ought to be evaluated according to whether the intervener *intended* to prevent or halt an injustice and promote peace” (2004, 227; emphasis in original). It follows then that a humanitarian intention contributes to the legitimacy of an intervener.

I do not endorse this position. A humanitarian intention is only a *defining* condition of humanitarian intervention: an intervener needs to have a humanitarian intention in order to be engaged in humanitarian intervention. But a humanitarian intention is not a *legitimizing* condition of an intervener. It does not do moral work. Generally speaking, an intention, by itself, is not sufficient for the moral evaluation of an action or agent. We need to look to other moral facts about the action or agent, such as whether it was done out of the right motive (although I will question the moral significance of this in Chapter 3 in the context of humanitarian intervention) or whether it was done with a reasonable expectation of success. To give an example, suppose that Jason intends to rescue Lucy from a prison, where she is being arbitrarily detained and will be executed very shortly. Without any further information, we cannot properly assess the moral credentials of this action. We do not know *how* Jason intends to rescue Lucy, *why* he intends to do it, or whether he would be *successful*. Now, suppose that Jason’s action would be unsuccessful – he is ill-equipped to mount such a rescue – and, moreover, his action would result in the torture of Lucy for the few hours that she is alive. Jason is well aware of these facts, but attempts the rescue anyway. In this case, we can say that, *given the extra information*, his action was morally wrong. Or, suppose instead that Jason’s action would almost certainly be successful – he is an ex-SAS officer and has in his possession a large array of firearms, which can easily overpower the prison’s

defence systems. In this case, we can say that, given the extra information, his action was morally right. Moreover, if we learn further that Jason's successful action was motivated by financial gain, rather than out of justice, love for Lucy, etc., then we might question his motives. There would therefore be a more complex moral picture of the justifiability of his action. My point, then, is that the agent's intention is not a factor for its moral justifiability. Knowing that Jason has a humanitarian intention of rescuing Lucy is not enough to characterise his action as justifiable. For this, we need to look to other factors. Indeed, in Chapters 4 and 5, I will claim that the main factor contributing to an intervener's legitimacy is its expectation of success. It follows that an intervener that has a humanitarian intention may or may not be legitimate; but an intervener that is likely to be *successful* in fulfilling its humanitarian intention will go a long way towards being legitimate. Thus, a humanitarian intention is a defining condition, rather than a legitimating condition of humanitarian intervention.³³

Humanitarian motives

Having claimed that humanitarian intervention must have a humanitarian intention, the question now is whether this intention must be motivated by underlying humanitarian

³³To see this further, consider an intervener that has a non-humanitarian intention, but whose action would nevertheless result in humanitarian side-effects. It may, for instance, decide to wage war against an imperialistic neighbour in order to stop itself being conquered, and the expected result of this action is the pacification and subsequent democratisation of its neighbour. In this case, although the war would not be humanitarian intervention – it would not have a humanitarian intention – it still would be morally justifiable because of its humanitarian effects.

reasons. The chief argument for *including* humanitarian motives is that an intervention by definition cannot be humanitarian unless those intervening are motivated by humanitarian concerns. As Parekh has it, humanitarian intervention is “an act for showing concern for and helping our fellow human beings... born out of compassion and solidarity, not contempt and pity, and is motivated by a desire to help” (1997a, 64-65). It follows that intervention which lacks a humanitarian motive would not be regarded as humanitarian intervention. However, there are two difficulties with including motives in a definition of humanitarian intervention.

The first problem with the claim that motives are a defining quality of a humanitarian intervener is ontological: whose motives should count? It is misleading to anthropomorphise the intervener, claiming that it has a particular motivation, for interveners are simply a collection of individuals. And the motivations of the individuals who collectively constitute the intervener cannot be easily collated so as to say that the intervener has a certain motive. As Shashi Tharoor and Sam Daws (2001, 24) suggest, every intervention arises from a complex and changing context of political aims, views, and positions in which motives are hard to isolate and interrogate.³⁴ Therefore, we need to specify exactly whose motives matter: should we take the motives of the intervener to be determined by (1) the motives of the intervener’s ruling elite (i.e. the governing authority and leading decision-makers) or (2) the motives of all those individuals who collectively constitute the intervener? It is questionable, if we are to take motivation as a

³⁴Also see Buchanan, who argues that “[g]iven the multiplicity of forces that contribute to state preferences, it would be remarkable if they possess the unity that psychological egoists attribute to the preferences of individuals” (2004, 34).

guide, whether we should limit this to (1) the ruling elite's motivation. The risk is that intervention that is otherwise humanitarian would be rejected as an instance of humanitarian intervention if the ruling elite were motivated by non-humanitarian motives, such as personal glory or electoral pressures. A better indicator then would seem to be (2) the motivation of all those who collectively constitute the intervener, such as Americans if the intervener is the U.S. However, on this position, an intervener's motive would be impossibly complex, given the number of individuals with different motives involved. Thus, making motives a defining condition of humanitarian intervention risks either (1) disregarding obvious cases of humanitarian intervention or (2) having an unmanageably complex notion of an intervener's motive.

The second problem is epistemological: there are serious difficulties in ascertaining an intervener's motives. Assume, for example, that we take an intervener's motives to be determined by its ruler's motives. Establishing what motivated a ruler to decide to intervene is notoriously difficult. Even if we overlook the banal point that we can never know what someone else is thinking, attempting to discover a ruler's motives for intervening is decidedly tricky. For instance, did Bill Clinton want to intervene in Kosovo because he really cared about saving the lives of the Kosovan Albanians? Or was he more concerned with reducing the domestic political heat after the Monica Lewinsky affair? It is extremely difficult to know and, as a result, making the definition of an intervention hang on such matters is problematic. The same applies, but on a much larger scale, if we were to take an intervener's motives as the motives of all those who collectively form the intervener; we would face the challenge of determining *all* these individuals' motives.

Note here that a humanitarian *intention* is not subject to these two problems. First, an intervener's intention can be taken to be the intentions of the ruling elite, without the risk of these jeopardising the humanitarian credentials of an obvious humanitarian intervention. It seems clear that if the ruling elite of the intervener do not have a humanitarian intention, then nor does the intervener. Second, ascertaining the intention of an intervener is far easier than ascertaining its motives. Assuming that we take an intervener's intentions to be its ruling elite's intentions, the task is to determine what these are. As Bellamy argues, "a number of tests can be applied to ascertain a state's intentions with a reasonable accuracy" (2004, 227). I suggest that there are three ways we can do this, which, when combined, can help us to build a general picture of what the intervener's intention is.

The first way is to examine the *rhetoric* of the ruling elite (Bellamy 2004, 227). We should look to the justifications offered and the rationales given for the intervention. But, in this context, Tesón claims that "governments, like individuals, may lie about why they are doing what they are doing, or they may be mistaken about why they are doing what they are doing... Words lack magical power, so whether the intervention is humanitarian cannot depend on the government saying so" (2005a, 4). Nevertheless, the rhetoric of the ruling elite can provide *some* indication of the intention of the intervener. First, in many cases, a government may not be lying or be mistaken about what it is doing. Second, once a government has offered a humanitarian justification for an intervention, it often becomes tied into that justification and has to follow a subsequent course of action that conforms to this justification. Hence, Nicholas Wheeler argues, *pace* Tesón, "[t]he legitimating reasons employed by governments are crucial because they

enable and constrain actions” (2000, 27). For instance, the (first) Bush and Clinton Administrations’ invocation of humanitarian justifications for their interventions in northern Iraq, Somalia, and the Balkans constrained their subsequent actions by the need to defend these actions as being in conformity with their humanitarian claims (Wheeler 2000, 288).³⁵

The second way to determine an intervener’s intention is to consider the decisions taken by the intervener’s ruling elite. Do they result, or are they likely to result, in humanitarian action? In other words, we need to consider the intervener’s *behaviour*. Thus, Tesón suggests that “what the intervener *does* is the best evidence of its intention” (2005a, 8; emphasis in original). Similarly, Bellamy asserts that “intentions can be inferred from acts themselves” and “[w]hen a state embarks on humanitarian intervention, the strategies it adopts allow us to infer its intentions” (2004, 227).

Third, we should look to the intervener’s previous behaviour (that is, the past decisions of the intervener’s ruling elite). How does its current intervention fit in with the intervener’s general pattern of behaviour?

So to judge NATO’s intention in Kosovo, for instance, we can look to (1) the statements of the NATO heads of states and governments, (2) consider the decisions they

³⁵Wheeler relies on the philosophy of Quentin Skinner here. Skinner asserts that whether an actor is sincere or not is beside the point. What matters is that, once an agent has accepted the need to justify behaviour, he is committed to showing that his actions “were in fact motivated by some accepted set of social and political principles. And this in turn implies that, *even if the agent is not in fact motivated by any of the principles he professes, he will nevertheless be obliged to behave in such a way that his actions remain compatible with the claim that these principles genuinely motivated him*” (in Wheeler 2000, 9; emphasis in original).

made and NATO's subsequent behaviour (e.g. was it more concerned with opening up humanitarian corridors or establishing access to any natural resources?), and (3) see how these fit with the previous decisions taken by NATO leaders. Given that NATO leaders (1) repeatedly reaffirmed their desire to halt the humanitarian crisis in Kosovo, (2) took actions that evidenced a strong desire to end the humanitarian crisis, and (3) undertook similar action in Bosnia, it seems clear that NATO's intention in Kosovo was humanitarian.

So, to return to the main point, humanitarian motives do not have to be included in the definition of humanitarian intervention.³⁶ If an intervention does not have a humanitarian motive, an intervener can still be humanitarian as long as its intervention has a humanitarian intention (as well as meeting the other defining conditions).

Humanitarian outcomes

Let us now focus on the question of humanitarian outcomes. One approach holds that intervention must result in an improvement in the humanitarian crisis in order to be defined as 'humanitarian intervention'. It follows that an intervention that does not reduce, halt, or prevent grievous loss of life and human suffering would not be deemed 'humanitarian', regardless of its motives or intentions.

There is good reason, however, not to insist that humanitarian intervention must have a humanitarian outcome. First, the U.S.-led UN intervention in Somalia in 1992

³⁶There are also difficulties with holding motives are an important *moral* factor in an intervener's legitimacy. I consider these problems in Chapter 3.

(arguably) did not have a humanitarian outcome, but it did have a humanitarian intention. If an intervention, such as in Somalia, which is generally regarded as an instance of humanitarian intervention, has humanitarian purposes but ultimately fails, why is it not humanitarian? Excluding this sort of case from humanitarian intervention would seem to fly in the face of common understandings of what constitutes humanitarian intervention. Furthermore, if we were to make humanitarian outcomes a defining condition of humanitarian intervention, we would have to wait until after intervention to see whether it was in fact humanitarian. As Tesón argues, if we were to include humanitarian outcomes in the definition of humanitarian intervention, “actions could not be judged when they are contemplated, since we would have to wait for all the consequences of the action to unfold” (2005a, 8).

While there is no need to *include* humanitarian outcomes, it is necessary to *exclude* one form of non-humanitarian outcome from the definition of humanitarian intervention: imperialism. After the action, the intervener may justifiably argue that it must stay in the political community that is subject to the intervention for a long period of time, perhaps to avoid a recurrence of the humanitarian crisis. But this must not extend into benevolent imperialism, like the American military occupation in Cuba from 1898 to 1902, which often has humane effects but nonetheless erodes the independence of the object of intervention (Walzer 1992, 103-104). The agent’s action is no longer a discrete event with a beginning and an end and, therefore, as Vincent asserts, it should not be included in the definition since it does not possess ‘a distinguishable feature of intervention in international politics’, namely, “‘stepping-out’ after the objective of intervention has been achieved or it has failed” (1974, 8).

Consequently, a qualification that excludes imperialism is required. This qualification insists that the agent of intervention must not annex any territory, set up any forms of indirect (neo-) colonialism, or alter the object of intervention in any other imperialistic manner. This, of course, cannot be determined until after intervention has occurred. We have no choice but to presume, in the meantime, that an intervention that meets the other defining conditions is humanitarian. If intervention ultimately results in these sorts of non-humanitarian outcomes, then, in hindsight, it should not be deemed humanitarian intervention.³⁷ For, as Parekh rightly argues, humanitarian intervention is “not designed to annex the state or permanently redraw its territorial boundaries. Rather it scrupulously respects the territorial integrity of the state and interferes with it only temporarily and to the minimum extent necessary to end the suffering occurring within it” (1997b, 5).

The definition in full

Having considered the main issues in defining humanitarian intervention, it is now time to conclude this section with the definition in full. I define humanitarian intervention, for the purposes of this thesis, as:

Forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing, or halting an ongoing or

³⁷Although this perhaps conflicts with my second argument for rejecting humanitarian outcomes as a defining condition of humanitarian intervention, it seems commonsensical that humanitarian intervention cannot result in colonial occupation, whereas it seems less commonsensical that humanitarian intervention must result in a humanitarian outcome.

impending grievous suffering or loss of life.

Thus, to be engaged in ‘humanitarian intervention’, an intervener needs to meet four defining conditions: it needs (i) to be engaged in military and forcible action; (ii) to be responding to a situation where there is impending or ongoing grievous suffering or loss of life; (iii) to be an external agent; and (iv) to have a humanitarian intention, that is, a predominant purpose of preventing, reducing, or halting the ongoing or impending grievous suffering or loss of life.

The War in Iraq

It is worth noting here that, according to this definition, the 2003 war in Iraq was not a humanitarian intervention. This is because its predominant intention was not the tackling of an imminent or ongoing grievous suffering or loss of life. It therefore fails to meet defining condition (iv). This is not to claim that the war was not justifiable (although the coalition would not be legitimate according to the conception of legitimacy outlined in this thesis), but to indicate that it cannot be included under the class of actions regarded as ‘humanitarian intervention’. The same can be said of the U.S.-led action in Afghanistan. Despite having humanitarian effects, this war had the (non-humanitarian) intention of ensuring national security, and, as such, is also not an instance of humanitarian intervention (Weiss 2005b, 156).

Tesón (2005a), however, disagrees with this understanding of the war in Iraq.³⁸ His argument is careful and considered, and makes perhaps the strongest case that can be made in favour of the war being a humanitarian intervention. Tesón also distinguishes between an intervener's intention and motive, arguing that only the former is relevant in defining humanitarian intervention. He goes on to argue that, whilst the British and Americans may have had dubious motives for intervening (personal enrichment, a place in history, etc.), their intention was humanitarian. This intention was regime change, to bring to an end Saddam Hussein's tyrannical rule (Tesón 2005a).

Tesón is right to focus on the coalition's intention in Iraq; it is key to understanding whether this war is a case of humanitarian intervention, since it clearly meets the other defining conditions (it was military and forcible, it occurred in circumstances of grievous suffering, and it was by an external party).³⁹ But, *pace* Tesón, it is very doubtful whether the coalition's intention was humanitarian. Rather, as Weiss rightly asserts, "the primary purpose of the war in Iraq was not to halt human suffering but rather to pursue geopolitical interests" (2005b, 179).

Tesón's argument relies on the humanitarian credentials of regime change, of ending Saddam Hussein's tyrannical rule. But, although it may have humanitarian side-effects, removing a tyrannical dictator is not, in itself, humanitarian. It can be consistent with having a non-humanitarian intention, such as protecting national security. There needs to be something extra to establish the humanitarian credentials of a particular

³⁸Also see Heinze (2006), who argues that the assertion that the invasion of Iraq was not justifiable is actually more nuanced than some may think.

³⁹That said, some have questioned whether the humanitarian crisis in Iraq in early 2003 was serious enough for the war to be humanitarian intervention. See Winston (2005) and Roth (2006).

regime change.⁴⁰

Tesón (2005a, 13) concurs that regime change, by itself, may not be enough to ensure an intervention's humanitarian intention. But he argues that the coalition had a humanitarian intention because not only did they remove a vicious dictator, they also attempted to establish democracy, set up a liberal constitution, and did not leave Iraq to anarchy. There is little evidence, however, that the *predominant* intention of the regime change was humanitarian. We can see this by using the three tests of an intervener's intention outlined earlier.

First, the *rhetoric* of the British and American governments claimed that the predominant purpose of the war – of regime change – was the national interest, primarily national and regional security – to remove weapons of mass destruction. In this context, Ken Roth, Executive Director of Human Rights Watch, asserts that the “principal justifications offered in the prelude to the invasion was the Iraqi government's alleged possession of weapons of mass destruction, its alleged failure to account for them as prescribed by numerous U.N. Security Council resolutions, and its connection with terrorist networks” (2004, 6).

Second, the *behaviour* of the British and American governments cohered with the rhetoric – the decisions taken have not been directed at benefiting Iraqi civilians. Roth argues that “if invading forces had been determined to maximise the humanitarian impact

⁴⁰To be sure, this is not an argument about motives. I agree with Tesón that we should leave the underlying motives of leaders aside when assessing the humanitarian credentials of intervention. An agent may undertake intervention to remove two tyrannical dictators, one with the intention of securing national security, the other with the intention of halt genocide, and the leader's decisions in both cases may be *motivated* by electoral pressures.

of an intervention, they would have been better prepared to fill the security vacuum that predictably was created by the toppling of the Iraqi government. It was entirely foreseeable that Saddam Hussein's downfall would lead to civil disorder" (2004, 6). In addition, the coalition employed measures, such as cluster bombs, that it was clear would result – and did result – in a large number of civilian casualties (Roth 2006, 89-90). Therefore, the behaviour of the coalition also showed that it did not possess a humanitarian purpose.

Third, the *previous behaviour* of the British and American governments in imposing sanctions against Iraq fits in with this pattern of behaviour. These sanctions exacted a terrible humanitarian toll on Iraq. As many as 500,000 Iraqi children died of thirst, malnutrition, and preventable diseases as a result (Winston 2005, 49). Yet the U.S. and the U.K. continued to support sanctions against Iraq, despite opposition to sanctions from many other governments.⁴¹

Thus, the coalition lacked a humanitarian intention. For this reason, the 2003 war on Iraq was not a case of humanitarian intervention.

III. CONCLUSION

This chapter has outlined the analytical framework for the rest of the thesis. I began by defining what I mean by 'legitimacy'. I relied to a certain extent on Buchanan's concept of legitimacy. This treats legitimacy as the morally justifiable use of political power. A legitimate agent will have certain qualities that mean it can justifiably wield political

⁴¹For a detailed critique of the British government's case for sanctions against Iraq, see Herring (2002).

power. Elaborating further, I suggested that, for the purpose of this thesis, legitimacy is a normative rather than a sociological concept, is not necessarily the same as legality or procedural justice, is forward-looking rather than backward looking, and should be viewed as scalar. I also distinguished between an intervener's internal legitimacy, its local external legitimacy, and its global external legitimacy.

The second part of the chapter defined 'humanitarian intervention'. The meaning of humanitarian intervention requires that interveners have some basic qualities. To be engaged in humanitarian intervention, an intervener needs to meet four defining conditions: it needs (i) to be engaged in military and forcible action; (ii) to be responding to a situation where there is impending or ongoing grievous suffering or loss of life; (iii) to be an external agent; and (iv) to have a humanitarian intention, that is, a predominant purpose of preventing, reducing, or halting the ongoing or impending grievous suffering or loss of life.

So, we already have an idea of some of the qualities that a humanitarian intervener requires. In what follows, the rest of the thesis will not be concerned with agents that fail to meet these conditions. This chapter therefore has outlined the boundaries for the analysis that follows. It is important to reiterate, however, that these four defining conditions are normatively neutral in that they do not prejudge the legitimacy of an intervener. An intervener could possess these qualities, and therefore be engaged in 'humanitarian intervention', yet still be illegitimate.

Over the next four chapters, I will consider the normative qualities that are required for an intervener to be legitimate. The next chapter – Chapter 3 – begins this analysis by evaluating the moral relevance of an intervener's legal status and, in doing so,

an intervener's motives as well. I will also consider what the international law on humanitarian intervention is, which is vital to understanding the international picture in which the normative debates about humanitarian intervention take place.

CHAPTER 3: HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW

Much of the controversy surrounding NATO's 1999 air campaign against Serbia arose from its questionable legality. Although the Security Council passed Resolution 1199, which affirmed "that the deterioration of the situation in Kosovo... constitutes a threat to peace and security in the region" and "all parties, groups and individuals immediately cease hostilities and maintain a ceasefire", and also passed Resolution 1203, which emphasised "the need to ensure the safety and security of members of the Verification Mission in Kosovo and the Air Verification Mission over Kosovo", neither resolution expressly authorised the use of force (Chesterman 2001, 207-208). According to most international lawyers and commentators, this meant that NATO's intervention was illegal because it violated Article 2(4) of the UN Charter (stated in Chapter 1).⁴²

There are arguably only two legal exceptions to this article: acting in self-defence and when the Security Council authorises the use of force under its Chapter VII powers in response to a threat to international peace and security.⁴³ However, NATO's intervention did not fall within either of these two legal exceptions: firstly, it was patently not self-

⁴²The list of scholars who regarded the Kosovo intervention as illegal is too long to document here, but a sample of them are as follows: Buchanan (2003), Byers and Chesterman (2003), Chandler (2002), Chesterman (2001), Franck (2003), the Independent International Commission on Kosovo (2000), Krisch (2002), Lepard (2002), Mayall (2000), and Nardin (2003).

⁴³As we will see, many reject the existence of a customary international law which would permit unauthorised humanitarian intervention and therefore provide an additional exception.

defence and, secondly, Russia and China made it clear that they would veto any resolution that expressly authorised the use of force under Chapter VII in this case.

The controversy that surrounded the illegality of this intervention seemed to derive from the view that humanitarian intervention needs to have UN Security Council authorisation in order to be justifiable, and that illegal humanitarian intervention – intervention undertaken without express UN Security Council authorisation – is morally problematic. In other words, a humanitarian intervener needs to be legal in order to be legitimate.⁴⁴ The primary aim of this chapter is to assess this commonly-held view. More specifically, I answer the following question: when deciding who should intervene, how morally important is it that those undertaking humanitarian intervention have the legal authority from international law to do so?

The chapter will proceed as follows. I begin with an analysis of the current law on humanitarian intervention and consider whether a positivist or a naturalist understanding of international law is preferable. Having determined the current status of international law on humanitarian intervention, I then critically examine five reasons for treating an intervener's legal status as morally significant. In particular, I consider the arguments that an intervener's legal status is morally significant because: (i) legal interveners derive their authority from state consent; (ii) legal interveners derive their authority from the functioning of the Security Council; (iii) illegal humanitarian intervention is itself

⁴⁴Although some lawyers automatically equate legality and legitimacy, as discussed in Chapter 2, this is not the position taken in this thesis. Nor is this usage consistent with an apparently growing trend in international law to distinguish between the two. The most famous example of this is the Independent International Commission on Kosovo's assertion that "the intervention was legitimate, but not legal, given existing international law" (2000, 289).

abusive; (iv) illegal humanitarian intervention leads to abusive intervention; and (v) illegal humanitarian intervention undermines international order.

I. THE LEGAL PICTURE: INTERNATIONAL LAW ON HUMANITARIAN INTERVENTION

Let us start by looking at the current status of the international law on humanitarian intervention. There are a number of different readings of the current law, but I shall focus on two of the most informative: international legal positivism and Tesón's natural law theory. The debate between these two approaches should be helpful for our purpose of determining what the law on humanitarian intervention is.⁴⁵ Why is this relevant? First, and most obviously, if we are to assess the moral importance of an intervener's legal status according to current international law, we need to know what this law is. Second, understanding the international law on humanitarian intervention is central to grasping the international framework in which the normative debates about humanitarian intervention must work. It is important then to grasp the international legal picture before deciding who should intervene.

⁴⁵That is not to say that these are the only two accounts of the legality of humanitarian intervention. The debate about the legality of humanitarian intervention is also framed in terms of 'restrictionists' against 'counter-restrictionists', 'legal realism' against 'classicism' (see Farer 1991; 2003), and 'pluralism' against 'solidarism'. These alternative ways of framing the legality of intervention cut across the positivism/naturalism divide on some issues. However, the naturalist/positivist distinction is perhaps the most illuminating and revealing, and is the basis on which a clear understanding of the legality of humanitarian intervention can be formed.

A legal positivist reading of international law

International legal positivism is a subspecies of legal positivism. It holds the ‘separability thesis’, asserting that there is a conceptual distinction between what international law is and what morality demands. As such, *lex lata* – the law as it is – is not the same as *lex ferenda* – the law as it ought to be. Its account of legal validity, and therefore of what international law is, is highly voluntaristic. International law is said to emanate exclusively “from the free will of sovereign independent states. There is no law except what is ‘posited’ by sovereign powers” (Wight 1991, 36). There are two ways in which sovereign states ‘posit their will’, i.e., consent to international law: the first is by agreeing to a treaty; the second is by engaging in a practice which becomes a customary rule of international law over time as it is repeated (and which meets the requirements of *opinio juris*).⁴⁶ In other words, for international legal positivism the two sources of international law are treaty and custom and, as such, moral considerations are not necessary for legal validity.

International legal positivists generally take the following position on the legality of humanitarian intervention. Article 2(4) of the UN Charter provides a general prohibition on the use of force. There are only two legal exceptions: unilateral⁴⁷ or

⁴⁶See below for a statement of the requirements of *opinio juris*.

⁴⁷‘Unilateral’ is sometimes used by international lawyers to refer to action by any number of states that lack UN Security Council authorisation. This usage is confusing. I will use ‘unilateral’ to refer to an intervention

collective self-defence and Security Council enforcement action under Chapter VII of the UN Charter. Most international legal positivists reject the existence of a third possible exception to Article 2(4), which would hold that *unauthorised* humanitarian intervention is legal because there is a customary international law for this practice. Their argument, in brief, is that there is insufficient state practice to establish such a customary international law (e.g. Byers and Chesterman 2003; Chesterman 2001; DUPI 1999). It follows that humanitarian intervention – which violates Article 2(4) – can be legal only when undertaken for self-defence or when the Security Council authorises it.⁴⁸ We can dismiss the former because humanitarian intervention will be very rarely, if ever, legal on the basis of self-defence, so defined in international law.⁴⁹ Interveners therefore need to have Security Council authorisation in order to be legal.

This reading of the law on humanitarian intervention, however, is disputed by some who regard it as being too broad (e.g. Joffe 1994). They can cite Article 2 (7), which states:

Nothing contained in the present Charter shall authorize the United Nations to

carried out by one state on its own and ‘unauthorised’ to refer to an intervention that lacks Security Council authorisation.

⁴⁸In fact, there are two additional (but less significant) exceptions to the prohibition on the use of force. The first is when the target state expressly agrees to the intervention. The second is intervention undertaken by the African Union. Article 4 (h) of the Charter of the African Union permits it to intervene in grave circumstances (war crimes, genocide, and crimes against humanity) in countries which have signed up to the treaty.

⁴⁹The International Court of Justice has ruled that claims of self-defence can be made only in response to ‘an armed attack’ (ICISS 2001b, 160).

intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Since Chapter VII measures refer only to ‘international threats to peace and security’, and since humanitarian intervention rarely constitutes an international threat to peace and security, it may seem that the Security Council cannot legally authorise humanitarian intervention. What this overlooks, however, is that Article 39 of the UN Charter states:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

As such, the Council is able to act in response to almost any situation *it* chooses to interpret as a threat to international peace and security. Although the Security Council is officially constrained by the purposes of the Charter, there are no effective judicial mechanisms to enforce this (DUPI 1999, 72-73; Welsh 2004, 182). Accordingly, “there appear to be no theoretical limits to the ever-widening interpretation of international peace and security” (ICISS 2001b, 159).⁵⁰ Indeed, since the early 1990s, the Council, on occasion, has broadened its determination of a threat to international peace and security to include intra-state war and internal oppression, and has been willing to authorise humanitarian intervention in these cases. Hence, broadly speaking, on an international legal positivist reading of international law, a humanitarian intervener is acting legally if

⁵⁰In addition, Holzgrefe argues that study of the records of the Dumbarton Oaks and San Francisco conferences (the *travaux préparatoires*) indicates that “the drafters of the UN Charter wanted the Security Council to have wide discretion in determining the existence of any threat to the peace” (2003, 41).

its intervention is authorised by the UN Security Council and illegally if its intervention lacks such authorisation.

A naturalist reading of international law

Others deem this understanding of the law on humanitarian intervention to be too restrictive. A prominent example is Tesón (1997), who, from the perspective of natural law, argues that those undertaking humanitarian intervention do not need to have express UN Security Council authorisation to be legal.

Like all naturalist accounts, Tesón rejects the separation of legal validity and morality. His account, which is based on Ronald Dworkin's interpretive natural law theory, asserts that what the current status of the law is on a certain issue, such as humanitarian intervention, also depends, in part, on what the law ought to be. In other words, *lex ferenda* affects *lex lata*. Tesón's naturalism includes a large role for positive law, but in contrast to legal positivists, he argues that neutral analysis of the two traditional positive sources of international law – custom and treaty – is impossible, and we should therefore interpret these sources according to the best moral theory of the purposes of international law. This theory, according to Tesón (1997), is a human rights-based approach that sees individuals as the subjects of international law and the role of international law as the protection of human rights.

On the basis of this human rights-based approach, Tesón argues that those undertaking humanitarian intervention do in fact act legally, even if they lack express

Security Council authorisation, providing that they meet certain normative criteria.⁵¹ He reaches this conclusion principally by claiming that the selection and reading of possible precedents, which could establish or deny the existence of a customary law permitting humanitarian intervention, is inevitably affected by the interpreter's views on the role of international law. Given that international practice tends to be chaotic and contradictory, and that any attempt to find normative patterns of behaviour is result-orientated (Tesón *et al* 2003, 941), he claims that we need to appeal to moral-political values to interpret potential precedents (Tesón 1997, 166).

Using a human rights-based interpretation of state practice, Tesón (1997) argues that there are nine precedents of humanitarian intervention: India's 1971 intervention in East Pakistan; Tanzania's 1979 intervention in Uganda; France's 1979 intervention in the Central African Republic; the U.S.'s 1983 intervention in Grenada; the U.S., the U.K., and France's 1991 intervention in northern Iraq to protect the Kurds; the U.S.-led 1992 UN intervention in Somalia; the U.S.-led 1994 action in Haiti; the French-led 1994 intervention in Rwanda; and NATO's 1994 intervention in Bosnia. To this list we can add NATO's 1999 intervention in Kosovo, and the U.S.-led interventions in Afghanistan (2001) and Iraq (2003), which Tesón has recently claimed were legal (2003, 109 n38; 2005c, 232 n54, 393). On the basis of these precedents, Tesón asserts that there is a legal right to intervene in customary international law for *both* authorised and unauthorised interveners.

⁵¹These require the intervener: (1) to have a humanitarian intention and to adopt humanitarian means, (2) to use force effectively and only when necessary, (3) to be welcomed by the victims of the oppression, and (4) to be internally legitimate (Tesón 1997, 121-128; 1998, 59).

It is hard to see how he can sustain this conclusion, however. The central problem is this: whilst intervention authorised by the UN Security Council is legal, too few of the *unauthorised* humanitarian interventions cited by Tesón have met the requirements of *opinio juris* for it to be plausibly claimed that unauthorised humanitarian intervention is legal according to customary international law. According to the International Court of Justice, the *opinio juris* condition of customary international law requires:

Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is ‘evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it’ (in Chesterman 2003, 58 n26).

Most of the unauthorised interveners that Tesón cites did not behave in a way that evidences a belief that humanitarian intervention is legally obligatory. In particular, they did not claim that their intervention was legal according to the international law on humanitarian intervention (they instead cited other legal justifications, such as self-defence), nor was world opinion inclined to regard these interveners’ actions as legal (Chesterman 2003, 49-50). For instance, neither Tanzania in Uganda, India in East Pakistan (at least primarily), nor France in Central Africa invoked a humanitarian justification for their intervention, nor was there support for the legality of humanitarian intervention in the international community at the time (Byers and Chesterman 2003; DUPI 1999, 89; Holzgrefe 2003; ICISS 2001b; Wheeler 2000).

That said, it could be reasonably claimed that *some* unauthorised humanitarian interventions have met the requirements of *opinio juris*. For example: the 1992 intervention in northern Iraq by the U.K., the U.S., and France was claimed to be in conformity with Security Council resolution 688, but also asserted a right of humanitarian

intervention (albeit a limited one which required a supporting Security Council resolution) (Stromseth 2003, 251; Wheeler 2000, 169); ECOWAS declared a right of humanitarian intervention in its interventions in Liberia (1990) and Sierra Leone (1997) (ICISS 2001b, 166); and NATO's legal justification for intervening in Kosovo rested on some assertion of a right of humanitarian intervention or humanitarian 'necessity' (ICISS 2001b, 167; Stromseth 2003, 251).

It is doubtful, however, whether any customary right of unauthorised humanitarian intervention can be reasonably interpreted to exist solely on the basis of these few interventions. Customary international law is formed by states engaging in a repetitive and ongoing practice; as the practice is repeated over time, it becomes law. The problem is that there have been too few instances of unauthorised humanitarian intervention that meet the requirements of *opinio juris* for unauthorised humanitarian intervention to be said to be a *repetitive and ongoing practice*.

Hence, legal positivists are right in their understanding of current international law. Legal interveners are those with express UN Security Council authorisation and illegal interveners are those without it.

II. THE MORAL SIGNIFICANCE OF AN INTERVENER'S LEGAL STATUS

Having seen what the current international law on humanitarian intervention is, how important is it that those undertaking humanitarian intervention do so legally? Or, to put it another way, is it morally significant that interveners have UN Security Council authorisation?

It should be noted here that, although I have defended a legal positivist understanding of international law, this is not to reject the importance of the moral evaluation of the current international law on humanitarian intervention. Positivists deny that moral considerations are part of legal validity, but this does not mean that they deny moral considerations in general. On the contrary, a positivist can coherently assert that an intervener needs to have UN Security Council authorisation in order to possess the legal authority to undertake humanitarian intervention, but, at the same time, hold that whether an intervener has UN Security Council authorisation – and therefore has the legal authority to undertake humanitarian intervention – is of little moral significance. My point, then, is that, in this second section of the chapter, the positivism/naturalism debate is, in the main, left behind; we have what we want from it – a sound understanding of the international law on humanitarian intervention – and so can now consider the question of the moral significance of an intervener's legal status according to this understanding of international law.

I will begin by assessing two potential procedural reasons for asserting the importance of an intervener's legal status. These procedural reasons defend the significance of an intervener's legal status by highlighting the moral value of the processes by which this law is formed, that is, by (I) state consent and (II) UN Security Council authorisation. Also note that, if these two reasons are persuasive, a legal intervener will be legitimate because it will be globally externally legitimate – that is, legitimated by global factors.

(i) State consent

As already discussed, state consent is the process by which international law is created (by treaty and custom) and therefore the way in which interveners authorised by the UN Security Council ultimately gain their *legal* authority. Some argue that state consent is also *morally* valuable, and consequently that international law has moral significance because it is formed by state consent (e.g. Doyle 2001). On this line of reasoning, then, the legality of interveners is important because legal interveners ultimately derive their authority from state consent. Why might one subscribe to this argument and how persuasive is it?

A traditional, organicist approach to international law holds that the state has an international personality from which certain rights and duties arise and, analogously, state consent has moral value because individual consent has moral value. This view is most popular amongst classical theorists. Christian Wolff, for instance, asserts that “nations are regarded as individual free persons living in a state of nature” and, as a result, the rights and obligations of men and nations are the same (in Beitz 1979, 75). However, this argument suffers from a number of difficulties. Most notably, the comparison between individual consent and state consent cannot be plausibly maintained because the analogy between the state and the individual (commonly referred to as the ‘domestic analogy’) is false (Beitz 1979; Caney 2005; Tesón 1997; Vincent 1986). In short, this is because states “lack the moral properties we attribute to human beings” (Caney 2005, 236). This organicist approach to international law is also problematic because it treats state consent as unconditionally morally valuable, that is, valuable regardless of what goes on within

the state's borders. For instance, the state consent of a dictatorship is deemed to have moral value, even if this dictator slaughters thousands of his subjects.

A related, but more sophisticated, defence of the moral significance of state consent does not claim that state consent is unconditionally valuable. Rather, the claim is that most states represent their citizens, even if, on the face of it, they are undemocratic and do not have a formal system of representation. In Michael Walzer's (1980, 214) terms, we should presume that there is a 'fit' between a people and its government. As a corollary, international law, which is formed by state consent, is also morally valuable because states represent their citizens. But this argument is largely unpersuasive because many states are undemocratic and even some apparently democratic states are often unrepresentative of their citizens on specific issues, including foreign policy issues. In these cases, Buchanan argues, "leaders cannot reasonably be regarded as agents of their people" and "it cannot be said that state consent is binding because it expresses the people's will" (2003, 152). One might reply that states represent their citizens even though their citizens have not expressly consented. Yet this claim has limited credibility. It is plausible only when there is some formal system of representation in place (this does not have to be liberal democracy) and when states do not seriously violate their citizens' human rights.⁵² So, although this argument is not fully convincing, neither is it wholly unsuccessful: state consent can be said to have some, albeit minor, moral value because, in some states, it expresses the wishes of that state's citizens.

A seemingly more promising defence of the moral worth of state consent, and therefore of an intervener's legality, is presented by David Chandler (2002). He argues

⁵²An example of such a society might be Rawls' (1999b, 63-67) account of a 'decent hierarchical society'.

that state consent is necessary for the formal equality of states, which he assumes is morally valuable. More specifically, he argues that state consent is a crucial part of the 'equality of derivation', which along with the 'equality of application', is required for international law to be based on the formal equality of states. In his words: "international law derives its legitimacy from the voluntary assent of nation-states... Without a notion of consent, the distinction between law... and repression... disappears" (Chandler 2002, 137).

The trouble with this argument is that it shifts the problem from justifying state consent to justifying the formal equality of states, and it is unclear why the formal equality of states has moral value. The formal equality of states cannot be plausibly defended on democratic or egalitarian grounds. It does not reflect an equal consideration for individuals (which is perhaps one of the most convincing arguments for the democratic ideal) since, firstly, many states are unrepresentative of their citizens on a number of issues, and, secondly, states of massively varying population size would be treated equally if we were to follow this principle (Buchanan 2004, 318). And even if we overlook these difficulties and assume that the equality of states is valuable, there is not a strong link between the *formal* equality of states and the *actual* equality of states. Powerful states have a much greater ability to consent to international law (they are more likely to be the authors of customary international law and have greater bargaining power in treaty negotiations) and are less likely to have international law applied against them.

This leads us to a larger problem with arguments that use state consent to make the case for the moral value of an intervener's legal status: in practice, international law is not founded on the free consent of sovereign states. The first element of this problem is

that, when states consent to international law, their consent is often not freely given. It is widely held that consent needs to be free from duress and that there need to be reasonable options available if it is to be morally valid, but such requirements are frequently not met in the process of international law. Hence, Buchanan argues: “What counts as consent in the system is not qualified by any requirement of voluntariness that would give what is called consent normative punch” (2004, 303). The second element of this problem is that states have not consented to many aspects of international law. Although treaty-based law may appear less susceptible in this regard, it still suffers from a lack of free consent. Perhaps the best example of this, as H. L. A. Hart (1994, 226) notes, is the automatic assumption that newly formed states are bound by international treaties, even though they have not consented to them. Given the number of states achieving independence in the past 100 years, this is a serious consideration. What is more, even if states subsequently withdraw their consent to a particular aspect of (some realm of) international law, they are still held to be bound by it (Hall 2001, 203). Hence, the traditional view of international law, in which sovereign states are free to posit their will as they like and are bound by the law only when they choose, is in conflict with the experience and complexity of international law. In short, international law is not, in large part, based on the free consent of states.

Thus, these three defences of the moral value of state consent are largely unpersuasive and, even if they were persuasive, the extent to which states have freely consented to international law is questionable. It follows that state consent to international law provides little reason for holding that the legality of an intervener matters. Let us now consider a second possible procedural reason for the moral

significance of an intervener's legal status.

(ii) The functioning of the Security Council

UN Security Council authorisation is the process by which the international law in a particular case of humanitarian intervention is determined and is therefore, like state consent, a central way in which interveners gain their legal authority. And again, as with state consent, some argue that the functioning of the Security Council is morally valuable and, as a corollary, that legal interveners gain in legitimacy because their authority derives from this process.

To be sure, most of those who make this argument admit that the Security Council is far from meeting the requirements of an ideally functioning institution (e.g. Caron 1993, 566; Krisch 2002, 333). But, like E. H. Carr (2001), they claim that the current international system is conflictual and dominated by powerful states, and because of this, it is highly unlikely that we would be able to develop an international system that completely matches the ideal in the foreseeable future. If we overlook these realities of the international system, we would be guilty of a form of naive idealism, which is morally problematic for two reasons. First, if we construct an international system based on an ideally functioning international institution, powerful states would not agree to join it or to be constrained by it. This would reduce the capability of the institution to govern. More seriously, it would have terrible consequences for the international system: powerful states would not be constrained by the law, and so would be free to dominate, to violate others' sovereignty, and to do generally what they want, or even worse, to engage

in wars with each other. This danger, Carr (2001, 29-31) argues, can be observed in the failure of the League of Nations, which was largely because it was too idealistic and therefore failed to constrain powerful states, and was therefore unable to prevent World War II. Hence, there is (what I shall call) a 'moral-political' demand to include powerful states within our international institutions, even if this means sacrificing some of (what I shall call) the 'ideal-moral' demands for the functioning of the institution.

Second, constructing an international system based on an ideally functioning international institution would be counter-productive with respect to the 'ideal-moral' demands. Since powerful states would refuse to be constrained by such an institution, any institutional arrangements based on ideal functioning would not locate these ideal principles where they are needed most – to constrain the decision-making of the powerful. If we wish to realise the 'ideal-moral' demands it would be more productive to reduce these demands so that powerful states are included in the institution and therefore the ideal principles, although weakened, govern the decision-making of the powerful. The best solution is therefore an international institution that recognises the realities of the international system and which balances the ideal-moral demands for an institution that has a representative make-up and a fair and democratic decision-making procedure with the moral-political demands for including powerful states.

The UN Security Council is claimed to strike such a balance (e.g. DUPI 1999, 123). By giving China, France, Russia, the U.K., and the U.S. permanent membership and veto power, it provides some of the most powerful states in the international system with a reason to engage with the UN. In addition, the functioning of the Council attempts to respond to ideal-moral demands by including ten non-permanent members which

provide it with a sense of universal representation (Doyle 2001), and also by giving each of these members a vote.

In short, the Council's functioning includes powerful states in the international legal system and subjects them to a formalised decision-making procedure, while still being based on a sense of universal representation and the rule of law. Interveners that are authorised by the UN Security Council are desirable because they gain their authority to intervene from this carefully-balanced and morally-valuable process.

The theoretical premises of this argument are persuasive, but its empirical claims are not. That is to say, although it is true that we need to balance ideal-moral demands carefully with moral-political ones for including powerful states, the functioning of the Security Council does not reflect such a balance. It is too much of a compromise with power and has too little concern for ideal-moral demands for its functioning to legitimise the interveners that it authorises. To start with, the representativeness of the Security Council is unduly limited. There are only ten non-permanent members and these states have limited power within the Council. More representative bodies, such as certain NGOs and the UN General Assembly, have little input into the procedures of the Council. In short, the Security Council is highly unrepresentative, not only of *states*, but also, much more significantly, of *individuals*. Furthermore, the Council's decision-making lacks almost any consideration for ideal-moral demands. As Allen Buchanan and Robert Keohane (2004, 9) assert, there is no justification for the veto given that it creates a radically unequal distribution of decision-making authority; it seriously impugns the legitimacy of the legal status quo. The veto is contrary to a system based on fair and democratic decision-making and the Council operates a 'closed-door' approach, which

means that non-permanent members are often not consulted (Lepard 2002, 313). It also has an uneasy relationship with other UN organs and lacks both coherence and consistency in its decisions, which often reflect the particular self-interests of the permanent five (Lepard 2002, 324-325).

The Danish Institute of International Affairs (DUPI) (1999, 123-124) reply by arguing that the current arrangements of the Security Council are the *only* way to include the great powers and also the best way to achieve an effectively governing institution. In other words, the current workings of the Council are the only way to respond realistically to the moral-political demands; any other system would be less successful in this regard. But this argument is flawed. First, it is wrong to assume that the current arrangements of the Council are the only viable option and that reform to redress the balance towards ideal-moral considerations would undermine the Council's ability to govern and to constrain powerful states. *Pace* David Caron (1993), reforming the veto and changing membership are unlikely to weaken the Council. Second, reform of the Council may in fact strengthen it, given the higher levels of perceived legitimacy that would come with such reforms. Indeed, a good case can be made for the necessity of such reform if the Security Council system is to maintain itself and its capacity to govern.⁵³

This leads us to the second point, which is that the current balance of the Security Council is not only morally problematic because it disfavors ideal-moral considerations, it also jeopardises the moral-political considerations. This is because it is doubtful whether the Security Council does in fact constrain powerful states. The permanent

⁵³Paul and Nahory (2005) have a particularly thoughtful discussion of proposals for reforming the Security Council.

members mostly act as they please, whether it be engaging in unauthorised and unjust wars, massively violating their citizens and non-citizens' rights, refusing to sign up to climate change protocols, or conducting nuclear tests. Moreover, it could be claimed that giving these five states permanent status reinforces their power. By being permanent members, they are always involved in UN decisions on the use of force, and by having the veto, they are essentially free from the governance of the Council (Lepard 2002). Similarly, and contra Nico Krisch (2002), it is doubtful whether the Council is effective in its governance. For years it was stymied by the Cold War. Yet even in the less divisive international system of the past two decades, the Council has failed in a number of areas. Most notably, it did not adequately respond within any acceptable timeframe to a number of humanitarian crises, such as those in Rwanda, Chechnya, Bosnia, and Indonesia. It has also failed to enforce its resolutions or to fulfil its supposed purpose of achieving international peace and security. What is more, part of the ineffectiveness of the Council may be due to the demands to include powerful states; the requirement for consensus amongst powerful states within the Council has led to either a lack of a decision or a watered-down resolution that represents the lowest common denominator of agreement between member states (Lepard 2002, 314). Hence, the Security Council compromises the ideal-moral requirements for a democratic, fair, and representative system without securing sufficiently the compensating moral-political benefits of constraining the great powers and promoting effective governance.

So, we have seen that the importance of an intervener's legality cannot be persuasively established by the two main arguments for the moral value of the procedures by which interveners achieve their legal authority. I will turn next to consider whether the

moral importance of an intervener's legality can be successfully demonstrated by arguments that claim that there are links between abusiveness and illegal humanitarian intervention. Unlike the procedural arguments, which are concerned with whether the intervener's legality derives from a morally-valuable international legal process, these arguments are concerned with the moral value of the content of international law, and in particular, with its effects when obeyed and disobeyed, that is, with the consequences of interveners being legal or illegal. The first of these, the Trojan Horse Objection, is concerned with the effects of an intervener's legal status on its local external legitimacy. The second objection, the Bad Precedent Objection, is concerned with effects of an intervener's legal status on its global external legitimacy.

(iii) Abusive humanitarian intervention – the Trojan Horse Objection

One of the most common arguments given in favour of the importance of an intervener's legal status is that illegal humanitarian intervention involves abuse. This argument is best seen as involving two quite distinct objections to illegal humanitarian intervention. The first objection is that illegal humanitarian intervention is *itself* abusive. This is what I shall call the 'Trojan Horse Objection': states use humanitarian intervention as a cover to engage in abusive humanitarian intervention. Consequently, we should use an intervener's legal status to decide who should intervene because this avoids abusive humanitarian intervention.

This Trojan Horse Objection, although frequently made, is either (1) incoherent or (2) unconvincing. To see this, it is important first to recall the distinction made in the

previous chapter between an intervener's *intention* and its *motive*. If an intervener has a humanitarian *intention*, it has the purpose of preventing, reducing, or halting the humanitarian crisis. The intervener's underlying reason – its *motive* – for having this humanitarian intention, however, does not also have to be humanitarian. It could, for instance, be a self-interested reason.

Now, the Trojan Horse Objection's accusation of 'abusive humanitarian intervention' is ambiguous. It is sometimes meant to imply (1) imperialistic or neo-colonial intervention, where the intervener's primary intention is to gain territorial, economic, or strategic advantage (e.g. Chandler 2002; Kirsch 2002). But the previous chapter argued that those undertaking 'humanitarian intervention' could not be imperialistic in either the intention (which must be humanitarian) or the outcome of intervention. It follows that this first version of the Trojan Horse Objection misses its target: this sort of illegal intervention is clearly not *humanitarian* – its intention is not to halt violations of human rights – and, as such, should not be regarded as an instance of 'humanitarian intervention'. Accordingly, it is incoherent to claim that illegal humanitarian intervention is 'abusive' because it is imperialistic. Although illegal *non-humanitarian* intervention can be abusive in this sense, illegal *humanitarian* intervention cannot.

Another version of the Trojan Horse Objection uses 'abusive' to mean (2) motivated by self-interest: illegal humanitarian intervention is abusive because those undertaking such interventions do so with self-interested motivations. Ian Brownlie, for instance, asserts that when humanitarian justifications have been made by interveners, "circumstances frequently indicated the presence of selfish motives" (1963, 339). This

contrasts with legal humanitarian intervention, which, the argument runs, is much less likely to be self-interested given the processes of the UN Security Council. So, this second version of the Trojan Horse Objection claims that an illegal intervener's *motives* undermine its legitimacy; self-interested reasons constitute inappropriate motives for conducting war in defence of human rights.

In the previous chapter, I argued that the notion of an intervener's having a humanitarian motive suffers from serious ontological and epistemological problems. These difficulties also apply to this argument about abusive intervention. Moreover, even if we were to overlook these conceptual problems and assume that we can easily establish an intervener's motives, it is doubtful whether an intervener's having a humanitarian motive is of moral significance. In other words, the normative claim of the Trojan Horse Objection – that an intervener motivated by self-interest is morally objectionable – is unpersuasive.

First, it is doubtful whether an intervener's having a humanitarian motive has intrinsic value. The argument for humanitarian motives having intrinsic value revolves around the Kantian notion that people should do the right things for the right reasons. If, for instance, Jack rescues Jill from drowning, it should be because he wanted to save her life, not because Jack thought that Jill would give him a big financial reward. To be sure, there does seem to be something intuitively attractive about this Kantian notion. As Terry Nardin argues: "Motives are a necessary element in judgments of responsibility, of praise and blame, culpability and excuse" and "are relevant in making moral judgments because we have moral duties to act from the proper motives" (2006, 10).

But in the context of humanitarian intervention, the intrinsic importance of a

humanitarian motive seems small. It is certainly not a *necessary* condition of legitimate humanitarian intervention. As Tesón argues:

It puts too much stock in the agent's subjective state and, in doing so, disallows many actions that are objectively justified under any plausible moral theory. Take this obvious case: a political leader decides to stop genocide in a neighboring country (or, even less controversially, to defend that country against aggression) because he thinks that is the best way to win reelection. If we require right *motive* and not merely right intent, that war would be unjust (2005a, 9; emphasis in original).

Could an intervener's having a humanitarian motive nevertheless be a *significant*, if not *necessary*, condition of an intervener's legitimacy? Humanitarian intervention is a response to grievous suffering or loss of life, typically on a massive scale. In this context, the intrinsic importance of an intervener's having a humanitarian motive pales into insignificance, especially when contrasted with other values that *are* important to an intervener's legitimacy. In short, the mindset of those intervening is far less important than these other qualities. (I establish the moral significance of these values over the next few chapters.) Consider the following hypothetical example, which demonstrates the difference in importance between an intervener's effectiveness and its motivation. There is a humanitarian crisis in Burundi. Zambia, for humanitarian reasons, wants to intervene, and has a reasonable expectation of saving 10,000 lives. Tanzania wants to intervene in Burundi as well, but this time for self-interested reasons (to stop border incursions) and has a reasonable expectation of saving 10,001 lives. Who should intervene, Zambia or Tanzania? Assuming, for the sake of example, that there are *no further differences* between the potential interveners, and that the different motivations for intervening have no impact on how the intervention is carried out, it is clear that we ought to prefer

Tanzania's intervention because, despite its lacking a humanitarian motivation, one further life would be saved. Similar arguments can be made to demonstrate the importance of other factors affecting the legitimacy of an intervener, such as its representativeness and the means it uses. If we have a choice between a representative yet self-interested intervener, and a less representative but well-motivated intervener, we should prefer the former. Likewise, if we face a choice between an intervener that uses humanitarian means yet undertakes intervention for self-interested reasons, and an intervener that drops bombs indiscriminately but whose leader has a humanitarian motive, we should, again, prefer the former. My point, then, is that the value of an intervener's having a humanitarian motive is likely to be overshadowed by other, more morally important, factors affecting the legitimacy of an intervener. By comparison, then, having a humanitarian motive is of little *intrinsic* moral value.

In response, one could claim that, in practice, an intervener's motivation is *instrumentally* important since it affects these other normative qualities: an intervener with a humanitarian motivation is much more likely to be effective, representative, and to adopt humanitarian means. But on the basis of past evidence (e.g. India's probably selfishly-motivated but generally successful intervention in Bangladesh and, antithetically, the U.S.'s perhaps altruistic yet largely ineffective intervention in Somalia), the motivation of the intervener (to the extent that we can ever determine what this is) seems to have less of an effect than one might think.

Some even suggest that it is morally desirable that an intervener is *not* purely motivated by humanitarian concerns (e.g. Seybolt 2000, 6; Stein 2004, 31; Walzer 2002a, 4). This argument, which I consider further in Chapter 5, has some plausibility. An

intervener with a humanitarian motive alone is unlikely to commit the resources required to prevent egregious human suffering beyond its borders. As ICISS asserts, the “reality of the 1990s has been that humanitarian motives alone rarely suffice to sustain an intervention” (2001b, 211). An intervener needs a political motivation to undertake humanitarian intervention as well, which means that it can justify its commitment in terms of the interests of its citizens. Therefore, a strong element of self-interest makes it more likely that an intervener will provide the commitment necessary for effective humanitarian intervention, such as to provide substantial military resources over a sustained period of time (Stein 2004, 35).⁵⁴ Thus, a humanitarian motivation does not have significant intrinsic or instrumental value.

So, if ‘abusive humanitarian intervention’ is meant to denote humanitarian intervention with a self-interested motivation (assuming that we can establish this motivation), that sort of humanitarian intervention is not necessarily objectionable. There is little stock then in the argument that an intervener’s legal status is morally significant because illegal interveners are motivated by self-interest. Thus, the Trojan Horse Objection, which claims that illegal humanitarian intervention is abusive, is unconvincing because (1) intervention that is ‘abusive’, meaning imperialistic, is not *humanitarian* intervention, and (2) intervention that is ‘abusive’, meaning self-interested, is not that

⁵⁴A further argument in this context is that mixed motives are desirable, since, as Walzer (2002b, 26) argues, the leaders of states have an obligation to consider the interests of their own people when they commit to undertake humanitarian intervention. It follows that, if an intervener were to have a pure humanitarian motive, it would disregard its fiduciary obligation to consider the interests of its own citizens. Buchanan (1999), however, presents a powerful critique of this ‘discretionary association view of the state’. Also see Chapter 6.

morally problematic.⁵⁵

(iv) Future abusive intervention – the Bad Precedent Objection

Let us now consider the second claim often made about illegal humanitarian intervention and abuse, which is instrumentalist in form. The allegation is that illegal humanitarian intervention *leads* to abusive intervention. ‘Abusive’ intervention here is meant to imply non-humanitarian intervention (such as imperialistic or neo-colonial intervention), as in the first version of the Trojan Horse Objection. This argument – which I shall call the ‘Bad Precedent Objection’ – has become more popular recently, with some theorists suggesting that the illegal intervention in Kosovo led to the 2003 war in Iraq (e.g. Wheeler 2005).

The Bad Precedent Objection has two parts: (1) illegal humanitarian intervention leads to humanitarian reasons being regarded as more acceptable reasons for breaking the prohibition on the use of force (perhaps, but not necessarily, in the form of a legal right to undertake humanitarian intervention in international law); (2) if humanitarian reasons are regarded as more acceptable reasons for breaking the prohibition on the use of force, states will be more inclined to engage in abusive (non-humanitarian) interventions. Therefore, we should prefer legal to illegal interveners because they do not have the negative effect of creating additional abusive interventions. It should be noted that the argument is not that it is impossible to distinguish between genuine humanitarian intervention and abusive intervention that is falsely claimed to be humanitarian; we can

⁵⁵Tesón (1997, 111-113) presents a similar argument about humanitarian intervention in general.

distinguish between the two by looking at the intervener's rhetoric, conduct during the intervention, and track record of waging war for humanitarian reasons. Rather, it is that, by establishing humanitarian reasons as permissible reasons to breach Article 2(4), unauthorised humanitarian intervention increases the opportunities for abusive intervention because, in the future, other states will cite humanitarian reasons to justify their abusive actions.

However, the two parts of the causal relationship between illegal humanitarian interveners and abusive intervention that underlie this argument are not strong. To start with, although it is probably true that (1) illegal humanitarian intervention leads to greater acceptance of humanitarian reasons as reasons that justify the breach of the prohibition on the use of force, this is also true of legal humanitarian intervention. Indeed, the Security Council-authorised interventions of the 1990s have already gone a long way towards establishing the acceptability of humanitarian reasons for the use of force in the international community.

The second part of the causal link (2) is also questionable. This objection to illegal humanitarian intervention is similar to the argument given by some of those who reject a new legal right to intervene: formally establishing humanitarian justifications as permissible justifications for using force (in the form of a legal right) will lead to abusive (non-humanitarian) interventions (Brownlie 1973, 147-148; Chesterman 2001, 6; Linter 2005, 288; Vincent 1986, 144).⁵⁶ The difficulty with this argument is that establishing humanitarian reasons as acceptable reasons for using force is unlikely to provide many *additional* occasions for states to engage in abusive interventions with the purpose of

⁵⁶For a detailed discussion of whether we should establish such a legal right to intervene, see Chapter 8.

gaining territorial, material, or strategic advantage. This is not to deny that states have used humanitarian justifications mendaciously in the past. As Farer (1973, 150) asserts, humanitarian justifications were frequently invoked to justify armed interventions by Western states in the rest of the world during the 19th and early 20th centuries (when there was a better case for the existence of a right of humanitarian intervention in international law), yet the majority of these interventions were in defence of property interests rather than human rights. Nor is it to deny that, if humanitarian reasons became more acceptable reasons for breaking the prohibition on the use of force, sometimes states would invoke maliciously and mendaciously a humanitarian justification for their actions. Rather, my point is that, since states *already* invoke self-defence as the justification for so many actions, increasing the acceptability of humanitarian reasons for using force is unlikely to provide many new opportunities for abuse. During the period in which humanitarian justifications for using force were more accepted (in the 19th-century and early 20th-century), did states engage in abusive (non-humanitarian) interventions that *they would not have otherwise engaged in*? In most cases, I doubt it. And while it might seem that there would be at least a few more cases of abusive (non-humanitarian) intervention as a consequence of further establishing the permissibility of humanitarian reasons for using force, this has not been borne out by recent state practice. Humanitarian reasons have become increasingly acceptable (at least political and perhaps legal) reasons to violate the prohibition on the use of force (Newman 2002), but there has not been a corresponding increase in the number of abusive interventions that mendaciously allege a humanitarian justification. Wars and interventions in recent decades have instead relied on self-defence

as the justification for their action.⁵⁷ As Mark Stein rightly asserts, the “idea that humanitarian interventions will lead to nonhumanitarian wars has been somewhat overtaken by events” (2004, 37).⁵⁸ Furthermore, and again as Stein asserts, in the future, the U.S.’s recent interpretation of ‘anticipatory self-defence’ is far more likely to undermine the prohibition on the use of force and lead to abusive intervention than “the possibility, feared by opponents of unauthorized humanitarian intervention, that like cases will lead to unlike cases” (2004, 37).

What is more, even if the two claims (1) and (2) were true, the good achieved by the original illegal humanitarian intervener could outweigh the harm done by subsequent abusive intervention. Although abusive intervention may lead to oppression, domination, and the violation of human rights, these negative, long-term effects could be balanced by illegal humanitarian intervention’s positive, immediate effects of ending serious violations of human rights, genocide, and ethnic cleansing. Furthermore, if it is true that (1) illegal interveners establish the acceptability of humanitarian reasons as reasons for breaching Article 2(4), then in addition to abusive interventions where humanitarian justifications are claimed mendaciously, there may also be additional *genuine* humanitarian interventions. These genuine humanitarian interventions could further offset

⁵⁷Self-defence was the main reason given for the following uses of force: the U.S. in Nicaragua; Portugal’s conflicts with Guinea, Senegal, and Zambia; South Africa in Namibia, Angola, Botswana, Mozambique, and Zambia; Israel in Lebanon; Thailand in Burma; Senegal in Guinea-Bissau, Tajikistan in Afghanistan; and Iran in Iraq (Gray 2000). Self-defence was also the main reason given by the U.S. and the U.K. for the 2003 war on Iraq (their attempts to justify the war for humanitarian reasons were always secondary to the main argument of self-defence) and for the action in Afghanistan (see Chapter 2).

⁵⁸Similarly, Farer (2005b) argues strongly that the Kosovo intervention did not set a precedent for Iraq.

any harm done by abusive interventions. The worry then that illegal humanitarian intervention will lead to abusive non-humanitarian intervention is largely misplaced.

(v) International order

Some, however, question the ability of humanitarian intervention to do more good than harm (e.g. Brownlie 1973, 146). Their argument, which is instrumentalist, is that illegal humanitarian intervention undermines international order. Kofi Annan, for instance, argues that “actions without Security Council authorization threaten the very core of the international security system founded on the Charter of the United Nations” (in Wheeler 2000, 294).

We have just encountered and rejected one version of this argument, that illegal humanitarian intervention leads to additional abusive interventions, and therefore undermines international order. Chandler (2002, 157-191) offers a more general argument. He argues that by circumventing the international legal system, an illegal humanitarian intervener reintroduces chaos into international affairs and fundamentally challenges the pre-existing structures of international order, thereby pushing us towards a Hobbesian international system. This is because illegal intervention leaves the judgment to the individual state, rather than deferring to the UN, and therefore removes consensus and certainty from international law.

This massively over-exaggerates the potential destabilising effects of illegal humanitarian intervention on international order. As Buchanan (2003, 147-148) argues, international law is not a seamless web: cutting one thread – violating one norm such as

the law on humanitarian intervention – would not destroy the whole fabric and send us towards chaos. Indeed, the experience of illegal humanitarian intervention does not suggest that it destabilises the international legal system. On the contrary, illegal humanitarian intervention is often condoned by the international community, as in the cases of Tanzania's intervention in Uganda and (to a certain extent) NATO's intervention in Kosovo (Wheeler 2000).

There is, however, another way in which the legality of an intervener's status might be said to have significance for the legal order. This argument appeals to the *positive* effects of *legal* interveners (instead of the *negative* effects of *illegal* interveners) for international order, and runs as follows. Since legal interveners require UN Security Council authorisation in order to be legal according to current international law, when legal interveners act, they help to demonstrate that the Security Council is an effective system of international governance – the Council is fulfilling its purposes of governing and authorising the use of force. And, although the functioning of the Security Council is *procedurally* problematic (for reasons outlined above), in terms of the *substantive* question of international order, an effectively functioning Security Council is likely to be beneficial because it will strengthen the rule of law and the stability of the international system by centralising decision-making on the use of force. As such, legal interveners are preferable to illegal ones, not because illegal interveners have disastrous effects on international order, but because legal interveners have a greater positive effect on international order.

It is important, however, not to overstate the force of this argument. It is highly speculative and cannot be easily verified. Even if it were accurate, it does not provide a

strong reason for disfavouring illegal humanitarian intervention, but only a reason for favouring legal humanitarian intervention. Furthermore, the positive effects of a UN Security Council-authorized intervention on the international system and on international order would probably be insignificant, at least in a grand scale of things. Consequently, the UN Security Council's authorization of a particular humanitarian intervention is unlikely to have an immediate, significant, and positive effect on overall international law and order.

III. CONCLUSION

My suggestion, then, is that a humanitarian intervener's legal status according to current international law is of small moral importance, and significantly less important than commonly assumed. All we can say is that an intervener with UN Security Council authorization is mildly preferable to an intervener without such authorization. This is, firstly, because states have sometimes consented in the process of the formulation of the international law on humanitarian intervention and this has partial moral value because some states are representative of their citizens' wishes, and, secondly, because legal interveners could perhaps have some positive effects on international order. But these two reasons do no more than establish the minor contribution of an intervener's legality to its legitimacy.

This is not to say that the Security Council, *in general*, has no moral value. On the contrary, for uses of force *apart from* humanitarian intervention (such as the 2003 war in Iraq (which lacked Council approval), the 2001 action in Afghanistan, and other security-

related uses of force), it is probably morally desirable, for instrumental reasons at least, that only agents with Security Council authorisation act. However, in cases of humanitarian intervention, if an intervener responds to a grave humanitarian crisis but is unable to achieve UN Security Council approval, perhaps because of the self-interested actions of its permanent five members, it will not be illegitimate merely because it is illegal. Similarly, if we face a choice between an ineffective but legal UN intervention, and a justifiable yet illegal humanitarian intervention by another agent, we should regard the latter as legitimate, other things being equal.

So, when deciding who should intervene, an intervener's legal status according to the current international law on humanitarian intervention should play a small role in our thinking. This is also true of an intervener's motives, which have neither intrinsic nor instrumental moral significance. We will need instead to look to other factors, such as those considered over the course of the next three chapters.

It follows then that there is too great a gap between the international law on humanitarian intervention and the demands of morality: *lex lata* bears little relation to *lex ferenda*. If we want an intervener's legal status to matter more, we need to reform international law. But this reform is perhaps not best achieved by changes in customary international law; the problem with this approach is that it leaves too much to fortune. Nor should reform simply be a matter of legalising all unauthorised humanitarian interveners or legalising all unauthorised humanitarian interveners that meet certain criteria. A more realistic, and desirable, solution (which I expand upon in Chapter 8) is an approach that would develop additional formal bases for authorising humanitarian intervention in certain regional organisations, such as the African Union, ECOWAS, and

the EU, which would supplement the powers of the Security Council. Additional treaty-based law would be created to give these organisations not only the legal authority to authorise and to undertake humanitarian intervention within their regions, but also the legal responsibility and duty to do so. This more integrated response would start to tackle the problems of the lack of states' willingness to intervene, as well as some of the legal issues raised in this chapter. And, although this solution would not be ideal, it would be a lot better than the morally deficient international law on humanitarian intervention we have at the moment.

CHAPTER 4: THE MODERATE CONSEQUENTIALIST APPROACH

I. INTRODUCTION

In the previous chapter, I argued that the importance of an intervener's legal status is significantly less than is commonly assumed. So, when deciding who should intervene, whether an intervener has UN Security Council authorisation should not be the primary concern. I focus now on what is a much more important factor for an intervener's legitimacy – its effectiveness. Indeed, I argue that an intervener's effectiveness is the most important factor for the legitimacy of an intervener. It follows that, when considering who should intervene, we should primarily look to the intervener that would be most effective.

Given its importance, I devote two chapters to the issues surrounding effectiveness. In this chapter, I outline and defend my own account of the role of effectiveness in the legitimacy of an intervener – what I call the 'Moderate Consequentialist Approach'. My aim is to formulate the Moderate Consequentialist Approach so that it is the most persuasive approach to the value of consequences in an overall account of legitimacy for humanitarian intervention. I argue that the Moderate Consequentialist Approach provides a compelling answer to how much weight we should give an intervener's effectiveness. In the next chapter, I consider and reject two alternative approaches to the value of consequences: the 'Non-Consequentialist Approach' and the 'Extreme Consequentialist Approach'.

This chapter proceeds as follows. I begin by giving a brief introduction to

consequentialism and outline the basics of the Moderate Consequentialist Approach. I then make the case for the persuasiveness of this approach. I first highlight the intuitive appeal of consequentialist thinking on humanitarian intervention. I then distinguish between three types of effectiveness and suggest that an intervener's effectiveness is a necessary condition of its legitimacy. To give this argument for an intervener's effectiveness a more solid philosophical foundation, I apply Raz's account of legitimate authority to humanitarian intervention. Like the Moderate Consequentialist Approach, Raz takes consequences to be the primary determinant of legitimacy. Having defended the basic premise of the Moderate Consequentialist Approach – that an intervener's legitimacy is primarily dependent on its effectiveness – the third part of this chapter fleshes out this approach in more detail. In particular, I consider what timescale we should use to measure an agent's effectiveness and outline what sort of comparison we should make to judge effectiveness. The final part of the chapter argues that, according to the Moderate Consequentialist Approach, a legitimate humanitarian intervener must have a sufficiently just cause, yet need not be unselective.

II. CONSEQUENTIALISM AND HUMANITARIAN INTERVENTION

The key assertion of the Moderate Consequentialist Approach is that an intervener's effectiveness is the *primary* (and a *necessary*) determinant of its legitimacy. When deciding who should intervene, the Moderate Consequentialist Approach focuses on the intervener that will be the *most effective*. Unlike the Non-Consequentialist Approach, considered in the next chapter, it gives significant weight to the importance of an

intervener's effectiveness. And unlike the Extreme Consequentialist Approach (also considered in the next chapter), it does not hold that this is the *only* determinant of an intervener's legitimacy. Other non-consequentialist factors, such as an intervener's representativeness and fidelity to the principles of *jus in bello*, matter to a certain degree, although they are less important than effectiveness. Their value can be included under the Moderate Consequentialist Approach.⁵⁹

Before going any further, it is worthwhile spending some time considering what consequentialism is in general and then relating this to the effectiveness of an intervener. Putting it in its most simple form, consequentialism judges things by their consequences. If something – such as an action, rule, institution, or practice – promotes (or is expected to promote) a good outcome, then that makes it morally right. What consequentialism is concerned with therefore is the intrinsic value of certain 'states of affairs'. Actions, rules, and institutions are instrumentally valuable to the extent that they have (or are expected to have) the consequence of achieving the intrinsically valuable state of affairs. As Philippa Foot puts it: "A consequentialist theory of ethics is one which identifies certain states of affairs as *good* states of affairs and says that the rightness or goodness of actions (or of other subjects of moral judgment) consists in their positive productive relationship to the decent state of affairs" (1988, 224-225). Utilitarianism, which for a long time has been the most prominent form of consequentialism, identifies the 'good' as utility

⁵⁹It might be alleged that the Moderate Consequentialist Approach is not really a consequentialist approach since it accepts that an intervener's legitimacy can be determined, in part, by other, non-consequentialist values (such as representativeness). In reply, although it does not take consequences to be the sole determinant of legitimacy, it does take them to be the primary determinant, and this is sufficient for it to be deemed consequentialist, at least for our purposes here.

(roughly meaning welfare) and claims that the rightness of something depends on whether it promotes utility. However, the structure of consequentialism does not require that the good is always utility, since other values, such as human rights, can be specified as the intrinsically good states of affairs.

A consequentialist approach to humanitarian intervention could take the good that is to be increased by an intervener as utility, the enjoyment of basic human rights, the prevention of human suffering, or well-being. Not much turns on this choice. Given the seriousness of a humanitarian crisis, these terms can be used interchangeably to a certain extent, without a loss of meaning. For instance, an intervener that is expected to promote utility in the political community suffering the humanitarian crisis would most likely do so by preventing human suffering, and the prevention of human suffering would involve the protection of basic human rights. The Moderate Consequentialist Approach (and, for the most part, this thesis) takes the good that is to be increased as the enjoyment of basic human rights, which will more often than not involve the prevention of human rights abuses. I sometimes refer to the prevention of human suffering and the promotion of well-being, but this does not affect the overall argument. So, an intervener that increases enjoyment of basic human rights is effective. In other words, the effectiveness of an intervener is determined by whether it achieves good consequences, that is, by whether it increases the good, which in this case is the enjoyment of basic human rights. This position is therefore similar to what Robert Nozick (1974) calls the ‘utilitarianism of rights’.

Note here some basic human rights – the enjoyment of which is the ‘good state of affairs’ to be increased – may be themselves justified consequentially, but many may

not be, and all may be justified non-consequentially. Indeed, it is in the nature of consequentialism that it must make its case by reference to a goal which is morally ultimate – the good state of affairs – and which cannot therefore be justified consequentially. These features of consequentialism in general, and of human rights in particular, are consistent with the claim of the Moderate Consequentialist Approach that the primary determinant of an intervener's legitimacy is consequentialist. Also note that a strong commitment to consequentialism as the primary determinant of an intervener's legitimacy need not entail a more comprehensive commitment to consequentialism in general. My focus is on legitimacy for humanitarian intervention and it is in this context in which I argue that consequentialist thought is largely compelling. I do not consider the persuasiveness of consequentialist thinking on other issues.

Why should we take the consequences of an intervener's action seriously? The notion that an intervener should be effective is intuitively appealing. Indeed, in the normative debates surrounding humanitarian intervention, one subject that continually arises is the effectiveness of humanitarian intervention. The discussions on *how*, *when*, and most notably, *whether*, humanitarian intervention should be undertaken all revolve around this issue. Those who are sceptical of intervention can cite the failure of the 1991 UN and U.S. interventions in Somalia and UN action in Bosnia as examples of the ineffectiveness of intervening to save lives. John Stuart Mill (1984), for example, defends the principle of non-intervention because humanitarian intervention is unlikely to be successful, given the importance of self-determination.⁶⁰ Those more favourable to intervention, on the other hand, can highlight the successes of NATO's 1999 action in

⁶⁰That said, he limits the principle of non-intervention to 'civilised' societies.

Kosovo, UN-authorized Australian-led action in East Timor, and Indian action in Bangladesh.⁶¹

Despite their differing empirical judgments, what both sides agree on is the importance of intervention being successful. If humanitarian intervention is not successful, then it should not occur; but if it is, perhaps it should. The basis of this highly plausible notion is a certain consequentialist logic: if intervention in another political community is to be undertaken in order to achieve a humanitarian outcome, it matters that it should achieve that humanitarian outcome.

From this intuitive notion follows another: *those* that undertake humanitarian intervention should be successful. If the UN, for instance, is to intervene in Burundi, it should do so effectively. This is a frequent requirement made of interveners both in the academic literature and by those involved with the practice of humanitarian intervention. For instance, in his address to the 54th session of the UN General Assembly, Annan (1999) called upon member states to unite in the quest for more effective policies to stop egregious violations of human rights.⁶² Furthermore, the Just War tradition typically requires war to have a reasonable prospect of success and to be proportionate. These two criteria can be interpreted as requiring that those undertaking war should be expected to be effective and, when applied to humanitarian intervention, that interveners should have a good prospect of success.⁶³

⁶¹Mason and Wheeler (1996), for instance, present persuasive arguments against ‘consequentialist realism’—the view that humanitarian intervention cannot be justified because it would lead to bad consequences.

⁶²Others who argue for the importance of an intervener being effective include Beach and Isbister (2000), deLisle (2001), Singer (2002), Stromseth (2003), Walzer (2002a; 2004a), and Wheeler (2000).

⁶³See Fixdal and Smith (1998).

At the very least, then, a degree of consequentialist thought on humanitarian intervention is appealing. This helps to provide some initial backing for the Moderate Consequentialist Approach, which claims that an intervener's effectiveness is the *primary* determinant of its legitimacy.

Three types of effectiveness

To see more clearly why an intervener's effectiveness is such an important consideration for its legitimacy, it helps to distinguish between three types of effectiveness. First, '*local external effectiveness*' depends on whether an intervener promotes or harms the enjoyment of basic human rights of those in the political community that is subject to its intervention. Second, '*global external effectiveness*' depends on whether an intervener promotes or harms the enjoyment of basic human rights in the world as a whole. Third, '*internal effectiveness*' depends on whether an intervener promotes or harms its own citizens' enjoyment of basic human rights.

To illustrate these categories by way of example, the local external effectiveness of Tanzania's 1979 intervention in Uganda depended on whether Tanzania promoted the enjoyment of the basic human rights of Ugandans. Its global external effectiveness depended on whether it promoted the enjoyment of the basic human rights in the world at large (i.e. the international community). Third, its internal effectiveness depended on whether it protected the basic human rights of Tanzanians. According to the Moderate Consequentialist Approach, all three types of effectiveness are important for an

intervener's legitimacy. Together, they explain why an intervener's effectiveness is the primary determinant of its legitimacy. I will make the case for each in turn.

The first type of effectiveness most clearly demonstrates the significance of an intervener's effectiveness and why effectiveness is the primary determinant of an intervener's legitimacy. This is an intervener's local external effectiveness, which depends on whether an intervener is likely to promote or harm the enjoyment of basic human rights of those in the political community that is subject to its intervention. In other words, to be locally externally effective, an intervener needs to be successful at tackling the humanitarian crisis. For instance, if the UN is to intervene in Darfur with the purpose of helping the Darfurians, it is vital that its intervention should benefit the Darfurians. If it were likely to make the situation even *worse*, then it would be locally externally ineffective and (in all probability) would not be legitimate.

Why is this a highly significant factor for an intervener's legitimacy? My reasoning is as follows. The violation of basic human rights is morally wrong. Indeed, the degree of human suffering typically involved in the violation of basic human rights is perhaps the greatest moral wrong, more morally urgent than other moral concerns. We tend to think, generally speaking, that rape, torture, and murder are more morally significant than repression, inequality, etc. A humanitarian crisis usually involves a high degree of human suffering and the mass violation of basic human rights. As such, it involves (1) the worst moral wrong (2) on a massive scale. Accordingly, it is of the utmost moral importance that the humanitarian crisis is effectively tackled, given it involves such a high degree of severe human suffering. It follows that, when a serious humanitarian crisis arises, it is vital that it is effectively tackled. It is important, then, that

a humanitarian intervener is effective, since it is vital that the degree of human suffering involved in the humanitarian crisis in which it intervenes is halted.

Moreover, humanitarian intervention involves military force and there is a risk that the use of force will *increase* the amount of human suffering in the target state. For this reason, Farer argues that “*there must be a high probability that the use of force will achieve a positive humanitarian outcome*” because the “one sure thing about force is that it destroys things... to propose to invade a society, to thrash around breaking things, and then to leave without significantly ameliorating and possibly even aggravating the situation is unacceptable” (2005a, 219; emphasis in original).

The second type of effectiveness is ‘global external effectiveness’. This depends on whether an intervener is likely to promote or harm the enjoyment of basic human rights in the world at large. But in order to avoid double-counting an individual’s enjoyment of basic human rights, global external effectiveness excludes those already included under internal effectiveness and local external effectiveness. Thus, global external effectiveness depends on whether an intervener promotes or harms the enjoyment of basic human rights in the world at large, apart from the intervener’s citizens and those subject to its intervention.

It is perhaps a little more difficult to see the significance of this factor for an intervener’s legitimacy. In the vast majority of cases, the most important thing seems to be whether the intervener promotes the enjoyment of human rights of those suffering the humanitarian crisis, not whether the intervener promotes the overall enjoyment of human rights worldwide. Yet global external effectiveness is a key consideration. Perhaps the best way of seeing this is to consider not the importance of an intervener’s *promoting* the

worldwide enjoyment of human rights, but the importance of its *not harming significantly* the worldwide enjoyment of human rights. In other words, the significance of an intervener's global external effectiveness is best seen in its negative aspect: an intervener that undertakes humanitarian intervention that severely harms the enjoyment of basic human rights in the world at large (minus those included under local external effectiveness and internal effectiveness) loses legitimacy.⁶⁴ The following are some examples where global external effectiveness is important. An intervener could destabilise the neighbouring states of the target political community (perhaps by creating a large refugee flow) and therefore severely harm the enjoyment of basic human rights of those in neighbouring states. Alternatively, an intervener's action may undermine international order by setting a dangerous legal precedent that challenges the prohibition on the use of force. The international instability that results may undermine the enjoyment of basic human rights of a large number of individuals in the international community. Or, an intervener's action may cause great power antagonism, and, ultimately, nuclear war.

The third type of effectiveness is an intervener's internal effectiveness, which depends on the consequences for the intervener's own citizens. This requirement tends to receive less attention than global and local external effectiveness, yet it is still significant. My claim is this: an intervener's legitimacy depends, at least in part, on its looking after its citizens' basic interests. To that extent, I agree with Walzer's claim (although not

⁶⁴This is not to endorse what Smart (1973) calls 'negative utilitarianism', which attempts to minimise the bad rather than maximise the good. Although I argue that the importance of global external effectiveness is best seen in its negative aspect, it is also possible for global external effectiveness to be important because an intervener has a positive impact on the enjoyment of basic human rights in the world.

necessarily his whole communitarian philosophy) that “[t]he leaders of states have a right, even indeed, they have an obligation, to consider the interests of their own people, even when they are acting to help other people” (2002a, 4).⁶⁵

Like global external effectiveness, the importance of internal effectiveness is less obviously important for an intervener’s legitimacy than local external effectiveness. It is also typically best seen in its negative aspect. In most cases, we would not expect an intervener to make an *improvement* in its own citizens’ enjoyment of basic human rights, given the costs of humanitarian intervention in terms of lives and resources. Instead, humanitarian intervention is likely perhaps to *decrease* some of its citizens’ enjoyment of basic human rights, e.g. its soldiers who are wounded and killed in action. But this decrease must not be excessive: an intervener that undertakes reckless humanitarian intervention, which will *severely* decrease its own citizens’ enjoyment of basic human rights (perhaps by incurring heavy casualties among its own forces or by bankrupting the state), loses legitimacy (i.e. it is ineffective overall).

If one doubts this assertion, consider the following scenario. The Mozambican government decides to intervene in Russia with the purpose of resolving the humanitarian crisis in Chechnya. This requires a massive military and financial effort. Mozambique’s minimal financial resources are all tied up in the intervention and, as a result, it is unable to provide vital services, such as clean water provision, for its home population. Because of this, tens of thousands of Mozambicans lose their lives through cholera and water-

⁶⁵See, further, Mason (2000, 199-200), who argues that a state can legitimately engage in humanitarian intervention, but when doing so it should give proper weight to the special obligations it owes to its citizens.

borne diseases. Although Mozambique does achieve an improvement in the enjoyment of basic human rights of the Chechnyans through its intervention, that improvement is tiny compared to the loss of well-being for the Mozambicans because of the intervention. Is Mozambique a legitimate intervener in Chechnya? It seems that it is not. Thus, according to the Moderate Consequentialist Approach, an intervener's legitimacy depends also on its internal effectiveness and typically how internally *ineffective* it is. Although an intervener could be legitimate even though it does not promote its own citizens' enjoyment of basic human rights, its legitimacy will be reduced if its intervention causes excessive harm to its home population (so that it is ineffective overall).

Given the importance of an intervener's being effective in these three senses, it follows that an intervener's *overall effectiveness* is a *necessary* condition of its legitimacy. If, when combining its local external effectiveness, global external effectiveness, and internal effectiveness, an intervener is ineffective overall, it cannot be legitimate. If an intervener's effectiveness were not a necessary condition of its legitimacy, an intervener could be legitimate even though it (1) failed to make an improvement in the humanitarian crisis – and so lacked local external effectiveness, (2) undertook intervention that was excessively costly to human rights worldwide – and so was extremely globally externally ineffective, and/or (3) undertook intervention that was excessively costly to its citizens – and so was extremely internally ineffective. Accordingly, an intervener must be likely to make an overall improvement in the enjoyment of basic human rights to be legitimate. As Jane Stromseth notes, “humanitarian intervention should have a reasonable prospect of success in stopping the atrocities that triggered intervention in the first place. Otherwise, the interveners will

simply be exposing their soldiers and the target population to life-endangering situations without the hope of success that justifies the risks to be borne” (2003, 268).

The standard way that the intervener will be effective overall is by being substantially locally externally effective, that is, by successfully tackling the humanitarian crisis. It follows that, in most cases, an intervener’s local external effectiveness is a necessary condition of its legitimacy. An intervener (usually) cannot be legitimate if its intervention is likely to worsen the situation of those suffering the humanitarian crisis.

There are, however, two potential exceptions. These are when the intervener could be locally externally *ineffective*, yet effective overall, and so still be legitimate. The first sort of case is where an intervener would be effective overall because of the contribution made by its global external effectiveness. For instance, State A may intervene with the purpose of tackling the humanitarian crisis in State B, but will make the situation worse for those in State B. It would prevent, however, an even worse humanitarian crisis arising in a neighbouring state, State C. Overall, State A’s intervention would be effective and therefore legitimate according to the logic of the Moderate Consequentialist Approach, even though it lacks local external effectiveness. The second sort of case is where an intervener would be effective overall because of the contribution made by its internal effectiveness. For instance, State X may intervene in State Y to tackle the humanitarian crisis in State Y, but its intervention would worsen the situation for those in State Y. It would avert, however, an even worse humanitarian crisis arising in State X. Overall, State X’s intervention would be effective – it would increase the overall enjoyment of basic human rights – and it would therefore be legitimate

according to the logic of the Moderate Consequentialist Approach, even though it lacks local external effectiveness.⁶⁶ Although it is important to acknowledge the existence of these two potential exceptions, they are hypothetical. In nearly all real-world cases, an intervener's local external effectiveness is a necessary condition of its legitimacy.

To summarise: an intervener's effectiveness is the primary, and a necessary, determinant of its legitimacy. This is because an intervener's internal effectiveness, global external effectiveness, and local external effectiveness are important considerations when deciding who should intervene. The importance of global external effectiveness and internal effectiveness are perhaps best seen in a negative sense. Local external effectiveness, by contrast, obviously is crucial. Indeed, in most cases, this is a necessary condition of an intervener's legitimacy. Although there are two potential exceptions to this, these two exceptions still support the central point: an intervener's effectiveness, generally speaking, is a necessary condition (and the primary determinant) of its legitimacy.

It follows then that the legitimacy of an agent depends on whether, at the time the decision to intervene is made, it can be reasonably expected to be effective in increasing enjoyment of basic human rights. To have a reasonable expectation of success, an agent should follow a course of action that it judges is likely to be successful and, crucially, base that judgment on information that it has good reason to believe is accurate. An agent

⁶⁶To be sure, such an intervener must still have a humanitarian intention. Its main objective must be to tackle the humanitarian crisis. Furthermore, if the intervener were to advance its citizens' interests in ways not involving the enjoyment of their basic human rights (such as by increasing their access to oil), it would not be legitimate. It can be legitimate on this line of reasoning only if it improves their enjoyment of basic human rights, for instance by preventing a terrible humanitarian crisis.

of intervention cannot have a reasonable expectation of success if it acts on the basis of what it regards as a good course of action, yet this judgment is not supported by information that it has a good reason to believe is accurate. Hence, Farer asserts that “[t]he question for those assessing an intervention after the fact would be whether, at the time the decision was taken, the decision makers could reasonably have believed that their planned tactics, strategies and material investment were likely to achieve the required outcome. In law this is what we call the ‘reasonable person’ standard” (2005b, 245).

It might be objected that the use of ‘reasonable’ is vague and will be “reinterpreted according to the moral and political ideas of those who use them” (Graham 1987, 142). However, as Gordon Graham (1987, 142) responds, although there is flexibility in the term – so that well-informed and well-intentioned parties may disagree – it does not follow that there are no clear cases of reasonable (or unreasonable) expectation, nor does it follow that the majority of cases are disputable.⁶⁷

Raz’s Service Conception of Authority

To make a more persuasive case for the Moderate Consequentialist Approach, it will help to give a stronger philosophical foundation to the claim that an intervener’s legitimacy is primarily dependent on its effectiveness. I will rely on Raz’s ‘service conception of authority’ for this purpose. This account is widely recognised as the most nuanced,

⁶⁷See Chapter 7 for a more detailed discussion of the issue of vagueness and how we should decide when the relevant factors of legitimacy have been met.

developed, and convincing of all instrumentalist accounts of legitimate authority, and perhaps of all accounts of legitimate authority in general.⁶⁸

For Raz, like for the Moderate Consequentialist Approach, achieving good consequences is not the sole way to determine an agent's legitimacy, but the normal and primary way to do so. Accordingly, by providing a persuasive theoretical base, the following analysis of Raz will go some way to help make the case that an intervener's legitimacy depends, to a large extent, on its effectiveness.

Before beginning, it is worth noting that Raz's primary concern is with the legitimate authority of the state. He does not directly discuss the issue of legitimacy for humanitarian intervention. This section therefore considers an account of legitimacy for humanitarian intervention that is Razian in spirit. Sometimes this may require a little flexibility in the application of Raz's central theory, but our interest is not in Raz's work *per se* but in his consequentialist approach.⁶⁹

Two theses lie at the heart of Raz's account of legitimacy. First, the 'dependence thesis' requires an institution to govern in conformity with the reasons that apply to its subjects. It says:

⁶⁸See McCabe (2001) and Morris (1996). Not all regard his instrumental approach to legitimate authority as persuasive, however. See, in particular, Christiano (2004a), Durning (2003a), Green (1988; 1989), Moore (1989), Regan (1989), Shapiro (2002), and Waldron (1989).

⁶⁹In fact, Raz does not accept that he is a consequentialist (1989, 1184 n66). However, this is largely due to his rejection of his particular conception of consequentialism, rather than to his not being a consequentialist. Regan argues that "a consequentialist is someone who believes that morality, whether individual or political, is about promoting the occurrence in the world of whatever has intrinsic value" and "Raz fits this definition of a consequentialist" (1989, 997). Also see Moore (1989, 842).

all authoritative directives should be based on reasons which already independently apply to the subject of the directives and are relevant to their action in the circumstances covered by the directive (Raz 1986, 47; emphasis in original).

In other words, the institution must serve the governed. A puppet government that makes decisions in response to the wishes of a dominant foreign power, rather than for the reasons that apply to its individuals, would be illegitimate.

Second, according to the 'normal justification thesis', the legitimacy of an institution depends on whether it promotes its subjects' compliance with dependent reasons. The normal justification thesis says:

the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely to better comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than trying to follow the reasons which apply to him directly (Raz 1986, 53; emphasis in original).

So, to be legitimate, an institution needs to be effective at serving the governed. For Raz, this is the primary way in which an institution is legitimised.

Together, the dependence thesis and the normal justification thesis provide a compelling view of legitimate authority. Not only do they capture our intuitions that authorities should serve the governed and that they should do so effectively, they explain why. Moreover, these two theses are mutually reinforcing. In Raz's words:

If the normal and primary way of justifying the legitimacy of an authority is that it is more likely to act successfully on the reasons which apply to its subjects then it is hard to resist the dependence thesis. It merely claims that authorities should do that which they were appointed to do. Conversely, if the dependence thesis is accepted then the case for the normal justification thesis becomes very strong. It

merely states that the normal and primary justification of any authority has to establish that it is qualified to follow with some degree of success the principles which should govern the decisions of all authorities (Raz 1986, 55).

Raz's judicious account of legitimate authority is ultimately linked to his account of well-being. Well-being for Raz is linked to the successful pursuit of our 'goals'; it consists of "the (1) whole-hearted and (2) successful pursuit of (3) valuable (4) activities" (1994, 3). By 'goals', Raz means "whatever a person cares about, be it a relationship, his career, a leisure activity, an interest in local history, a fascination with children, the pleasure of drink or of good food, etc." (1986, 305). This does not mean that the fulfilment of self-interest determines well-being. Raz distinguishes between well-being and self-interest, arguing that "self-interest is largely a biological notion" (1986, 295). Whilst people's well-being is, to some extent, dependent on biologically determined goals, it is also "to a considerable extent a function of their non-biologically determined goals" (Raz 1986, 294). The key point then is that an individual's well-being is, in significant part, determined by the successful pursuit of his goals, but this does not mean the same as fulfilling his self-interest.

This pursuit of goals and the achievement of well-being is reason-based: "Both when a person chooses a goal and when he surveys the one he has, he regards himself as looking for reasons for choosing one goal rather than another, and he holds himself to have the goals which he has for a reason" (Raz 1986, 300). The primary sorts of reasons involved in this pursuit are 'action reasons' (Raz 1986, 300). What are 'action reasons'? According to Raz, these are reasons "where the value (instrumental or intrinsic) is in the performance of an action, i.e. where there is intrinsic value in certain agents performing

actions of a certain kind” (1986, 279).⁷⁰ Raz asserts that “it is clear that many of a person’s projects and goals provide him with action reasons; many are constituted by the endorsement of action reasons” (1986, 306). Thus, “well-being depends, at the deepest level, on his action reasons and his success in following them” (Raz 1986, 308).

We can now see how Raz’s account of legitimacy links into his account of well-being. A legitimate authority can be expected to increase compliance with the reasons which apply to its subjects – their dependent reasons. Often (but not always) these reasons will be action reasons, which are important to the individual since many of them determine his goals and therefore his well-being. A legitimate authority can be expected to help an individual achieve his action reasons (and also other reasons), or to put it another way, it can help the individual to attain his goals and therefore increase his well-being. Thus, the Razian approach asserts that the legitimacy of an institution primarily depends on its effectiveness and provides a detailed explanation why.

Moreover, like the Moderate Consequentialist Approach (and unlike the Extreme Consequentialist Approach considered in the next chapter), Raz does not claim that effectiveness is the *only* factor for the legitimacy of an institution. This further adds to the persuasiveness of his approach. First, Raz argues that identification can help to establish legitimacy. He sets out two types of identification: (1) consent to the authority and (2) respect for its laws (Raz 1986). Raz limits the legitimating function of consent and respect for law, and therefore identification in general, to a role that is secondary to

⁷⁰These contrast with outcome reasons “where the value of the action is in its outcome or consequences (where neither the action itself nor the fact that it leads the same or other agents to perform some actions counts as an outcome)” (Raz 1986, 279).

and that supports the normal justification thesis. In addition to primary reasons, “[t]he secondary reasons help to meet the burden of proof required to establish a complete justification, i.e. they may suffice in conjunction with the primary reasons in circumstances in which the primary reasons alone will not be enough to establish the legitimacy of an authority” (Raz 1986, 55). Second, Raz waters down the role of consequences further with his belief that authorities must satisfy what he calls the ‘Condition of Autonomy’.⁷¹ These are matters “on which it is more important that people should decide for themselves than that they should decide correctly” (Raz 1989, 1180). This condition takes into account the intrinsic desirability of people conducting their own life by their own lights (Raz 1989, 1180).⁷² My main point here then is that Raz, like the Moderate Consequentialist Approach, takes consequences to be the *primary*, rather than the *sole*, determinant of legitimacy.

How can this Razian account apply to humanitarian intervention? A humanitarian crisis massively harms the well-being of those subject to it. First, the grievous suffering and loss of life will harm individuals ‘biologically’, hurting their self-interest and preventing them from realising the goals that determine their well-being. More specifically, when there is a humanitarian crisis, an individual’s action reasons (and other reasons) are frustrated – someone who is famished, tortured, or oppressed cannot successfully pursue their goals – and so will not be able to ‘comply with the reasons which apply to him’. An intervener that can be expected to minimise this ‘biological

⁷¹For a recent restatement of this condition, see Raz (2003, 261).

⁷²This Condition of Autonomy has some affinity with my argument in Chapter 6 for local external representativeness.

harm' is likely to increase the well-being of those subject to its intervention. By doing so, the intervener will be legitimate since it will increase the number of reasons that are able to be fulfilled and therefore increase their subjects' compliance with the reasons which apply to them. Hence, an intervener that can be expected to improve the humanitarian crisis will be legitimate according to the normal justification thesis.

Crucial then to an intervener's legitimacy is the effective resolution of the humanitarian crisis. To apply what Raz says about governmental interference to humanitarian intervention, agents "should act only where their intervention is likely to lead to greater conformity with those reasons than is likely if they do not intervene" (1989, 1231). A legitimate intervener on the Razian account is primarily legitimised by its effectiveness at remedying or improving the humanitarian crisis. Hence, an intervener that is likely to undertake successful humanitarian intervention will go a long way towards being legitimate.

Thus far, I have applied the Razian account to help to explain the paramount importance of local external effectiveness. To be locally externally effective, the intervener has to act on the basis of (and to increase compliance with) the dependent reasons which apply to the individuals in the political community that is subject to its intervention. As previously argued, the main reasons which apply to these individuals involve a resolution of the humanitarian crisis. Hence, the intervener is locally externally legitimate if it effectively improves the humanitarian crisis. This explanation of the importance of local external effectiveness seems sound. But how does the Razian account apply to other types of effectiveness, and in particular internal effectiveness? One possible objection here is that the dependence thesis is incompatible with humanitarian

intervention. Specifically, it may appear that an agent intervening to resolve a humanitarian crisis cannot be internally legitimate on a Razian account when there is no benefit for its citizens. As discussed above, the dependence thesis requires an institution to act on behalf of reasons that apply to *its* subjects. But, the objection runs, by undertaking humanitarian intervention an intervener acts on reasons that apply not to its subjects, but to those beyond its borders – those suffering the humanitarian crisis.

But Raz's account of reasons avoids this problem. In this context, Andrew Mason notes: "Raz's account allows that some of the reasons which apply to a person may derive from moral obligations which he is under" (2000, 195). To explain further: recall here that, for Raz, well-being is not dependent merely on the fulfilment of self-interest, but is a broader notion, determined by an individual's successful achievement of his goals. So, the reasons that apply to individuals are not necessarily the same as their narrow self-interest. These reasons (such as their action reasons) are instead to do with their goals, which ultimately determine their well-being. Now, there are good reasons for thinking that the undertaking of humanitarian intervention can be deemed a valuable goal on this Razian framework. Most simply, protecting others from an egregious violation of their human rights is an intuitively valuable goal. Second, Raz (1986) endorses value pluralism, which means that a wide degree of goals can be valuable. Third, for Raz many goals are not individualistic or self-interested, but instead depend on the promotion of others' well-being. Indeed, Raz claims that we have certain duties of well-being, the fulfilment of which will in turn promote our own well-being. For instance, he asserts that "[o]ur duties of well-being are to provide the conditions in which people will enjoy the

basic capacities to take advantage of the opportunities available in their society” (Raz 1994, 18).

It follows then that “Raz’s account can allow that the state may have legitimate authority to engage in humanitarian intervention when it thereby enables its citizens to discharge their moral obligations to those beyond its borders” (Mason 2000, 195). Thus, an intervener on Raz’s service conception of authority can still be internally legitimate. On this Razian view, then, the state is not simply a discretionary association to promote its citizens’ interests. Rather, as in Buchanan’s (1999) account of legitimacy, it can be seen as an ‘instrument for justice’, since it requires legitimate governments to increase their citizens’ compliance with certain duties (including fulfilling their duty to prevent human suffering by undertaking humanitarian intervention) in order to promote their well-being. Nevertheless, an intervener that undertakes reckless humanitarian intervention at *excessive* cost to its citizens would not be legitimate on the Razian framework since such intervention would severely harm its citizens’ well-being.

This explanation can also be extended to the importance of global external effectiveness on the Razian account, at least in the negative sense. If it were the case that some of individuals’ dependent reasons are concerned with their moral obligations beyond the borders of their own state, including humanitarian intervention, it would seem that these obligations would include an obligation not to undertake intervention that is excessively costly to worldwide enjoyment of basic human rights. The legitimacy of an intervener will therefore also depend on whether it avoids reckless humanitarian intervention that is excessively costly to worldwide well-being.

Thus, Raz’s service conception, which holds that institutions are legitimate to

the extent that they promote well-being, shows why the Moderate Consequentialist Approach is persuasive and, in particular, why we want interveners to resolve humanitarian crises effectively. It asserts that an intervener that effectively improves the humanitarian crisis will have a positive effect on well-being and, according to the normal justification thesis, that intervener will be legitimate. As such, I take the Razian account to provide the philosophical justification for my argument for the substantial significance of consequences for an intervener's legitimacy. The Razian service conception therefore underpins the Moderate Consequentialist Approach.

III. DETAILS OF THE MODERATE CONSEQUENTIALIST APPROACH

The previous two sections have outlined and defended the basics of the Moderate Consequentialist Approach. I argued first that the notion that consequences have a large role in the legitimacy of an intervener is intuitively compelling and that this helps to explain some of the initial attractiveness of the Moderate Consequentialist Approach. Next, I distinguished between three types of effectiveness: internal effectiveness, global external effectiveness, and local external effectiveness. Together these help to explain why an intervener's effectiveness is the primary, and a necessary, condition of its legitimacy. I then delineated and applied Raz's service conception of authority to humanitarian intervention to provide some more theoretical substance to these claims of the Moderate Consequentialist Approach. This section will now consider some details of the Moderate Consequentialist Approach.

(i) What timescale?

Let us start with whether the Moderate Consequentialist Approach should measure an agent's intervention – and therefore its effectiveness – by its short- or long-term expected success. Measuring an intervention in terms of the likely short-term success means that effectiveness is to do with how well the intervener can be expected to tackle the impending or ongoing humanitarian crisis. The long-term view, on the other hand, requires the intervener not only to resolve the humanitarian crisis, but also to prevent an immediate recurrence of it, thereby securing individuals' enjoyment of basic human rights. Hence, Wheeler suggests that we should regard the short- and long-term humanitarian outcomes as issues of rescue and protection: “the former [rescue] referring to the success of intervention in ending the supreme humanitarian emergency, and the latter [protection] being defined in terms of how far intervention addresses the underlying political causes that produced the human rights abuses” (2000, 37).

Overall, the long-term perspective is preferable because it includes expected short-term gains in its calculation of expected long-term enjoyment of basic human rights – it includes rescue as well as protection. The short-term perspective, conversely, excludes expected long-term gains – it includes only rescue. As Walzer (2002a, 5) argues, the short-term view, in the form of an ‘in and quickly out’ rule, can lead to a recurrence of the humanitarian crisis after the intervener has left. So, assuming that both short- and long-term gains in enjoyment of basic human rights are morally significant, we should favour the long-term perspective because it takes into account *both* types of increase in enjoyment of basic human rights.

But, as C. A. J. Coady argues: “The ‘longer-term’ cannot be too long. An intervention must avoid escalating into a colonial saga or even an enduring protectorate” (2002, 30). Perhaps the easiest way to avoid this, Walzer (2002a) argues, is to limit the extent of the long-term objectives. Similarly, as one of the participants at the Stanley Foundation’s Thirty-Fifth United Nations of the Next Decade Conference observed, the intervener could not and “should not fix ‘everything’ in these countries. ‘You don’t need to turn Rwanda into Pennsylvania’” (2000, 39). Nor does long-term humanitarian intervention mean that short-term expected results are of lesser importance. Where possible, the intervention “must be tailored to suit these long-term objectives, though... securing an immediate cessation of hostilities will, in some cases, trump other objectives” (Clarke 2001, 3). If a state’s intervention is expected to save 50,000 lives in the short-term but cost 40,000 lives in the long-term, this is still a positive outcome in the long-term (10,000 lives have been saved).

One difficulty commonly raised with this longer-term perspective is that it is too demanding because it requires many things that are not easily achieved – protection is often harder than rescue. Consequently, an intervener is more likely to be effective – and therefore, to a large degree, legitimate – in the short-term than in the long-term. But this is not a satisfactory reason to adopt the short-term perspective. Instead of lowering the moral threshold of legitimacy so that some current agents can be called effective, we should work towards producing such effective agents.

(ii) What comparison?

A related issue here is the standard of comparison by which we should judge an intervener's effectiveness. One option is to treat an effective intervener as one that increases enjoyment of basic human rights in the long-term compared to the situation at the time its decision to intervene was made. Another option is to treat an effective intervener as one that increases enjoyment of basic human rights in the long-term compared to what would have been likely to happen if it had not intervened – the counterfactual. To illustrate the distinction, suppose that Tanzania were to intervene in Mozambique. On the first position, Tanzania would be expected to be effective if it were likely to improve enjoyment of basic human rights in the long run, compared to the situation at the time that President Jakaya Kikwete agrees with his ministers to intervene in Mozambique. On the second position, Tanzania would be expected to be effective if it were likely to improve enjoyment of basic human rights in the long run, compared to what would happen if it refrained from intervening in Mozambique. Which position should we prefer?

I will use the second position for the Moderate Consequentialist Approach. NATO's intervention in Kosovo provides support for the persuasiveness of treating effectiveness in this way. Although NATO's intervention in Kosovo originally exacerbated the situation and, overall, the post-intervention situation was probably worse than the pre-intervention situation in Kosovo, had NATO instead stood by and not intervened, the situation in Kosovo would have become far worse (Franck 2003, 226). It is right to call this intervention 'effective', even though it did not improve the pre-

intervention situation. The justification for using the counterfactual calculation in determining effectiveness is that it properly accounts for the role of *preventative* humanitarian intervention, such as NATO's action in Kosovo. The problem with the first approach is that preventative and anticipatory humanitarian interventions would often be deemed ineffective. As Simon Caney notes, "it is implausible to criticize humanitarian intervention as 'unsuccessful' when it is more 'successful' in meeting the humanitarian objectives than any of the other courses of action" (2005, 244). Thus, the second approach is preferable and we should measure all three types of effectiveness (global external effectiveness, local external effectiveness, and internal effectiveness) by comparison with the counterfactual of non-intervention.

Note here that the counterfactual improvement need not necessarily be that large. Hypothetically, an intervener could be deemed effective overall even if it prevented the violation of only a small number of individuals' basic human rights. More generally, an intervener does not need to tackle completely the humanitarian crisis in order for its intervention to be effective. As long as its intervention makes an improvement in the crisis compared to what would have happened had it not intervened, this is sufficient for it to be deemed effective. Of course, the greater the intervener's effectiveness, the better. The more it increases the overall enjoyment of basic human rights, the greater its legitimacy.

IV. SELECTIVITY

Having outlined the Moderate Consequentialist Approach in more detail, I will now argue that this approach can explain why selectivity is not an important factor for the legitimacy of an intervener.

One of the most frequent criticisms made of humanitarian intervention is that it is carried out inconsistently. The criticism might be, for instance, that NATO undertook intervention in Kosovo but not in DR Congo (Damrosch 2000). The problem with this selectivity is that it “conveys the impression that ‘some are more worth protecting than others’” (ICISS 2001b, 150). If humanitarian intervention really is to be humanitarian, the argument continues, it has to be consistently applied whenever there is a serious humanitarian crisis. Mohammed Ayoob, for instance, claims that since humanitarian interventions “are undertaken on a selective basis and the same criteria are not applied uniformly and universally in every case, such interventions lose legitimacy and credibility in the eyes of many, if not most, members of the international system” (2002, 86). Likewise, Edward Luttwak asks: ““what does it mean for the morality of a supposedly moral rule, when it is applied arbitrarily against some but not others?”” (in Linter 2005, 284).

Although frequently made, this objection about selectivity is problematic. The problem is twofold. First, some selectivity in the application of humanitarian intervention is desirable. On the Moderate Consequentialist Approach, an intervener should be reasonably expected to be effective and an intervener may be expected to be effective in one situation but not in another. For instance, suppose that Chad and Algeria both suffer

serious humanitarian crises. France has a reasonable expectation of improving the situation in Chad – it would be locally externally effective – without destabilising international order and without its intervention being extremely costly in French resources and lives. But suppose further that France does not have a reasonable expectation of improving the situation in Algeria. Given the history between these two countries, French intervention would face much resistance and so be unlikely to be locally externally effective; the intervention would also massively destabilise the surrounding region, and so lack global external effectiveness. What is more, the intervention would be likely to be bloody, with much fighting, and with an extremely large number of French casualties, so the intervention would lack internal effectiveness. In these two cases, it is certainly desirable that France should be selective in where it intervenes. On the Moderate Consequentialist Approach, France would be a legitimate intervener in Chad, but not Algeria. Hence, as Tharoor and Daws note, “selectivity is thus an inevitable consequence of the requirement of efficacy in intervention” (2001, 27). But, as Tharoor and Daws also note, this does not mean that we should overlook humanitarian crises in situations where intervention will not be effective. The international community should instead employ other tools, such as “condemnation through resolutions of human rights bodies and exposure in the increasingly ubiquitous mass media... shame is a powerful weapon in global diplomacy and should be a choice weapon of recourse” (Tharoor and Daws 2001, 27).

Moreover, having intervened in one country, the intervener may not have the resources (especially military resources) to intervene in another. For this reason, most interveners should be selective where they intervene. Furthermore, there are some

countries in which a humanitarian intervener could *never* be legitimate (at least in the foreseeable future). For instance, intervention in Russia over Chechnya or in China over Tibet is likely to be extremely globally externally ineffective – at worst, it might lead to nuclear war. Failing that, it is likely to be internally ineffective – if the U.S., for instance, were to intervene in either of these countries, the number of U.S. casualties and the cost in resources would be excessive. In addition, intervention in either China or Russia would be unlikely to improve the situation of the Chechens or Tibetans. Perhaps the closest we have come to such an intervention was the Korean War in the early 1950s.⁷³ This war, which had the Chinese (and, to a certain extent, the USSR) on one side supporting the North Koreans and the Americans on the other side supporting the South Koreans, set the way for paralysis of the Cold War, resulted in massive American casualties, and caused the death of as many as 4 million Koreans, three-quarters of them civilians (Cumings 2001, 474). Indeed, even if there were a large-sized permanent force for humanitarian intervention in the hands of cosmopolitan democratic institutions (as I shall propose in Chapter 8), intervention in the major world powers would still be unlikely to be successful.⁷⁴ There is, then, a strong case for a degree of selectivity in humanitarian intervention on the Moderate Consequentialist Approach.

That said, it might be argued that selectivity is more of a problem for the legitimacy of interveners when they remain selective after these consequentialist concerns have been taken into account fully. In other words, selectivity renders an intervener illegitimate when the intervener would be effective in a number of cases but

⁷³Note that I am not claiming that this war was an instance of humanitarian intervention.

⁷⁴See Kinloch-Pichat (2004, 229).

does not respond to them consistently.⁷⁵ For instance, suppose that there are two similar humanitarian crises, one in Niger, the other in Mali. The U.S. has a reasonable expectation of successfully intervening in both states. The U.S. decides to intervene in Niger. The apparent, underlying reason for the U.S.'s decision is that oil has been found in Niger (the instability caused by the humanitarian crisis makes it extremely difficult to access this oil). The U.S. does not intervene in Mali, where there is no such potential oil supply. Is the U.S. nevertheless a legitimate intervener in Niger? Many sceptics of humanitarian intervention would say that it is not. The selectivity of American intervention undermines its legitimacy because it intervenes in Niger where it has some interest at stake, but not in Mali, where it has none. The underlying objection here is one about motives and runs as follows. The selectivity of interveners demonstrates that humanitarian intervention is undertaken only ever for the intervener's own interests – humanitarian justifications are a façade. Ayoob, for instance, states: "Selectivity in humanitarian intervention seems inevitable" (2002, 86) because it is "impossible to prevent considerations of national interest from intruding upon decisions regarding international intervention for ostensibly humanitarian purposes" (2002, 85). The argument continues: humanitarian intervention undertaken for an intervener's own interest is illegitimate. Selectivity therefore demonstrates the illegitimacy of humanitarian intervention. This selectivity objection is essentially deontological. It suggests that

⁷⁵Wheeler takes a similar position: he asserts that it is important to distinguish "between actions that are selective because of considerations of selfish interests, and those that would have to be ruled out because the human costs of intervention would outweigh the humanitarian benefits" (2000, 134).

selectivity is evidence of the moral inadequacy of an intervener's ulterior motives. There are good reasons, however, to doubt the validity of this claim.

First, we can question the importance of motives for an intervener's legitimacy.⁷⁶ On the Moderate Consequentialist Approach, the most important thing for legitimacy is an intervener's effectiveness. In the above example, the U.S. is likely to be effective in Niger and it would be legitimate for this reason. When million of lives are at stake, the motives of an intervener seem comparatively unimportant in comparison, at least intrinsically. They may be, of course, instrumentally important – that is, if they affect the intervener's effectiveness. But, as argued in the next chapter, and as already discussed in Chapter 3, there is a good reason to believe that an intervener may in fact be more effective if it has mixed motives.⁷⁷

Second, this selectivity objection misses its target. When considering whether the U.S. is a legitimate intervener in Niger, we have to consider the factors relevant *to that particular case*. So, when considering U.S. intervention in Niger, we should ask: what is the right way to tackle the humanitarian crisis in Niger? According to the Moderate Consequentialist Approach, the most important thing is that the humanitarian crisis in Niger is effectively tackled. For that reason, the U.S. would be a legitimate intervener. My point, then, is that when considering whether an intervener is legitimate in a

⁷⁶For a more detailed discussion, see Chapter 2, which challenges the concept of an intervener's motivation, and Chapter 3, which challenges its moral significance.

⁷⁷One target that those who make this sort of argument may have in their sights is that the suggestion that humanitarian intervention is justified because it is undertaken *with* a humanitarian motive (e.g. Mehta 2006, 282). I agree with the critics here: just as the motives of the intervener do not undermine its legitimacy, nor do they establish it.

particular case, we should concentrate on the details of that case and, specifically, on whether it will be effective.⁷⁸ The other cases of humanitarian intervention are important for the legitimacy of the intervener only to the extent that they affect (or are affected by) *this* case. As Thomas Franck argues: “The ultimate test of humanitarian intervention’s legitimacy is whether it results in significantly more good than harm, not whether there has been a consistent pattern of such interventions whenever and wherever humanitarian crises have arisen” (2002, 189). So, the seemingly obvious point that the selectivity objection overlooks is this: what the U.S. does or does not do in Mali should not change the judgment of its legitimacy in Niger, unless it will actually affect this intervention in *Niger*.

Third, this is not to say that we should refrain from criticising the U.S. for not intervening in Mali. When considering the particular details of the Mali case, or when considering U.S. foreign policy more generally, the U.S. (and perhaps others) should be criticised for failing to fulfil its (their) duty to end human suffering in the Mali case. In general, then, selectivity is not the real issue. The real issue is the fact that states choose to stand by on too many occasions when they could legitimately intervene. We should not criticise states when they do intervene legitimately; we should criticise them when they do not. As ICISS asserts, “even occasionally doing the right thing is certainly preferable to doing nothing routinely” (2001b, 150).

⁷⁸It is important to remember here that one aspect of effectiveness is global external effectiveness. This means that, when concentrating on the details in particular case, we should also consider the likely effects of intervention on international order, stability, future humanitarian interventions, etc.

V. JUST CAUSE

It is worth noting that the Moderate Consequentialist Approach limits the situations in which an intervener can legitimately intervene.⁷⁹ In other words, it goes some way towards establishing a just cause criterion for humanitarian intervention. If intervention is to increase the enjoyment of basic human rights, that is, if it can be reasonably expected to be successful, the intervener needs to be responding to a situation in which it has the opportunity to do enough good to outweigh the harm that its intervention will cause. As Eric Heinze asserts, “whether or not military force can be expected to avert more harm than it brings about depends crucially on how large-scale or severe the situation to be corrected is” (2005, 173). This is because humanitarian intervention involves military action and so is likely to harm the basic human rights of some of those in the political community that is subject to the intervention. It is also likely to harm the basic human rights of those undertaking intervention, for instance, the intervener may suffer casualties and intervention may be a heavy drain on its resources. Furthermore, intervention may destabilise international order to a certain degree. If the infliction of these three sorts of harms is to be legitimate, the humanitarian crisis must be of such a magnitude that the good that might be secured by intervention is sufficiently large to outweigh the badness of those harms. In particular, the crisis will have to be such that intervention will improve

⁷⁹The ensuing discussion differs from my analysis in Chapter 2 of the circumstances in which humanitarian intervention occurs. In Chapter 2, I was concerned with providing a normatively-neutral definition of just cause to identify the sorts of cases that can be classified as ‘humanitarian intervention’. My focus now is on a normative point about the sorts of cases in which an intervener can *legitimately* act.

the human rights situation sufficiently to offset the harms it will cause.⁸⁰ As Heinze argues, unless a

government is engaging in large-scale, systematic and gross physical abuse of its people, then the costs of deposing such a regime via military invasion is likely to only bring about severe harm that would have otherwise not occurred. Since interveners risk killing people, maiming them, and otherwise physically harming them in the conduct of intervention, then intervention must only take place to avert this same type and severity of harm (2005, 172).

So, the good of responding to a small number of violations of basic human rights or to a larger number of violations of other human rights (which are not basic) will not outweigh the harm caused by intervention. An intervener can be expected to be effective overall only in cases where a *large number* of violations of *basic* human rights are being frustrated. For instance, suppose that the Mauritanian government detains opposition politicians without trial, denies the freedom of the press, and does not follow proper judicial processes. However, military intervention in Mauritania would cause much more hardship for the Mauritanian people than their current situation. Intervention in this case is therefore unlikely to be effective overall because the situation, although bad, is not bad enough. Suppose further that genocide is currently ongoing in Guinea-Bissau. Although intervention in Guinea-Bissau may cause harm to some of its citizens, for instance, by damaging vital infrastructure with stray bombs, the situation is bad enough for the

⁸⁰There are two hypothetical exceptions, which were discussed earlier. These are when an intervener is (1) extremely globally externally effective or (2) extremely internally effective. In these cases, an intervener can respond to a less serious humanitarian crisis and still be effective, and legitimate, overall. But, even in these cases, the underlying logic still applies: an intervener must be responding to a situation where it is possible to be effective overall.

intervener to be effective overall. By tackling the genocide, the intervener will make a large enough increase in the enjoyment of basic human rights to outweigh these harms. Thus, the Moderate Consequentialist Approach, in taking effectiveness to be the primary determinant of legitimacy, indicates the sort of cases in which an intervener can be legitimate.

VI. CONCLUSION

This chapter has outlined the Moderate Consequentialist Approach, which takes an intervener's effectiveness to be the primary determinant of its legitimacy. When deciding who should intervene, the Moderate Consequentialist Approach focuses primarily on the intervener that will be the *most effective*. I firstly distinguished between three types of effectiveness (local external effectiveness, global external effectiveness, and internal effectiveness) and suggested that effectiveness is a necessary condition of an intervener's legitimacy. I then used Raz's service conception of authority to give a stronger philosophical foundation to the claim that an intervener's legitimacy is primarily dependent on its effectiveness. Having defended this basic premise of the Moderate Consequentialist Approach, in the third part of the chapter I fleshed out the approach in greater detail, arguing that we should measure an intervener's effectiveness over the long-term and that we should judge effectiveness by comparison with the counterfactual. I then claimed that, on this Moderate Consequentialist Approach, selectivity can be justified and an intervener must have just cause.

But is this the most persuasive approach to the importance of an intervener's

effectiveness? Would an approach that (1) gives less weight or (2) gives greater weight to an intervener's effectiveness be preferable to this Moderate Consequentialist Approach?

The next chapter will consider these questions and, in doing so, will strengthen the case for the Moderate Consequentialist Approach.

CHAPTER 5: ALTERNATIVES TO THE MODERATE CONSEQUENTIALIST APPROACH

The previous chapter outlined the Moderate Consequentialist Approach. I argued that this approach, which takes an intervener's effectiveness to be the primary determinant of its legitimacy, is highly persuasive. The aim of this chapter is to show that the Moderate Consequentialist Approach is preferable to two alternative approaches to the significance of consequences for humanitarian intervention. The first I call the 'Non-Consequentialist Approach' and this gives no or little weight to an intervener's effectiveness. The second I call the 'Extreme Consequentialist Approach'. This gives exclusive weight to an intervener's effectiveness and no weight to the value of other factors. By showing that these two other approaches to the significance of consequences are mistaken, I hope to strengthen the case for the Moderate Consequentialist Approach.

The first half of the chapter concentrates on the Non-Consequentialist Approach. I first consider a principled Non-Consequentialist Approach which gives little or no weight to an intervener's effectiveness, holding instead that an intervener's legitimacy is determined by other factors. I then move on to assess a more pragmatic version of the Non-Consequentialist Approach, which rejects consequentialist thinking on humanitarian intervention because of the problems of predicting whether humanitarian intervention will be effective. The second half of the chapter focuses on the Extreme Consequentialist Approach. To show that this approach is mistaken, I highlight the importance of one particular non-consequentialist factor for an intervener's legitimacy: the intrinsic value of fidelity to the principles of *jus in bello*. I conclude therefore that the Moderate

Consequentialist Approach is more persuasive than these two alternatives.

I. THE NON-CONSEQUENTIALIST APPROACH

Let us begin then with the first alternative to the Moderate Consequentialist Approach, the Non-Consequentialist Approach. This approach gives little or no weight to an intervener's effectiveness and holds that an intervener's legitimacy is determined instead by other values. There are two versions of this Non-Consequentialist Approach, one principled, one pragmatic.

The Principled Non-Consequentialist Approach

The most palatable version of the principled Non-Consequentialist Approach claims that an intervener's effectiveness is of little moral concern.⁸¹ Instead of looking to see whose intervention will be the most effective, it uses other factors to decide who should intervene. What are these other factors? Two leading candidates are an intervener's motives and its legal status. In Chapter 3, however, I largely rejected the moral

⁸¹It does still hold that an intervener's effectiveness is of *some* moral concern, however. A stronger version of the principled Non-Consequentialist Approach, which holds that an intervener's effectiveness is of absolutely *no* moral concern, is highly counterintuitive. That an intervener could have no expectation of success, and still be a legitimate intervener, seems nonsensical. As Rawls argues: "All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy" (1999a, 26). Scheffler (1988, 1) makes a similar point.

importance of these two factors. Three other potential factors could be plausibly used by this approach. These are that we should look to the intervener that (1) is responsible for creating the humanitarian crisis, (2) has a special relationship with those suffering the humanitarian crisis, or (3) has the institutionalised responsibility to intervene. Let us assess, in turn, whether these three potential factors are better candidates for deciding who should intervene than the Moderate Consequentialist Approach's suggestion that the most effective intervener should intervene.⁸²

I start with the view that the intervener that is somehow responsible for creating the humanitarian crisis in the first place should intervene. It may, for instance, be a former colonial master whose misrule and reckless departure has led to chronic instability. Or it could be an international hegemon that has previously destabilised the region. The intuition at work here is this: those who create the mess should clear it up.

An immediate challenge to this approach is that there are unlikely to be many interveners that will be both responsible for creating the humanitarian crisis and able to tackle it successfully. Those responsible for the crisis, if they intervene, are likely to face high levels of resistance amongst the local population. Another difficulty with this approach is that identifying the actors that are responsible for the humanitarian crisis can be extremely tricky. Of course, this is sometimes all too obvious, but at other times it can

⁸²Note that I later argue that there are four non-consequentialist factors (fidelity to the principles of internal and external *jus in bello* and internal and local external representativeness) that should determine who undertakes humanitarian intervention. However, I argue that these non-consequentialist factors should be taken into account *in addition* to an intervener's effectiveness. Unlike the three potential factors considered in this section, I do not argue that these four non-consequentialist factors should *replace* the role of an intervener's effectiveness as the primary determinant of its legitimacy.

be difficult to disentangle the role that a potential intervener played in causing the humanitarian crisis from the roles that other, particularly domestic, actors played.

Furthermore, it is not clear why an agent that is responsible for the crisis should be preferred to the most effective intervener. If one takes the prevention of human suffering to be a duty (as argued in Chapter 2), what matters most is that this duty is effectively discharged. ICISS argues that the language of responsibility and duties “focuses the international searchlight back on where it should be: on the duty to protect communities from massacre, women from systematic rape and children from starvation” (2001a, 17). And when the focus is on those suffering the humanitarian crisis, what is most important is that their suffering is ended. This trumps the importance of an intervener making up for its past injustices. It might be argued in response that intervention by the agent responsible for the crisis is required for some sort of reparation. But this would be an odd notion of justice: those who suffered the injustice in the first place – those suffering the humanitarian crisis – would end up being worse off. This is because intervention by the responsible agent would be less effective at tackling the ongoing egregious violations of human rights than the most effective intervener.⁸³

The second factor, which could be used to ground the Non-Consequentialist Approach, is a special relationship between those suffering the humanitarian crisis and the intervener.⁸⁴ In this context, Kok-Chor Tan (2006, 98) gives an example of a man drowning off a beach that has no lifeguard on duty. Out of everyone on the beach, the

⁸³A further objection to this position may be made about the questionable motives of the intervener that caused the humanitarian crisis. However, I rejected the intrinsic and instrumental importance of an intervener’s motives in Chapter 3.

⁸⁴deLisle (2001, 550) and Walzer (2000b) endorse this position.

drowning man's spouse would be identified as the appropriate agent because of her special relationship to him. In the case of humanitarian intervention, the special relationship might be historical, religious, or cultural.

It is doubtful, however, whether special relationships exist among members of the international community that are sufficiently strong. It is not clear, for instance, that the communal affinity of the *umma* (the Muslim community) is sufficient to identify a Muslim state as the appropriate intervener when another Muslim state is suffering a humanitarian crisis (Hashmi 2003). Furthermore, even if there were a few special relationships strong enough within the international community to make a difference, in many other cases there would not be. This would leave us with the general problem of identifying which particular agent should intervene in these cases. Suppose, for instance, that the Darfurians do not have a strong enough special tie with anyone in the international community. Who in the international community should step in to save these individuals?⁸⁵

Moreover, even if there were a strong enough special relationship, it is not clear that we should prefer this sort of agency condition to the most effective intervener. Consider again the analogy of a drowning man, but this time assume that there is an off-duty lifeguard among the bystanders.⁸⁶ Who should we prefer to save the drowning man, his wife, or the off-duty lifeguard? It is clear that the lifeguard should be identified as the appropriate agent because he has the greatest chance of saving the drowning man.

⁸⁵Tan cites the opposite problem where “[t]here may be more than one potential agent with historical ties to those in need of protection, in which case the agency problem reappears” (2006, 102).

⁸⁶This second example is also adapted from Tan (2006, 100).

Similarly, we should prefer the most effective intervener to an intervener that has a special relationship with those suffering the humanitarian crisis. If we are to focus our attention on where it should be – on those suffering the humanitarian crisis – what matters most is not this relationship, but, rather, the prevention of the torture, murder, and rape of innocent civilians.

The third potential alternative is an intervener with the institutionalised responsibility to intervene. This is Tan's preferred option. Given that we can expect the recurrence of humanitarian crises, he argues, we need to put in place "institutional arrangements to allocate and distribute responsibilities to ensure that the duty to protect is effectively performed when the situation demands it" (Tan 2006, 105).

Yet the same problem arises for this factor as for the other two potential factors: it fails to identify any current agent of humanitarian intervention since, at present, no agent has the institutionalised responsibility to intervene. The UN perhaps comes closest, but it is still disputed whether it has a legal right to intervene, let alone the official duty to do so.⁸⁷

The draw of institutionalising the duty to intervene is largely that this duty would, as Tan suggests, be *effectively* performed when required. As such, the best argument for institutionalisation in this context is instrumental – that the duty to intervene would be more successfully discharged.⁸⁸ There may be something to this argument. And if there is, the Moderate Consequentialist Approach would be likely to point to the same actor –

⁸⁷See Chapter 2 for further discussion.

⁸⁸There could be a further potential benefit of institutionalising the duty to intervene. The institution could decide when the relevant normative factors are met, that is, when intervention would be legitimate. I consider this in Chapter 7.

the intervener that would be the most effective and that has the institutionalised duty to intervene – as the appropriate agent to undertake intervention. This is particularly the case when we include an intervener's global external effectiveness as part of its effectiveness overall, for this takes into account many of the apparent benefits of institutionalising the duty to intervene, such as the effects on international order and stability.⁸⁹

However, if there is a conflict between the most effective intervener and the agent that has the institutionalised duty to intervene, the Moderate Consequentialist Approach is right to suggest that, where the agent with the institutionalised duty to intervene would not effectively discharge this duty, we should prefer the former. Institutionalising the duty to intervene does not guarantee that this duty would be performed effectively when necessary. Suppose we were to institutionalise the duty to intervene at the UN. As will be argued in Chapter 7, the UN often lacks the resources to intervene effectively. Accordingly, we may face situations similar to Rwanda and Srebrenica, where the UN

⁸⁹In addition, an intervener with the institutionalised duty to intervene could be the most effective intervener overall because it is *indirectly* effective, even though, on the face of it, it seems otherwise. Suppose that there is an institutionalised provision for humanitarian intervention that means that, in general, humanitarian intervention is undertaken more effectively than if such a provision did not exist. Suppose further that undertaking humanitarian intervention outside of this provision will weaken the provision irrevocably. It follows that the most effective intervener would be the one with the institutionalised duty to intervene, even though it may appear otherwise at first. This is because it will help to sustain the institutionalised provision for humanitarian intervention. By contrast, undertaking humanitarian intervention outside of this institutional provision will undermine this provision and therefore jeopardise the protection of basic human rights in the long-term, even if it may appear to be more effective in the short-term.

has a presence, but ultimately fails to stop genocide and ethnic cleansing. As such, in some cases we may still prefer the most effective intervener to the intervener with the institutionalised duty to intervene.⁹⁰

However, Tan (2006, 102) raises a serious challenge to placing the responsibility to protect on the most effective intervener: it imposes an unreasonably heavy burden on the most effective intervener. To see the force of this challenge, it helps to distinguish between three ways that the issue of unfairness arises. First, having the most effective agent intervene is unfair because that agent has to do all the intervening. The duty to intervene falls on the same agent in a number of different cases. Other agents do not have the duty to intervene because their intervention would not be the most effective. The second and third types of unfairness differ slightly from this in that they involve the most effective agent covering for other agents' non-compliance with their duties – that is, in *nonideal* situations. In the second, other interveners fail to intervene and so the duty to intervene falls on an intervener who has already done its fair share. Suppose, for instance, that, States A and B would be the two most effective interveners, but are unwilling to act. The duty then falls on State C to intervene, because it is the third most effective intervener. This seems unfair on State C because it has already done its fair share: it has already undertaken humanitarian intervention a number of times recently. The third type of case in which the issue of unfairness arises is when the most effective intervener has to act because of the behaviour of those who caused the humanitarian crisis (e.g. the government of the target state persecutes a certain ethnicity). It is because of these individuals' non-compliance with their duty to prevent human suffering that the most

⁹⁰Mehta (2006, 282) makes a similar point.

effective intervener has the burden of intervention. In these three ways, then, adopting the most effective intervener as the preferred agent can be unfair to that intervener.

In response, there are a number of points that, to a certain extent, mitigate this unfairness. First, the duty to intervene is likely to fall on different agents in different situations, given the importance of circumstances in determining effectiveness (I consider this below). Furthermore, if an intervener is already intervening somewhere else, or if it has already intervened somewhere else very recently, then it may be unlikely to be the most effective intervener for a further intervention because it would be over-stretched. The duty to intervene will therefore fall on another agent. Second, I argue in Chapter 7 that the most effective intervener in most cases will be NATO. NATO comprises some of the richest countries in the world. That the duty to intervene falls on these extremely rich states does not seem unduly unfair.⁹¹ Third, although other agents do not have a duty to intervene, they nevertheless have a duty to prevent human suffering. In fact, other agents may have equally morally demanding requirements arising from the duty to prevent human suffering. Even though they will not be the intervener, they will have a duty to assist the intervener in whatever ways they can. This might include funding the intervention and providing equipment, and this will help to offset any apparent unfairness. This reply also helps to repudiate a further criticism: the most effective interveners have an incentive to run down their capabilities so that they no longer have the duty to intervene (deLisle 2001, 546). If we admit that there is a duty to prevent human suffering, actors that fail to maintain their capacity to intervene violate their moral duty to do what they can to prevent human suffering.

⁹¹This is especially the case if one believes that rich states have acquired their wealth in unscrupulous ways.

Ultimately, though, to overcome these objections about fairness, it is necessary to revise the duty to prevent human suffering so that it is not as demanding. In this context, Liam Murphy proposes what he calls the ‘compliance condition’:

agent-neutral moral principles should not under partial compliance require an agent to act such that a loss is imposed on some other person where the total compliance effect on that other person, taking this loss into account, would be worse than it would be (all other aspects of her situation remaining the same) under full compliance from now on (2000, 82).⁹²

In other words, the demands on a complying agent should not exceed what they would be if everyone complied with the principle that should govern their conduct (Murphy 2000, 7). Applying this to the duty to prevent human suffering, those complying with the duty to prevent human suffering are not required to do more than they would have to if everyone complied with the duty to prevent human suffering. This principle of beneficence, however, is not best suited to humanitarian intervention. Humanitarian intervention always involves cases where someone has failed to comply with their duty to prevent human suffering (e.g. when governmental neglect or persecution causes a humanitarian crisis). Thus, humanitarian intervention requires at least one agent to do more (i.e. to intervene) than it would be required to do if there were full compliance with the duty to prevent human suffering.

My alternative suggestion to tackle the problem of the unfairness on the most effective intervener is that we amend the duty to prevent human suffering so that agents have a duty to make a *reasonable and substantial effort* to prevent human suffering. The

⁹²Murphy’s account of the compliance condition is influenced by Derek Parfit (1984, 30-31), who takes a similar position in *Reason and Persons*.

duty to intervene will still fall on the most effective intervener. But if this agent has already made significant efforts to prevent human suffering in a number of ways (such as by undertaking a number of recent humanitarian interventions), then, for reasons of fairness, the duty to intervene should fall on the next most effective intervener. In practice, however, most agents have not done their bit to prevent human suffering – consider the number of humanitarian crises and amount of human suffering that currently go unchecked. The duty to intervene is therefore likely to continue to fall on the most effective intervener.⁹³

In this section we have seen that the three other potential factors are an inadequate base to decide who should intervene, and that we should look instead primarily to an intervener's effectiveness (moderated to take into account fairness).⁹⁴ The Moderate Consequentialist approach is therefore preferable to the principled version of the Non-Consequentialist Approach. But there might still be pragmatic reasons for holding that an intervener's effectiveness does not determine its legitimacy.

⁹³In Chapter 9, I make a further revision to the notion that the most effective intervener has the duty to intervene. My suggestion instead is that the most legitimate intervener (which in most cases is the most effective intervener) has the duty to intervene.

⁹⁴As noted above, I later argue that there are four non-consequentialist factors that should be taken into account *in addition* to an intervener's effectiveness, although they should not *replace* the role of an intervener's effectiveness as the primary determinant of its legitimacy.

The Pragmatic Non-Consequentialist Approach

There are a number of pragmatic arguments that might be deployed in support of the Non-Consequentialist Approach. The first is that an intervener's effectiveness is of minor significance for its legitimacy since humanitarian intervention is unlikely to be successful. For instance, Graham argues that intervention relies

upon the actions now and in the future of third parties through which the intervening states must work – foreign diplomats, rebel forces, and governments installed by the power of the intervener. As the governments of the South Vietnam, Kampuchea, Afghanistan, Uganda, and Lebanon illustrate, such third parties are rarely satisfactory instruments of the policies of their backers. Intervention, consequently ... may not have a very much higher chance than not intervening at all (1987, 143).

Similarly, Beitz concludes, "the prospects of reform intervention in unjust states are normally uncertain whereas the costs in blood and treasure are certainly extreme" (1980, 391). These views, however, provide poor reason for rejecting the importance of an intervener's effectiveness. It is simply not true that humanitarian intervention is never likely to be successful. There have been a number of cases of successful humanitarian intervention, such as those of India in Bangladesh, Tanzania in Uganda, the U.S., the U.K., and France in northern Iraq, Australia in East Timor, and NATO in Kosovo. Furthermore, even if it were true that humanitarian intervention is never likely to be successful, the proper conclusion would not be to reject the importance of an intervener's effectiveness, but to maintain that intervention should not occur. To argue otherwise would be to endorse the same counter-intuitive conclusions as a stronger principled

version of the Non-Consequentialist Approach – that an intervener can be legitimate even though it has no expectation of success.⁹⁵

A second, more pragmatic argument for holding the Non-Consequentialist Approach also maintains that an intervener must lack a reasonable expectation of success. But, unlike the first argument, it relies not upon the claim that humanitarian intervention *cannot* be successful; but on the claim that we can never *know*, at the time the decision is made to intervene, whether it will be successful. Graham argues that this is because of the complexity of humanitarian crises, which “makes the outcome of political actions to a large degree uncertain” (1987, 143). Hence, this epistemological objection claims that an intervener’s effectiveness is useless as a moral guide to its legitimacy. We cannot *predict* whether an intervener will be successful and, for that reason, (expected) effectiveness cannot determine legitimacy.

This line of reasoning is also unsustainable. It is possible to make fairly accurate predictions of the likely success of humanitarian intervention, especially if an effort has been made to obtain accurate information and intelligence. We can judge, for instance, that a multilateral, Australian-led, large-scale, Pacific force is likely to be successful in the Solomon Islands but not in China. As Andrew Mason and Nicholas Wheeler argue, this sort of claim overstates the case: “There are many dangers attached to humanitarian intervention... But surely in practice there can be cases in which we know that humanitarian intervention has a reasonable chance of success, and the potential gains are such that the risk is worth taking” (1996, 105).⁹⁶

⁹⁵See my discussion above in fn. 81.

⁹⁶Similarly, Holzgrefe argues that it is true “the task of testing a claim that this or that humanitarian

A third, and more forceful, potential reason to endorse this pragmatic version of the Non-Consequentialist Approach is that an intervener's effectiveness is of little significance for its legitimacy because the effectiveness of humanitarian intervention is completely contingent upon circumstances. It is not the characteristics of the agent that determine the success of humanitarian intervention; it is the cause it is tackling. In this regard, Gerardo Munck and Chetan Kumar (1995) argue that it is the specific circumstances within the political community that is subject to intervention which have the greatest effect. So, when deciding who should intervene, the effectiveness of an intervener should be of no moral concern because it is entirely circumstantial. The particular qualities of the intervener do not determine its effectiveness and, for that reason, do not determine its legitimacy. It will be harder to achieve a successful outcome in China or Russia than in a war-torn collapsed state with deeply ingrained ethnic conflict and influential systems of patronage, and this, in turn, will be more difficult than supplying aid to a poverty stricken region with the support of all those involved. On the Moderate Consequentialist Approach, an intervener is likely to be effective and therefore legitimate in the last case, but ineffective and therefore illegitimate in the first. This highlights the hollowness of this approach, so the objection continues, since an agent's legitimacy will depend on the circumstances of intervention rather than on its structural qualities. We should therefore look to other values in assessing an intervener's

intervention will (or would) affect human well-being in this or that way is fraught with methodological and practical difficulties" but while "these problems are formidable, they are not insurmountable. One can crudely measure how a humanitarian intervention will affect human well-being by comparing the number of people who actually died in a similar intervention in the past with the number of people who would have died had that intervention not occurred" (2003, 50; emphasis amended).

legitimacy, such as its motives, representativeness, etc. This third reason for the pragmatic Non-Consequentialist Approach therefore provides a strong challenge to the Moderate Consequentialist Approach. If it were true that an intervener's effectiveness is wholly determined by circumstances, then the Non-Consequentialist Approach would be preferable to the Moderate Consequentialist Approach.

However, I will now argue that this claim is overblown. We can predict, to a certain extent, that an intervener that has certain qualities will be more likely to be effective than an intervener that lacks these qualities. All these qualities depend on the structure of the intervener, so that institutional form does play a significant role in the agent's expected effectiveness. As will become evident, there are two forms of quality: those that contribute to an agent's effectiveness directly and those that do so indirectly.

The discussion that follows, in responding to this objection, will also further flesh out the Moderate Consequentialist Approach by identifying what is needed for an intervener to be effective. Indeed, given that I hold that an intervener's effectiveness has much moral significance, it is important to see what exactly is required for an intervener to be effective. In addition, this analysis will be vital when it comes to Chapter 7's assessment of who exactly should intervene. It is also needed to avoid presenting an account of legitimacy that is too vague and that lacks practical significance.⁹⁷

Direct qualities of effectiveness

The most obvious quality an intervener needs is the *capability* to intervene successfully.

⁹⁷I discuss the objection of vagueness in Chapter 7.

It has to have the resources necessary for it to be expected to carry out intervention effectively. Military resources are central; they are necessary for not only the initial coercive action, but also for post-war reconstruction and the opening up of a 'humanitarian space' in which NGOs can deliver aid. To have sufficient military resources, an agent requires: a high number of armed, motivated, and trained – and, ideally, experienced – military personnel; military equipment such as tanks, boats, and aircraft; strategic lift capacity (in both air and sea forms) to be able to move personnel and equipment to wherever the humanitarian crisis is in the world; and logistical support to sustain this force abroad (without its resorting to looting, etc.) (O'Hanlon 2003). Although some of these are not always required – Tanzania obviously did not need sea- and air-lift capacity for its 1979 action in Uganda – many humanitarian interventions require all four factors.

If a successful and enduring solution is to be achieved, non-military resources are required to accompany the military ones. To put it crudely, military resources are important for winning the war and non-military resources are important for winning the peace. More specifically, political and economic resources are required for tackling the causes of the conflict, running any transitional authority, and reconstructing the political community. For instance, in addition to the military resources required to secure a stable environment, a successful intervener may need personnel to run the vital infrastructure (such as electricity, fresh water, and sewerage) in the affected political community, facilities for training the affected political community's civil service, and election monitors. Hence, Michael Bhatia notes that it "is the nonmilitary and political dimension that determines overall success or failure" (2003, 124).

To use military and non-military resources successfully, an agent of intervention needs to have a suitable strategy for both aspects. Agents of intervention often have a clear military strategy for halting the humanitarian crisis – for winning the war – but fail to develop a proper post-war strategy – for establishing and maintaining the peace. As a result, the success of their intervention has often been harmed as post-war policy is formed on the hoof. Perhaps the best example of this is the 2003 war on Iraq, which suffered from an apparent lack of such planning and was followed by severe instability. Furthermore, the strategy must be realistic. For decisions about whether and how to intervene to have a good chance of success, Alan Kuperman argues that “they must be informed by realistic appraisals of the prospects of humanitarian intervention rather than wishful thinking about the ease of saving lives with force” (2001, 119). An intervener needs to make an accurate assessment of the situation on the ground and how it can tackle it with its resources, noting its own limitations.

In addition, it is important that the intervener has an appropriate mandate and rules of engagement for its mission (Bhatia 2003; Coady 2002; ICISS 2001b; Terriff 2004a). If a certain level of force is required in a particular situation during intervention, the commanding officers should not be impeded by unwarranted restrictions. For instance, an intervener may need to launch an attack on militia who are persecuting civilians. Too often humanitarian intervention has been approved without a suitable accompanying mandate and appropriate rules of engagement. Not only does this harm the immediate effectiveness of the operation, it creates resentment amongst the local population as the intervening force fails to halt attacks on civilians that, with an appropriate mandate, it could do easily.

Now, all the men, machines, and materials in the world, backed up by a suitable strategy and mandate, do not mean much unless the agent is prepared to use them. To be an intervener, an agent needs, at the very least, to have the *willingness* to use its resources to intervene. And to be an effective intervener, it also needs to be *committed* to using all the resources required for achieving a long-term successful outcome. Thus, “commitment... is also very much a part of effectiveness. ‘Until we get the commitment issue right, other questions of effectiveness are not relevant’. Commitment means more than just mustering the political will to get involved; it also means providing adequate resources, both material and political” (The Stanley Foundation 2000, 28).⁹⁸ An agent of intervention lacking commitment may be willing to use only airpower or it may be unwilling to take casualties, which will mean that it is more likely to put civilian lives at risk, which is also likely to harm the prospects of success (Walzer 2002a; 2004a). Alternatively, the agent may be willing to commit military resources necessary to achieve a short-term successful outcome, but not be willing to commit non-military resources necessary for long-term success.

Kuperman argues that “[e]xperiences in the 1990s demonstrated that although the international community has sufficient will to intervene in many conflicts, it rarely has sufficient will to devote the resources necessary to intervene effectively” (2001, 116).

⁹⁸Similarly, Stromseth argues that success for intervention depends profoundly on international commitment to providing adequate resources: “Often the impulse to assist suffering civilians is a mile wide and an inch deep – it is not accompanied by a corresponding willingness to commit forces or provide resources needed to respond effectively to the atrocities and their underlying causes. Yet if insufficiently equipped and trained forces are deployed to carry out over-ambitious or ill-defined missions, the likelihood of failure is considerable” (2003, 270).

This apparent lack of commitment leads some to claim that effective interveners require ‘mixed motives’ because the only way an agent will be sufficiently committed is by having a self-interested reason to intervene (e.g. Seybolt 2000, 6; Stein 2004, 31; Walzer 2002a, 4). There are strong and weak versions of this ‘mixed motives’ argument. The stronger version says that mixed motives are a *prerequisite* for effective intervention because they are the only way to ensure the necessary commitment, whereas the weaker version says that mixed motives *improve the chances* of effective intervention because they make the necessary commitment more likely.

The epistemological and ontological difficulties of determining the motives of an intervener outlined in Chapter 2 mean that it is difficult to assess either of these claims. But setting aside these difficulties, the weaker claim, as discussed in the previous chapter, does have some *prima facie* plausibility. One does not have to be a Realist to admit that concerns about the national interest figure largely in states’ foreign policy decisions. As ICISS asserts, “the budgetary cost and risk to personnel involved in any military action may in fact make it politically imperative for the intervening state to be able to claim some degree of self-interest in the intervention” (2001a, 36). It follows that an intervener is more likely to commit the necessary resources if it has an additional, self-interested reason to intervene. It also follows that an intervener is more likely to be willing to undertake intervention in the first place if it has mixed motives.

This point about mixed motives links to an argument for an intervener’s being local or regional. A regional intervener is more likely to be effective because its geographical proximity to the humanitarian crisis means that it will typically have a vested interest in resolving the crisis (ICISS 2001b, 210). A nearby humanitarian crisis

may cause border incursions, an influx of refugees, financial hardship, and political instability for the whole region. For instance,

African countries pay a high price for mass human-rights abuses and killing on their continent – a price that European and North American countries do not pay, at least not directly. Flows of hundreds of thousands of refugees, cross-border incursions of militia groups, social and political upheaval, and damage to already struggling economies can hurt entire regions, as happened in West Africa, Central Africa and the Horn of Africa in the end of the Cold War (Gompert 2006, 15-16).

Indeed, it would be odd if regional interveners did *not* benefit from humanitarian intervention in their region. This element of self-interest makes commitment to the intervention much more likely.⁹⁹ And, as discussed above, an intervener's commitment is crucial for effective intervention. A more committed intervener is more likely to be willing to engage in more ambitious military manoeuvres that may result in casualties on its side and maintain their presence in the long-term during the reconstruction stage, both of which are necessary for success. In addition, fewer financial and military resources are required for regional intervention. Air- and sea-lift capabilities are rarely needed, and the costs involved in sustaining troops abroad are lower. However, it is important not to overstate the case. The link between successful intervention and regional interveners is not always certain since regional interveners are often ill-equipped and lack the financial resources to undertake humanitarian intervention (Nowrojee 2004, 3).

The final direct quality an agent needs in order to be expected to be effective is the ability to respond in a timely manner. This has two aspects. First, an intervener needs to be able to intervene when the situation is *ready* for intervention. In many cases, this

⁹⁹Conversely, for non-regional intervention, such as Western and UN engagements in Africa, there has been a notable lack of commitment necessary for effective intervention (de Waal 2000, 93; Gueli 2004, 133).

means an early intervention since prevention of the humanitarian crisis can often be the most effective type of humanitarian intervention, as in the case of the 2004 U.S. action in Haiti. Yet, the ability to undertake only early humanitarian intervention is insufficient because early humanitarian intervention might not be effective. It can make a humanitarian situation worse; other methods of diplomatic action might need to be tried first to avoid domestic and international resistance to the intervention, and waiting may secure Security Council approval. More important then, as Munck and Kumar (1995, 180) argue, is that the intervener is able to wait until the situation is *ripe* for intervention. The second aspect of timeliness is that an intervener needs to be able to use its resources *quickly*. Kuperman rightly claims that, “once humanitarian military intervention is deemed necessary, time becomes of the essence as most violence can be perpetrated in a matter of weeks, as also demonstrated by the cases of Rwanda, Kosovo, and East Timor” (2001, 111). To a certain extent, this is again a question of the agent’s capabilities and commitment, since it needs the necessary military and non-military resources for quick intervention.

Indirect qualities of effectiveness

The discussion so far has been concerned with direct qualities of effectiveness; an improvement in an intervener’s capability, commitment, strategy, mandate, and timeliness can be expected to increase directly its effectiveness. However, there are other qualities that improve expected effectiveness, albeit indirectly. They can be indirect in three, closely related, senses: (1) they improve effectiveness overall despite sometimes

detracting from it; (2) they improve effectiveness in the long-term, rather than in the short-term; and (3) they increase the amount of perceived legitimacy, which in turn increases effectiveness. This last point merits explanation. For an intervener to be expected to be effective, those in the political community that is subject to its intervention need to *believe* that it is legitimate.¹⁰⁰ This makes the running of any occupation much smoother, since those subject to the intervention are more willing to yield to its demands and rules, and therefore the chances of achieving long-term peace and stability are greatly increased. Constant opposition amongst most of the population will make the achieving of a successful long-term humanitarian solution almost impossible (as can be seen in Iraq and Afghanistan). Yet an intervener does not need to have the support of everyone within the political community in which it intervenes. Political elites and certain factions within the population might have vested interests in continuing the crisis, perhaps because their power is dependent on it, or perhaps because they do well materially out of the current structures. Instead, it is important that there is strong grassroots support for the intervener amongst the affected political community.¹⁰¹

¹⁰⁰Analogously, Green argues that “a belief in legitimacy tends to increase its [the state’s] stability and effectiveness” (1988, 1).

¹⁰¹It is important to note that an intervener’s perceived legitimacy is different from what, in the next chapter, I call its ‘local external representativeness’. An intervener’s perceived legitimacy depends on the degree to which it is supported by those in the political community in which it intervenes. By contrast, its local external representativeness depends on the degree to which the intervener reflects, in its decision-making, the opinions of those in the political community in which intervenes. An intervener can be perceived to be legitimate but lack local external representativeness; for instance, it may enjoy support but fail to take into account these individuals’ opinions on intervention. An agent can also be locally externally

There are a number of indirect qualities that affect an intervener's effectiveness in these three ways. Indeed, in other chapters of this thesis, I argue that certain qualities have an instrumental value, thereby contributing to an intervener's effectiveness. In the next chapter, for instance, I argue that an intervener that is internally and locally externally representative is more likely to be effective. Later in this chapter, I suggest the same for an intervener that follows the principles of *jus in bello*. And in Chapter 3, I suggested that an intervener whose intervention is legal – that has UN Security Council authorisation – is perhaps more likely to be globally externally effective (although I argued that this effect is likely to be weak). I shall not repeat the argument for the instrumental value of these qualities here; my main point is that the qualities of an intervener can affect its effectiveness both directly and indirectly.

To summarise, an effective intervener will have, and will be committed to using, sufficient military and non-military resources, based on a sound strategy and suitable mandate, and in a timely manner. It may also have Security Council support, follow principles of *jus in bello*, and be internally and locally externally representative, which can affect an intervener's effectiveness indirectly.

The role of circumstances

From this analysis, it is clear that it is not circumstances alone that determine an intervener's effectiveness. We can expect an intervener that has these qualities to be

representative, but lack perceived legitimacy; for instance, it may decide not to intervene having found out, after consulting with those in the target state, that its intervention would be unpopular.

effective and an intervener that lacks these qualities to be ineffective. Indeed, even in the same, or very similar, circumstances, two different interveners may achieve very different results. Hence, the third argument for holding the pragmatic version of the Non-Consequentialist Approach is mistaken.

All that said, circumstances do, to some extent, determine an intervener's effectiveness. In fact, circumstances can determine whether an intervener's effectiveness is sufficient for its legitimacy according to the Moderate Consequentialist Approach. Let me explain. The overall effectiveness of an intervener depends, firstly, on the degree to which it has these characteristics and, secondly, on the circumstances in which it is acting. Just as different interveners will achieve different results in the same circumstances, the same intervener will achieve different results in different circumstances.

Circumstances affect an intervener's effectiveness in two ways. First, an intervener will have a different expectation of success in different circumstances. For instance, there may be more local resistance to the intervention by State A in State B than in State C. Hence, the *probability* of success varies according to the situation. Second, an intervener will have greater opportunity to achieve a large-scale success in some situations than in others. Where there is a terrible humanitarian crisis and the potential for great harm to a large number of individuals, such as genocide, there is more scope for an intervener to achieve extremely beneficial consequences by tackling the crisis and preventing the harm. Other less (although still) serious situations, such as the oppression of political opposition, present less scope for an intervener to achieve extremely beneficial consequences. Hence, the *magnitude* of the potential success varies according

to the circumstances. Thus, an intervener's effectiveness varies in both probability and magnitude according to the circumstances. It is important not to overemphasise this point, however. An intervener's effectiveness is not completely dependent on circumstances. An intervener with the characteristics outlined above is much more likely to be effective than one that is not. My point is rather that, in addition to whether it has these characteristics, circumstances also determine an intervener's effectiveness.

Now to the crux of the matter: on the Moderate Consequentialist Approach, when an intervener has a *high probability* of achieving a success with a *large magnitude*, effectiveness may be *sufficient* for it to have an adequate degree of legitimacy. An intervener may be legitimate, for instance, simply because it is highly likely to prevent genocide. This is the case even if it lacks other qualities. Recall here that in Chapter 2 I proposed a scalar approach to legitimacy. On this scalar approach, a legitimate intervener does not need to possess all of the morally relevant qualities; it need only have enough of these factors in order to possess an adequate degree of legitimacy. An intervener can have an adequate degree of legitimacy by achieving hugely beneficial consequences. The likely achievement of these extremely beneficial consequences means that it is likely that extreme levels of human suffering will be prevented. The good achieved by this intervention is likely to outweigh any other moral problems which come from the intervener's not having other qualities. Suppose, for example, if in the beginnings of the genocide in Rwanda, Uganda had been willing to intervene and was highly likely to do so effectively. Given that this could have saved hundreds of thousands of lives, the fact that Uganda lacked other qualities (it was undemocratic at the time and might not have consulted with the Rwandans) would not have undermined Uganda's general legitimacy

as an intervener.

So, effectiveness can, in unusual circumstances where hugely beneficial consequences are more than likely, be sufficient for an adequate degree of legitimacy according to the Moderate Consequentialist Approach. In most cases, however, effectiveness will not be sufficient because an intervener will not have a very high probability of achieving a very sizeable success. Normally, then, an intervener's legitimacy will also depend on the degree to which it possesses other, non-consequentialist qualities, such as fidelity to the principles of internal and external *jus in bello* and internal and local external representativeness (I establish the importance of these qualities below).

Moreover, even where hugely beneficial consequences are more than likely, and effectiveness is sufficient for an intervener to have an *adequate degree* of legitimacy, the intervener will not be *fully* legitimate unless it has all the relevant qualities. Hence, effectiveness can, at most, be a *sufficient* condition for an *adequate* degree of legitimacy. In the majority of circumstances, it is not even sufficient for this.

II. THE EXTREME CONSEQUENTIALIST APPROACH

Effectiveness is therefore a substantial consideration when deciding who should intervene. It is a necessary condition of legitimacy and even occasionally sufficient for an adequate degree of legitimacy. But why is effectiveness only sufficient for an *adequate* degree of legitimacy in *exceptional* cases? Why is it not sufficient for *full* legitimacy in *all cases*? On what I call the 'Extreme Consequentialist Approach', effectiveness is not a

primary determinant of legitimacy. It is the *only* determinant. This approach therefore presents a different sort of challenge to the Moderate Consequentialist Approach. It claims that the Moderate Consequentialist Approach, which holds that effectiveness is the primary determinant of an intervener's legitimacy, does not go far enough.

One of the attractions of the Extreme Consequentialist Approach is its simplicity. It holds an intervener's legitimacy is to be entirely dependent on its consequences. If an agent of intervention is effective at bringing about good consequences, that is, the enjoyment of basic human rights, it is legitimate, but if it is ineffective, it is illegitimate. For instance, on this approach INTERFET (the Australian-led, UN Security Council-sanctioned force) was a legitimate intervener in East Timor solely because it was effective. Other putative criteria for Australia's legitimacy, such as whether it was representative or used humanitarian means, are not intrinsically important, but only instrumentally valuable to the extent that they improved its effectiveness. Thus, on the Extreme Consequentialist Approach, an intervener's effectiveness is the sole determinate of its legitimacy, or, to put it another way, effectiveness is both necessary *and* sufficient for legitimacy.

However, in placing all moral weight on consequences, the Extreme Consequentialist Approach disregards other moral qualities, which are also significant for an intervener's legitimacy. The legitimacy of an intervener also depends on three other qualities that have intrinsic as well as instrumental value: the intervener's internal representativeness, its local external representativeness, and its fidelity to principles of *jus in bello*.

For the rest of the chapter, I will concentrate on the intrinsic value of an

intervener's fidelity to principles of *jus in bello*. The next chapter examines the intrinsic value of an intervener's internal and local external representativeness. Of the three intrinsic values, the importance of fidelity to the principles of *jus in bello* provides the clearest demonstration of the inadequacy of the Extreme Consequentialist Approach to the legitimacy of an intervener. In fact, the inability of the Extreme Consequentialist Approach to take into account properly the importance of this value reflects two commonly-cited, and related, problems with a purely consequentialist approach: it is insensitive to the means by which consequences are achieved and it fails to distinguish between doing and allowing. By contrast, the Moderate Consequentialist Approach leaves room for such intrinsic values in its generally consequentialist account of legitimacy and so is not subject to these flaws.

The intervener's conduct: fidelity to the principles of *jus in bello*

The conduct of the intervener during intervention is often mentioned as an important consideration (Ramsbotham and Woodhouse 1996, 226; Tesón 1997). Some insist that an intervener must follow principles of international humanitarian law (Farer 2005a; ICISS 2001a; Simons 2001). Others frame this requirement in terms of Just War Theory, and, in particular, with reference to the principles of *jus in bello*, principles of just conduct in war (Caney 2005, Heinze 2004; Lucas 2003).

There are several principles of *jus in bello* that can be applied to humanitarian intervention. Before examining these, it is important to note that these principles provide restrictions on just conduct *during* war. These criteria are analytically distinct from the

criteria of *jus ad bellum*, which limit *when* war can be justly waged.¹⁰² These criteria are also analytically distinct from questions of who should intervene. This is because the question of who should intervene, as outlined in Chapter 2, implies a forward-looking account of legitimacy. By contrast, the principles of *jus in bello* can affect an intervener's legitimacy only *during* intervention – the legitimacy of the intervener would increase or decrease according to whether it follows these rules – and this would not be helpful when deciding who should intervene *before intervention occurs*. Hence, the degree of fidelity to these principles would not, on the face of it, affect an intervener's legitimacy (as defined in this thesis).¹⁰³ But this does not mean that we should overlook the importance of an intervener's following these principles. I suggest that we consider whether, at the time that the decision to intervene is being made, we can *reasonably expect* an intervener to follow these principles. We can make this judgment by considering, firstly, the intervener's track record of fidelity to the principles of *jus in bello* in previous interventions and, secondly, its institutional characteristics (such as whether it is constituted of low-paid, ill-disciplined troops or highly-trained, specialised forces with much experience in dealing with civilians). I make such judgments about the current interveners in Chapter 7.

There are a number of principles of *jus in bello* that an intervener should follow. These principles limit the means that a legitimate intervener can use. For our purposes, the two main principles are as follows. First, a strict rule of 'non-combatant immunity'

¹⁰²That questions of *jus in bello* and *jus ad bellum* are analytically distinct does not mean that they are unrelated. See McMahan's (2004) criticism of Walzer (1992).

¹⁰³Tesón (2005b, 29) makes a similar point about the war in Iraq.

maintains that all civilian casualties are impermissible. Any violent means used should distinguish between combatants and non-combatants. Civilian casualties or even severe harm to civilians should always be avoided. Methods such as cluster bombs and landmines that risk civilian casualties are therefore impermissible.¹⁰⁴ Second, a principle of ‘proportionality’ limits the harm that a legitimate intervener can cause to *combatants*. Violent means must cause as little harm to the combatant as possible. An intervener should attempt to make soldiers surrender, then attempt to disarm them (using nonlethal weapons), and only as a last resort kill them. An intervener should also eschew methods of demotivation such as humiliation and methods which cause undue pain for the combatant.

In addition, there are two further principles, which concern how a legitimate intervener can treat its own citizens – what I call principles of ‘internal *jus in bello*’. The third principle restricts the sort of soldiers that an intervener can use to undertake humanitarian intervention (i.e. not conscripts or child soldiers).¹⁰⁵ The fourth principle maintains that an intervener should not use methods that cause its own soldiers excessive and avoidable harm. This is not to claim that an intervener should never put its soldiers’ lives at risk. Rather it is to insist that an intervener has a duty of care for its soldiers. It should, for instance, provide its soldiers with the equipment (such as flak jackets, radio

¹⁰⁴McMahan (2004) has recently presented a highly compelling critique of the principle of non-combatant immunity, arguing that, in certain circumstances, we should target those who are *responsible* for unjust aggression instead of innocent combatants. But, as he admits, his argument falls foul of the publicity criterion (since, if put in place, it may lead to an increase in civilian casualties) and is best considered to be part of the deep morality of Just War Theory.

¹⁰⁵See Tesón (2003) on the moral problems with using conscripts for humanitarian intervention.

systems, and working rifles) necessary to be able to undertake humanitarian intervention without putting their lives in needless danger.¹⁰⁶

The Extreme Consequentialist Approach is unpersuasive because it cannot fully account for these principles of just conduct in war in its conception of legitimacy. By placing all moral weight on an intervener's effectiveness, it marginalises the importance of an intervener's expected fidelity to these principles of *jus in bello*. In this context, Heinze claims that a purely consequentialist account "has serious problems when employed as part of a theory of the morality of war based on human rights, because it suggests that aggregate human suffering is the *only* moral concern that need be addressed" (2004, 549; emphasis added). He claims that if, for instance, a purely consequentialist principle alone were used to determine proportionality in NATO's war in Kosovo, NATO would have been permitted to pursue its primary end of the capitulation of the Milosevic regime unconditionally, regardless of civilian casualties (Heinze 2004, 550).

That said, there are three potential consequentialist arguments that could be made for the importance of an intervener being expected to follow these principles. The first is act consequentialist (particularly, direct act consequentialist): fidelity to the principles of *jus in bello* will directly increase an intervener's effectiveness.¹⁰⁷ This increase in effectiveness is not simply a question of local external effectiveness, but also global external effectiveness (and internal effectiveness).

¹⁰⁶The Allied force's treatment of its soldiers in the First World War is the paradigmatic example of the violation of this principle.

¹⁰⁷According to act consequentialism (in its direct form), an agent should try to maximise the good directly with each act it performs.

This act-consequentialist argument clearly fails. For it to work, an intervener's strict fidelity to the rules of *jus in bello* would need to maximise the good *in each and every situation* during intervention. But, on many occasions, an intervener will be more effective if it abandons these principles. These rules may prohibit the use of methods that can be highly effective in achieving strategic aims and that might be expected to decrease civilian casualties overall. For instance, an intervener may be more effective if it tortures captured soldiers in order to obtain information that will help it to achieve a swift resolution to the humanitarian crisis.

The second argument is rule consequentialist.¹⁰⁸ The argument is this: interveners should follow rules of *jus in bello* because these rules, when sufficiently complied with, maximise the good – the enjoyment of basic human rights. Although an intervener may be more effective in the short-term by disregarding these rules, the rules of *jus in bello* will generally increase its effectiveness. In this context, R. B. Brandt argues that “the moral justification of these rules lies in the fact that their acceptance and enforcement will make an important contribution to long-range utility” (1972, 147).¹⁰⁹ For instance, although torturing captured soldiers may increase the good in a particular instance, a rule against torture will generally maximise the good because such methods will give a bad name to humanitarian intervention and mean that future potential interveners will face greater resistance or be unwilling to intervene in the first place.

Although this rule-consequentialist argument seems promising, there is an

¹⁰⁸In short, rule consequentialism holds that agents should follow rules that maximise the good.

¹⁰⁹Brandt goes on to offer his own account of the principles of *jus in bello*. Hare (1972) also presents a rule-consequentialist defence of the importance of fidelity to principles of *jus in bello*.

inherent problem with rule consequentialism: it collapses into act consequentialism. This objection to rule consequentialism is made by J. J. C. Smart:

Suppose that an exception to a rule *R* produces the best possible consequences. Then this is evidence that the rule *R* should be modified so as to allow this exception. Thus we get a new form of the rule 'do *R* except in circumstances of the sort *C*'. That is, whatever would lead the act-utilitarian to break a rule would lead the Kantian rule-utilitarian to modify the rule. Thus an adequate rule-utilitarian would be extensionally equivalent to act-utilitarianism (1973, 10-11).¹¹⁰

This difficulty also arises with the rule consequentialist defence of the importance of an intervener's expected fidelity to these principles when deciding who should intervene. Suppose that a rule – call it R1 – requires interveners to follow principles of *jus in bello*. If complied with, this rule is generally expected to increase the enjoyment of basic human rights. Suppose, further, that in a particular case, an intervener can be more effective by abandoning one of the details of the rule R1. When intervening in a militarily strong target state for instance, an intervener may be more effective if it abandons the provision of external *jus in bello* against using conscripts (which would allow for a larger force). According to the logic of consequentialism, the appropriate response would be to modify the rule R1 so as to take into account this exception. We then have rule R2, which says that interveners should follow principles of *jus in bello*, except when intervening in a militarily strong state, where they can be more effective by using conscripts. R2 is better

¹¹⁰In Arneson's words: "for any construal of rule consequentialism according to which it appears to dictate conduct different from what act consequentialism would dictate, there must be an alternate candidate rule consequentialist code that eliminates the putative conflict with act consequentialism and must be judged superior from the rule consequentialist standpoint" (2005, 236). Lyons (1965) makes the original statement of this objection.

at maximising overall enjoyment of basic human rights than R1 because it takes into account this exception. Suppose, further, that in another case, one particular type of intervener (such as a private military company) would be more effective if it abandoned one of the details of R2 – such as permitting the targeting of certain non-combatants. Again, according to the logic of consequentialism, the most appropriate response would be to modify the rule R2 to take into account this second exception. We then have rule R3, which is better at maximising overall enjoyment of basic human rights than both R2 and R1 because it takes into account this new exception. Such modifications will continue *ad infinitum* so that the rule of fidelity to principles of *jus in bello* maximises enjoyment of basic human rights.

The problem then for rule consequentialism is that, by making continuous modifications to these rules, there will be a rule for each intervener and for each situation. It therefore becomes equivalent to act consequentialism. The rule-consequentialist may reply by arguing that we need not make these continuous amendments. However, if it were not to make these continuous amendments, then the rule of fidelity to principles of *jus in bello* would not be *optimal* – it could not be justified on the consequentialist grounds of maximising enjoyment of basic human rights. In short, it would be ‘rule worship’ (Smart 1973, 10). Hence, rule consequentialism collapses into act consequentialism and with it so does this second consequentialist defence of the importance of an intervener’s fidelity to these principles when deciding who should intervene.

In *Ideal Code, Real World*, Brad Hooker presents a sophisticated version of rule consequentialism that tries to overcome this problem of collapse. His reformulation

insists that the rules of rule consequentialism need to be kept simple so that they can be easily internalised (Hooker 2000, 96-97). Iterative amendments to the principles of *jus in bello* would therefore not be endorsed on this sophisticated rule consequentialism – it is more important to keep the rules simple. It is not clear, however, whether his theory is actually rule consequentialist since it ultimately appeals to intuitionism, rather than to a single, underlying consequentialist principle of maximising the good. Indeed, as Hooker (2000, 188-189) himself admits, his approach does not have an overarching commitment to maximising the good. It does not conform therefore with the Extreme Consequentialist Approach. That aside, there are also difficulties with Hooker's account of rule consequentialism in cases of individual acceptance but general non-compliance with the rules, and also with his provision that internalised rules may be broken in cases of disaster (Arneson 2005).¹¹¹

The third consequentialist defence is an indirect consequentialist argument and runs as follows.¹¹² An intervener should follow these principles because this is likely to

¹¹¹Hooker (2005) does reply to these concerns, however.

¹¹²As a general theory, indirect consequentialism (specifically indirect act consequentialism) holds that, rather than attempting to maximise the good directly, agents should adopt decision-making procedures, such as dispositions, traditions, and rules of thumb, which maximise the good overall. Note that rule consequentialism and indirect consequentialism are distinct. The central assertion of rule consequentialism is what Hooker (2004) calls the rule-consequentialist 'criterion of rightness'. This judges things by whether they comply with rules, the acceptance of which maximises the good. By contrast, the central assertion of indirect consequentialism is its indirect decision-making procedure, which can be expected to maximise the good indirectly. The distinction between indirect and direct consequentialism cuts across the distinction between rule and act consequentialism. In other words, it is possible to have a direct and an indirect version

maximise its effectiveness overall, even if on particular occasions it will not. This is because, firstly, such an intervener will tend to face less resistance from the local population. Conversely, an intervener that is willing to kill civilians will quickly stop being legitimate in the eyes of those in the political community that is subject to its intervention. This will increase resistance and hostility to the intervener, and severely hamper its effectiveness. Hence, Walzer argues that “once we are engaged we have to fight justly so as not to antagonize the civilian population, whose political support is necessary to a military victory. In Vietnam, the relevant civilians were the Vietnamese themselves; we lost the war when we lost their ‘hearts and minds’” (2004a, 10).¹¹³

A similar defence can be made of the principles of internal *jus in bello*. An intervener that uses child soldiers or conscripts is less likely to be effective, firstly, because an intervener that resorts to using these sorts of soldiers will lose the confidence of those in the political community in which it intervenes. Likewise, an intervener that fails to fulfil the duty of care to its soldiers will find that its intervening force quickly becomes demotivated and less effective. Hence, an intervener that follows principles of *jus in bello* is more likely to be effective overall and, for this reason, fidelity to the principles of *jus in bello* can perhaps be incorporated into the Extreme Consequentialist Approach to legitimacy.

This indirect consequentialist argument makes the strongest possible consequentialist case for the importance of an intervener’s fidelity to the principles of *jus*

of rule consequentialism and a direct and an indirect version of act consequentialism. See, further, Hooker (2004).

¹¹³To be sure, Walzer’s defence of *jus in bello* is not completely consequentialist.

in bello when deciding who should intervene. Indeed, it provides a plausible instrumental justification of these principles. However, the argument is not wholly convincing.

The first problem with it is that it leaves the justification of these principles contingent solely on their expected effectiveness. This is too risky a strategy. The link between an intervener's effectiveness and its fidelity to these principles is not strong enough to guarantee that following these principles will always increase effectiveness overall. My point here is not that this approach is unsuccessful because there will be *instances* when disobeying these principles will increase enjoyment of basic human rights (which was essentially my objection to the direct act-consequentialist defence of these principles). Rather, my point is that this approach is unsuccessful because these principles *may* not be justified *overall* in the future. For instance, it may be that humanitarian intervention becomes much more of a short-term exercise and it subsequently becomes far less important to win the hearts and minds of those in the political community that is subject to the intervention. If this were to happen, according to the Extreme Consequentialist Approach, there would be little reason for an intervener to follow the principles of *jus in bello*. For something as important as following the principles of *jus in bello*, a stronger guarantee is required.

The second, related problem with this indirect consequentialist argument is that it seems to miss something important by limiting the importance of an intervener's following these principles to their significance for its effectiveness. That is to say, there is something more to the importance of an intervener's expected fidelity to the principles of *jus in bello* than simply whether this improves its effectiveness.

Consider the following standard objection to utilitarianism:

Imagine that each of five patients in a hospital will die without an organ transplant. The patient in Room 1 needs a heart, the patient in Room 2 needs a liver, the patient in Room 3 needs a kidney, and so on. The person in Room 6 is in the hospital for routine tests. Luckily (for them, not for him!), his tissue is compatible with the other five patients, and a specialist is available to transplant his organs into the other five. This operation would save their lives, while killing the 'donor.' There is no other way to save any of the other five patients... We need to add that the organ recipients will emerge healthy, the source of the organs will remain secret, the doctor won't be caught or punished for cutting up the 'donor', and the doctor knows all of this to a high degree of probability (Sinnott-Armstrong 2006, 8).

It seems obvious that utilitarianism would sanction the transplant and, for most, this is rightly abhorrent.

What this example of the transplant relies on is a distinction between *doing* and *allowing*. That is, there is a morally relevant distinction between what one does oneself and what one allows others to do.¹¹⁴ In the example above, there is a significant difference between the doctor's harming the potential donor and his not harming the donor, thereby allowing the others to die. It seems right that the doctor should not conduct the operation because he should not do harm himself. It would be morally better if he allowed the other five patients to die.

The same reasoning can be applied to an intervener's fidelity to the principles of *jus in bello*. In addition to any instrumental justification, a reason why an intervener's likelihood of following the principles of *jus in bello* is important when deciding who

¹¹⁴Scheffler frames the distinction between doing and allowing in terms of this distinction between primary and secondary manifestations of our agency and that "we operate with an intuitive picture according to which, in general, the norms of individual responsibility attach much greater weight to the primary than to the secondary manifestations" (2004, 216). In his view, "[t]here is little doubt that some idea of this sort has an important role to play in ordinary moral thought" (Scheffler 2004, 215).

should intervene is that an intervener should not itself do harm (specifically, harm that is impermissible according to these principles).¹¹⁵ It would, to a certain degree, be better if an intervener were to *allow harm*, perhaps thereby being less effective, than for it to target civilians, to use chemical weapons, or to rely on conscripts and child soldiers. Indeed, it seems more important that an intervener has a satisfactory degree of fidelity to the principles of *jus in bello* when it is using force for humanitarian purposes than for any other reason.¹¹⁶ When going to the lengths of using military force for humanitarian purposes, it matters intuitively that an intervener should be likely to do so in a way that is itself humanitarian.

One reason why the doing and allowing distinction matters is because when one does the action, it is *oneself* that is violating the right, whereas when one allows the action, it is *someone else* that is violating the right. There is a difference between the government of state A violating state B's citizens' rights and the government of state A not intervening to stop the government of state B violating its own citizens' rights.

I am not claiming that the difference between doing and allowing is of overwhelming moral significance. In fact, on an absolutist, deontological position according to which the difference between doing and allowing is of absolute moral significance, an intervener could never be legitimate because intervention almost always

¹¹⁵To be sure, some harm is permissible according to the principles of *jus in bello*; the concern is with *impermissible* harm, that is, harm that is suffered by civilians, disproportionate, caused by conscripts or child soldiers, or that is the result of a failure in an intervener's responsibility of care for its soldiers.

¹¹⁶I say *satisfactory*, rather than *full*, fidelity to principles of *jus in bello*, because it would be harsh (and unrealistic) to judge an intervener as not obeying the principles of *jus in bello* if one or two of its soldiers break these rules in an isolated incident. The violation of these rules has to be more systematic.

involves some harm that is impermissible (Tesón 2003, 115).¹¹⁷ My point is rather that there is, at least, *some* moral significance in the distinction between doing and allowing. When deciding who should intervene, it matters, *to a certain degree*, that an intervener will not violate innocent individuals' rights itself, even though this may ultimately allow more rights to be violated. Thus, who undertakes humanitarian intervention should be determined in part by the non-instrumental importance of an intervener's following principles of *jus in bello*.

But for the extreme consequentialist, there is *no* moral importance (beyond any instrumental importance) to the distinction between an intervener that does harm, say by killing non-combatants, and an intervener that fails to prevent harm, say by failing to prevent another agent killing non-combatants. All harm is permissible if it improves effectiveness. Suppose that torturing young children of members of oppressive regimes would be effective overall at getting these sorts of regimes to stop human rights abuses. That it is interveners who do the harm is morally irrelevant. On the contrary, if a particular intervener were to *refrain* from torturing innocent family members, it would be illegitimate because it would be *allowing* harm. So, according to the Extreme Consequentialist Approach, whether an intervener follows the principles of *jus in bello* is of no intrinsic value. What an intervener does itself is essentially morally equivalent to what it allows. But, as the discussion above demonstrates, this is highly counterintuitive. An intervener's legitimacy does seem to depend on what it does itself and, in particular, its expected fidelity to principles of *jus in bello*. For this reason, the Extreme

¹¹⁷Nagel (1972) outlines (but does not necessarily endorse) an absolutist defence of *jus in bello*. Attack (2002) gets close to this position.

Consequentialist Approach's reliance solely on instrumental justifications of these principles is unacceptable.

Consequentialist trump

I suggested above that a deontological position, which holds that the distinction between doing and allowing is of utmost significance, is unpersuasive. One reason is that, on this position, humanitarian intervention could never be justifiable. Another reason is that, according to the scalar approach to legitimacy adopted in this thesis, an intervener can be sufficiently legitimate, even though it does not have a satisfactory degree of fidelity to the principles of *jus in bello*. As long as the intervener is able to make up in other ways the loss of legitimacy that comes from its not following closely the principles of *jus in bello*, its overall level of legitimacy may still be sufficient for it to have an adequate degree of legitimacy.

One clear way in which an intervener can make up this loss of legitimacy is if there is a high expectation of achieving extremely beneficial consequences, for instance by preventing genocide. Suppose that there is mass ethnic cleansing – genocide – in Benin. Tens of thousands of civilians of a certain ethnic group are being slaughtered, maimed, and raped every day by government troops and militias. Nigeria intervenes in Benin to stop this ethnic cleansing, and does so very effectively, but in doing so uses conscripts, a number of whom kill and sexually assault the non-combatants they are supposed to be helping. Although Nigeria's intervention is far from being *fully* legitimate, the fact that it is effective at preventing genocide means that it would have an *adequate*

degree of legitimacy overall. Hence, according to the Moderate Consequentialist Approach, if hugely beneficial consequences are highly likely, then effectiveness may be sufficient for an adequate degree of legitimacy and the importance of an intervener's following these principles of *jus in bello* can be trumped by the consequences it will achieve.

This is not equivalent to endorsing the Extreme Consequentialist Approach. The Moderate Consequentialist Approach is much more restrictive. Given the intrinsic importance of an intervener's following the principles of *jus in bello*, the intervener's expected effectiveness is sufficient for an adequate degree of legitimacy only in particular circumstances. As discussed above, these are circumstances in which the intervener has both a *high probability* of achieving a success with a particularly *large magnitude* – in short, when highly beneficial consequences are more than likely. In other cases, effectiveness is not sufficient for an adequate degree of legitimacy because of the non-instrumental significance of an intervener's following these principles. For instance, if the situation in Benin was less serious than ethnic cleansing and genocide – say, for example, that its population suffered political oppression – Nigeria would struggle to have an adequate degree of legitimacy if it violated principles of *jus in bello*. Furthermore, even when an intervener has a high probability of achieving a success with a particularly large magnitude by halting an especially egregious violation of basic human rights, it needs to follow principles of *jus in bello* in order to be *fully* legitimate. In the example given above, in which Nigeria intervenes in Benin to halt ethnic cleansing, Nigeria would not be fully legitimate. It would need to use volunteer troops that have a satisfactory degree of fidelity to principles of *jus in bello*.

Therefore, fidelity to principles of *jus in bello* provides two sorts of constraint on consequentialist thinking on humanitarian intervention. First, in situations where highly beneficial consequences are not expected, an intervener would struggle to have an *adequate degree of* legitimacy without following the principles of *jus in bello*, even if it is likely to be effective. Second, in situations where highly beneficial consequences are likely, being effective is not enough for *full* legitimacy. A fully legitimate intervener would need to have fidelity to these principles of just conduct.¹¹⁸

By contrast to the Extreme Consequentialist Approach, these two constraints are easily accommodated by the Moderate Consequentialist Approach. That is because the Moderate Consequentialist Approach takes effectiveness to be the primary, but not the only, determinant of an intervener's legitimacy. Although effectiveness therefore does much of the normative work, this approach still makes sufficient room for secondary factors, such as fidelity to the principles of *jus in bello*, in its overall conception of legitimacy.

III. CONCLUSION

This chapter has established that the Moderate Consequentialist Approach provides a persuasive account of the weight that we should give to an intervener's expected effectiveness. The first half of the chapter compared the Moderate Consequentialist Approach with a Non-Consequentialist Approach that rejects the importance of

¹¹⁸It also follows that Just War Theory's traditional separation of legitimate authority from *jus in bello* is mistaken.

effectiveness for humanitarian intervention. Having argued that the principled rejection of an intervener's effectiveness is mistaken, I then considered more pragmatic reasons for rejecting an intervener's effectiveness. In reply to the most forceful of these, which suggests that an intervener's effectiveness is determined solely by circumstances, I argued that the qualities of an intervener will, to a large extent, determine its effectiveness. In particular, an intervener that has adequate resources, a suitable strategy, a strong enough mandate, sufficient willingness and commitment, and the ability to intervene in a timely manner is more likely to be effective. I did argue, however, that circumstances play *some* role in an intervener's effectiveness: when extremely beneficial consequences are more than likely, an intervener's effectiveness is sufficient for it to have an adequate degree of legitimacy.

The second half of the chapter compared the Moderate Consequentialist Approach with the Extreme Consequentialist Approach, which holds that effectiveness is the sole determinant of an intervener's legitimacy. This approach, I claimed, is unpersuasive because it cannot take into account the intrinsic importance of an intervener's following principles of *jus in bello*.

Thus, an intervener's effectiveness is best seen as the *primary* determinant of its legitimacy, rather as either morally irrelevant – as the Non-Consequentialist Approach holds – or as the sole determinant of its legitimacy – as the Extreme Consequentialist Approach holds. Although consequentialist thought is dominant in the legitimacy of an intervener, it is not the whole picture.

In the next chapter, I make the case for the importance of two other factors for an intervener's legitimacy that cannot be explained solely by instrumental concerns: its

internal representativeness and its local external representativeness. These two factors are neither necessary nor sufficient conditions of an intervener's legitimacy, but are nevertheless important. They will reinforce the objection I have made in this chapter against the Extreme Consequentialist Approach: that effectiveness is not the only factor determining an intervener's legitimacy. The next chapter will therefore help to establish further the persuasiveness of the Moderate Consequentialist Approach.

CHAPTER 6: REPRESENTATIVENESS AND HUMANITARIAN INTERVENTION

I. INTRODUCTION

Having defended the Moderate Consequentialist Approach against two alternatives in the previous chapter, in this chapter I want to argue for the moral significance of two factors, both pertaining to an intervener's representativeness. Both factors can be incorporated under the Moderate Consequentialist Approach. By making the case for these two factors, I will reinforce the objection made against the Extreme Consequentialist Approach in the previous chapter: effectiveness is not the only morally relevant factor when deciding who should intervene.

The first I shall describe as an intervener's 'internal representativeness'. This depends on whether an intervener's decision-making on the proposed intervention reflects the opinions of *its citizens*. For instance, the internal representativeness of the 1992 American intervention in Somalia turned on whether America represented the opinions of *Americans*. The second is what I shall describe as an intervener's 'local external representativeness'. This depends on whether an intervener's decision-making on the proposed intervention reflects the opinions of those individuals *in the political community that is subject to its intervention*. To use the same example, the local external representativeness of the 1992 American intervention in Somalia turned on whether America represented the opinions of *Somalis*.

In this chapter, I make the case for the moral importance of these two factors that have been neglected in the literature to a certain extent.¹¹⁹ That is, I argue that an intervener's legitimacy depends on whether it is representative of the opinions on intervention, firstly, of its domestic population and, secondly, of those subject to its intervention. I begin by presenting three (largely complementary) arguments for the importance of an intervener's internal representativeness. The first is consequentialist: an intervener that has public support is more likely to be effective in tackling a humanitarian crisis. The second is the 'Resources Argument'. This asserts that an intervener should be representative of its citizens' opinions because these citizens provide the resources for humanitarian intervention. The third argument emphasises the intrinsic value of individual self-government. I then present three arguments for the importance of an intervener's local external representativeness. In some measure, these mirror the arguments for internal representativeness. The first argument is consequentialist: a locally externally representative intervener is more likely to be effective. The second is the 'Burdens Argument', which holds that an intervener should represent the opinions of those subject to its intervention because those individuals are likely to be burdened by its intervention. The third argument again asserts the value of individual self-government. Overall, then, I present six arguments for the significance of internal and local external representativeness for the legitimacy of humanitarian intervention. I conclude by dismissing the importance of a third potential factor – global external representativeness.

¹¹⁹That said, these issues, especially local external representativeness, have received some treatment. Of those who consider these issues, Buchanan (1999; 2006, 27), deLisle (2001, 552), ICISS (2001a, 36), Tesón (1997, 126-129; 2003, 105-107), and Walzer (2000a) are the most constructive.

Before we proceed, however, I need to clarify what I mean by ‘representativeness’. In her seminal work on the concept, Hanna Pitkin (1967) distinguishes between a number of meanings of representation, all based around the notion of re-presentation, a making present again.¹²⁰ For example, formalistic views of representation include the ‘authorisation view’, where a representative is someone who has been authorised to act, and the ‘accountability view’, where a representative is someone who is to be held to account (Pitkin 1967, 38-55). The problem with these views, Pitkin (1967, 58) notes, is that they cannot tell us anything about what goes on during representation, how a representative ought to act, and whether he has represented well or badly. Alternatively, the descriptive view of representation takes representation to be ‘standing for’ by virtue of a correspondence or connection between the representative and the represented. The focus is on the representative’s characteristics, such as her class, ethnicity, and religion (Pitkin 1967, 61-91).

But the most useful meaning of representation, at least for our purposes, is ‘acting for’. This view is concerned with the activity of representing, what goes on during representing, and the substance or content of acting for others (Pitkin 1967, 113).¹²¹ Accordingly, a representative institution will act for its citizens, by delegation or trusteeship. It is here that we find the ‘mandate-independence’ controversy. Should a representative represent his citizens’ opinions, since he is bound by mandate to do what they want, or should he have the independence to be able to promote his citizens’

¹²⁰Pitkin (1967) remains the best discussion of representation. Also see Birch (1971), Cohen (1968), Diggs (1968), Frankena (1968), and Pennock (1968).

¹²¹This roughly corresponds to Birch’s first usage of the term ‘representative’, that is, “to denote an agent or spokesman who acts on behalf of his principal” (1972, 15).

interests as he sees them, and as best he can, in relation to humanitarian intervention? As will become apparent, I take the 'mandate' side of this controversy. That is to say, a representative should represent his citizens' opinions, a representative institution is one that reflects its subjects' opinions in its decision-making, and 'representativeness' is the measure of the extent to which an institution does so.

It is also important to define what I mean by an individual's 'opinions on the intervention'. The most morally relevant opinion is an individual's view on whether humanitarian intervention should be undertaken. Other relevant opinions – but largely secondary in importance – are an individual's views on the specific form of intervention (e.g. regime change or traditional peacekeeping), on who should intervene, and on how long the intervention should last. Those subject to a humanitarian crisis might want intervention, but not want it to be carried out by a particular intervener (such as the U.S.), or they might want regime change, but not long-term occupation. Furthermore, for reasons of practical simplicity (and perhaps of anti-paternalism), I am concerned with an individual's *actual* opinions rather than what his opinion would be if he had more information or if his opinion were more freely formed. Although individuals' opinions may be influenced in undesirable ways and contain misperceptions, I argue for their moral significance when they relate to humanitarian intervention.

II. INTERNAL REPRESENTATIVENESS

Let us begin with the case for internal representativeness. To be internally representative, an intervener needs to reflect, in its decision-making, its citizens' opinions on the

proposed intervention. If the majority of its citizens do not want intervention, an internally representative government would not intervene. If its citizens want intervention to be undertaken in a particular way (such as regime change), then the decision-making of the internally representative government would reflect this.¹²²

A would-be intervener can establish the opinions of its citizens – and therefore be internally representative – in a number of ways. For example, it could conduct opinion polls on a sample of the population, hold referenda on humanitarian intervention, and, less scientifically, consider other indicators of the public mood, such as the media, its interactions with the public, and public campaigns. The latter sort of measures are, of course, not completely accurate, given media influence, and, more generally, it can be tricky (but not impossible) to access reliable or genuine domestic public opinion. But an intervener should nevertheless attempt to garner such information, given the arguments that follow for the importance of internal representativeness. Note here that it is possible for non-democratic states to be internally representative if they accurately reflect their constituents' opinions. That said, democratic states are perhaps most likely – although far from certain – to reflect public opinion on intervention, given the democratic politician's desire to be elected, her sense of duty to reflect her constituents' opinions (and often public opinion more generally), and the likelihood of a concurrence between public opinion and the government's judgment.

¹²²One example of an internally representative humanitarian intervention was the 1999 UN-authorised, Australian-led, intervention in East Timor. In response to images of the atrocities on their television screens, the Australian public opinion was crucial to providing the impetus for the Howard government's intervention (Wheeler and Dunne 2001).

An immediate challenge might be this: why does the question of internal representativeness for humanitarian intervention arise? On many issues (such as health, education, and fiscal policy), it seems right that elected politicians should have some independence to use their judgment. They should primarily act in accordance with what they deem to be in the national (or their constituents') interest, without always having to reflect public opinion. In other words, the trusteeship conception of representation, according to which a representative can go against constituents' declared opinions and use their own judgment, seems appropriate in many contexts. Why should we prefer a delegate conception of representation according to which representatives must reflect the opinions of their constituents in the context of humanitarian intervention? What distinguishes humanitarian intervention from other governmental acts such that it requires politicians to reflect their citizens' opinions?

One answer is that humanitarian intervention is a different sort of governmental action because it is not (usually) undertaken for its own citizens' interests. We find this line of reasoning in what Buchanan (1999) terms (in his discussion of the internal legitimacy of humanitarian intervention) the 'democratic variant of the discretionary association view of the state'. This discretionary association view, which is based on Lockean thought, understands the state as:

the creation of a hypothetical contract among those who are to be its citizens, and the terms of the contract they agree on are justified by showing how observance of these terms serves *their* interests. No one else's interests are represented, so legitimate political authority is naturally defined as authority exercised for the

good of the parties to the contract, the citizens of this state (Buchanan 1999, 74-75; emphasis in original).¹²³

Accordingly, the government is taken to be “the agent of the associated individuals, an instrument to further *their* interests” (Buchanan 1999, 74; emphasis in original). Since an intervening state is primarily concerned with the interests of those suffering a humanitarian crisis rather than its own citizens’ interests, it breaks its fiduciary obligation to put its citizens’ interests first. NATO’s action in Kosovo, for instance, was *prima facie* unjustifiable on this view since it was (at least partially) driven by concern for Kosovan Albanians. According to the discretionary association view, then, humanitarian intervention such as this is a special type of case because it is altruistic, undertaken for the good of those beyond the borders of the state rather than the good of those within it, and therefore violates the state’s special obligation to its citizens. It then follows that, if a government wishes to undertake humanitarian intervention, it needs a special democratic mandate from its citizens.

¹²³Note that Buchanan ultimately rejects this view, favouring instead the ‘state-as-the-instrument-for-justice’ view, based on John Rawls’s account of the natural duties of justice. He argues that the most fundamental problem with the discretionary association view is that it implies that “there would be nothing morally wrong with a world in which every state adopted the Swiss model” (Buchanan 1999, 79). That is to say, it affirms that a state has no obligations beyond the advancement of its citizens’ interests. Imperialism, colonisation, and exploitation could be justified, regardless of the harm to those beyond the mutual association of the state, if these actions would advance the interests of those within the state. Even a far softer version of the discretionary association view, which admits that a state has some negative duties not to harm others, contradicts our basic moral intuitions (Buchanan 1999, 80-1). For instance, it would justify a rich state’s refusal to donate its excess food surplus to its starving neighbour.

This discretionary association view does have some initial appeal. But it does not fully explain why a humanitarian intervener should be internally representative. There is more to the extraordinariness of humanitarian intervention than its apparent altruism. Indeed, if we limit the specialness of humanitarian intervention to its apparent altruism, as does the discretionary association view, two problems arise. On the one hand, this argument for the need for humanitarian intervention to have a democratic mandate also applies to many other apparently altruistic governmental actions, such as aid donations and ethical trade negotiations.¹²⁴ On the logic of this approach, any governmental action, however minor, which is not in the national interest requires a democratic mandate. As such, the reasoning of the discretionary association view is too inclusive. On the other hand, on this discretionary association view, humanitarian intervention which *is* in the intervener's national interest does not need to be representative of its citizens' opinions on intervention because it does not violate the terms of the hypothetical contract. Indeed, on the logic of this approach, any governmental action, however major, which is in the national interest does not require public support. As such, the reasoning of the discretionary association view is also too exclusive.

We therefore need a different account of what demarcates humanitarian intervention from other governmental actions – and that means that we should prefer a delegate (rather than trustee) conception of representation in this context. My suggestion is that what differentiates humanitarian intervention is that it involves extremely high moral stakes and, in particular, the use of military force to save lives. Humanitarian intervention (like any use of military force) has significant potential to cause high levels

¹²⁴Of course, what is in a state's national interest may be subject to much dispute.

of suffering and devastation to those in the target state, for instance, by killing innocent civilians, destroying vital infrastructure, and creating a power vacuum. Yet a government's decision to undertake humanitarian intervention can also have considerable positive benefits, such as protecting populations from genocide and ethnic cleansing. It follows that the consequences, either good or bad, of an agent's decision regarding if, when, and how to undertake humanitarian intervention will be considerable for those suffering the humanitarian crisis. Furthermore, the effects of an agent's decision to intervene reverberate around the international system, not only by affecting international norms (both legal and normative) by, for instance, the setting of precedents, but also more materially by, for instance, creating refugee flows and destabilising surrounding regions. The intervener's citizens are also affected by the decision, for (as discussed below) they provide the financial and human resources (which can be significant). Thus, the consequences, either good or bad, of an agent's decision to intervene will be highly significant for both the international system and the intervener's citizens.¹²⁵

So when making a decision with such high moral stakes, it is right that a government should reflect its citizens' opinions in its decision-making. Other, less important, decisions can be left to politicians to decide for themselves, but trusteeship is not appropriate when the moral stakes are so high. Hence, the opinions of the intervener's citizens matter and a delegate view of representation is preferable in this context. I will use therefore 'representativeness' in this sense of representation as delegation.

¹²⁵In fact, as Buchanan (1999, 76) points out, it is far from clear that a humanitarian intervention that does receive a special democratic mandate would be legitimate on the discretionary association view. The democratic mandate would have to be unanimous (which is improbable); otherwise, humanitarian intervention would violate the terms of the contract for those who oppose intervention.

In what follows, I present three arguments for the importance of internal representativeness for the legitimacy of humanitarian intervention. These arguments further demonstrate that we should favour a delegate conception of representation in the context of humanitarian intervention.

We could perhaps use these arguments to defend the importance of the representativeness (in the delegate sense) of other governmental decisions. One option would be to apply these three arguments to make the case for the representativeness of decisions that have *lower moral stakes*. However, the fact that these other decisions have lower moral stakes means that these three arguments would not be as persuasive as they are for humanitarian intervention. It is less important, for instance, that there is individual self-government on the issue of public transport than on the issue of humanitarian intervention. Another option, which would avoid this objection, would be to apply these three arguments to make the case for the representativeness of other decisions that have *high moral stakes*. Examples might include a decision to secede, the waging of war in self-defence, and significant constitutional changes. But it is important to note a further point here: the three arguments I present for the importance of an intervener's internal representativeness have a particular focus *on humanitarian intervention* and, as such, are not necessarily relevant to these issues.

(i) Increased effectiveness

Let us begin the case for the importance of internal representativeness with a consequentialist argument. One of the largest problems faced by humanitarian

intervention is insufficient commitment. This has led to critically under-resourced, and ultimately unsuccessful, interventions. The failure of UN member states to provide UNAMIR, the UN force led by Roméo Dallaire, with the necessary resources to stop genocide in Rwanda is the most conspicuous example. Many of these problems arise because interveners are unwilling to commit the necessary financial, military, and diplomatic resources to potentially unpopular and controversial interventions. By contrast, an internally representative intervener which knows that it has public support is more likely to be willing to commit the resources required to be successful. It may be more willing, for instance, to risk casualties and so be able to undertake ambitious military manoeuvres, which are necessary for intervention to be successful. Consider, in this context, Australia's 1999 action in East Timor. Since it knew it had the support of the Australian public, the Australian government was prepared to accept some casualties and, as a result, intervened with the level of military force necessary for successful humanitarian intervention.¹²⁶

This consequentialist argument for internal representativeness is, however, contingent on there being a correlation between internal representativeness and effectiveness. On occasion, being internally representative may not ensure that the intervention is successful. The time it takes to establish whether there is public support for intervention may mean that deployment is slowed, which in turn undermines the effectiveness of the operation. Alternatively, public opinion may change during the intervention, but if the intervener were to respond to this change (perhaps by altering its

¹²⁶In fact, Australia successfully intervened without suffering any casualties, even though it had braced itself for them (Wheeler and Dunne 2001).

mission objectives), it would be less effective. Likewise, humanitarian intervention can be successful without being internally representative. This raises an important question for both internal and local external representativeness: would an intervener be legitimate if it lacked internal or local external representativeness (or both), yet was likely to be effective at preventing, reducing, or halting the mass violation of basic human rights?

Both internal and local external representativeness, like the fidelity to principles of *jus in bello*, are neither sufficient nor necessary conditions of legitimate humanitarian intervention. As long as the intervener is able to make up in other ways the loss of legitimacy that comes from not being internally or locally externally representative, its overall level of legitimacy may be sufficient for it to have an adequate degree of legitimacy. One clear way in which an intervener can make up this loss of legitimacy is if there is a high expectation of its achieving extremely beneficial consequences, for instance by preventing genocide. This reflects the dominance of consequentialist thinking on humanitarian intervention, as encapsulated by the Moderate Consequentialist Approach. Intuitively, what matters most is that the intervener is effective at preventing, reducing, or halting the mass violation of basic human rights.

That is not to deny that internal and local external representativeness are important considerations for the legitimacy of humanitarian intervention. On the contrary, the six arguments set out in this chapter establish that these are significant considerations. The aim here is to make clear the strength of the arguments that follow and, in particular, to avoid overstating the case. Furthermore, in most cases of humanitarian intervention, where extremely beneficial consequences are not on the cards, an intervener would struggle to be legitimate if it were not internally representative and locally externally

representative. Moreover, even when the extremely beneficial consequences are likely, it remains important that the intervener should be internally and locally externally representative. Indeed, this would be necessary for it to be *fully* legitimate.

(ii) The Resources Argument

The second reason why an intervener's internal representativeness matters is what I call the 'Resources Argument'. The central contention of this argument is this: since the intervener's citizens provide the resources for humanitarian intervention, they should have their opinions reflected in its decision-making on intervention.

The underlying argument at work here is Lockean: an individual should have some freedom to determine how his own resources (property) are used. Given that humanitarian intervention requires a substantial amount of resources, the intervener should reflect the opinions of those providing the resources for humanitarian intervention – its citizens. Doing so means that these individuals retain some control over their resources. This Lockean argument is not absolute. There are moral constraints on how an individual should use his resources (such as not causing excessive harm to others) and the importance of individual choice here might not be as significant as other moral considerations (such as highly beneficial consequences). Nevertheless, some degree of control over one's own resources is intuitively attractive.

In theory, we could make this argument about any governmental action that uses its citizens' resources. However, it is more convincing for humanitarian intervention because of the level of resources involved. Alex de Waal estimates that the ECOWAS

interventions in Liberia and Sierra Leone cost \$4 billion (de Waal 2000, 81). In *R2P*, ICISS (2001a, 71) estimates that the cost of the Kosovo intervention (including post-intervention peacekeeping and reconstruction) was \$48 billion.¹²⁷ The intervener's citizens – in these cases, the citizens of ECOWAS and NATO respectively – ultimately have to foot the bill for humanitarian intervention, perhaps through significantly increased taxation or greatly decreased public spending elsewhere. It is right, therefore, that these individuals should have some input into the decision-making on humanitarian intervention. The Resources Argument gains further plausibility if, in addition to financial resources, it includes human resources. The intervener's citizens provide the personnel to undertake humanitarian intervention. Some of these individuals may be injured and killed in combat. That provides further reason for representing the opinions of these individuals.

In domestic political thought, we may question whether individuals' influence upon decision-making should be proportionate to the taxes they pay. This issue also arises for humanitarian intervention. Within a multinational operation, it is typical for some countries to contribute more financially and militarily than others. To use the same two examples, Nigeria dominated the ECOWAS interventions in Liberia and Sierra Leone, providing 90% of the troops, and U.S. warplanes flew 85% of the sorties in the Kosovo intervention (ICISS 2001b, 219). The question then is this: should the opinions of those who contribute more towards intervention have greater weight?

¹²⁷O'Hanlon's (2003, 34) table on the cost of UN peacekeeping is illustrative here too (if not directly concerned with humanitarian intervention).

This would not be appropriate for unilateral intervention, that is, intervention by a single state. Within a state, we should not give greater weight to the opinions of those individuals who contribute more (e.g. through taxation) to humanitarian intervention for two reasons. First, most states have complex economic and political structures in which an individual's wealth cannot be claimed to be purely the result of his own labour. For the Resources Argument to be plausible at the domestic level, there would need to be greater equality of opportunity than currently exists in most states. Greater equality of opportunity would mean that well-off individuals – those who contribute more financially towards an intervention – could claim with greater credibility that their wealth has been earned fairly rather than being the result of advantages that they have received from the system (such as private education, inheritance, etc.). The second problem is that, given the population size of most states, it would be difficult to identify which particular individuals contribute more towards intervention. Furthermore, even if we were able to identify which particular individuals contribute more towards intervention, it would be difficult to find a method of data collection that could distinguish between those who contribute more towards an intervention and those who do not.

At the multinational level, however, it does sometimes seem right to give greater weight to the opinions of individuals from states that provide most of the resources for humanitarian intervention. Although the two problems discussed above also apply to multilateral intervention, they are not so serious. Let me start with the first problem. The international system is unfair, with inherent advantages for rich states.¹²⁸ It follows that it is not plausible to claim that states are wholly responsible for the creation of their wealth.

¹²⁸See Pogge (2005).

It also follows that, when comparing *different sorts of states*, such as Mozambique and the Netherlands, it would be mistaken to give more weight to the opinions of the individuals from states that contribute more to an intervention. The biases of the international system mean that rich states have not necessarily earned their wealth fairly and, consequently, the Resources Argument is less convincing in this context. Nonetheless, when comparing *similar sorts of states*, such as Britain, Australia, and France, Brazil and Argentina, Romania and Bulgaria, etc., it does seem right to give more weight to the opinions of the individuals from states that contribute more. This is because these states receive similar advantages and disadvantages from the international system. Second, although it is sometimes difficult to ascertain the contribution made by each member state to an intervention by a regional organisation, the UN, or a coalition of the willing, at other times the contributions made are well documented. Moreover, assessing the relative contribution of each state is far easier than at the domestic level, where it would be necessary to assess the relative contribution of each individual. This is because there exist fewer actors to assess the contributions of at the international level.

Thus, it seems right to give greater weight to the opinions of individuals from those states that provide most of the resources for humanitarian intervention when, firstly, comparing similar sorts of states and, secondly, the contributions made by states are easily identifiable. To illustrate this by way of example, suppose that the African Union were to intervene to stop a humanitarian crisis in Kenya. Let us assume that Tanzania provides and funds 5,000 troops, which is almost all of the intervening force, apart from a contribution of ten medical staff by Zambia. No other AU member state contributes towards the intervention. If we were to treat each citizen's opinion as equal, regardless of

the African state from which it came, the opinions of Tanzanians would be given, firstly, the same weight as the opinions of Zambians, and, secondly, the same weight as the opinions of those from all the other AU member states. In this context, then, equality of opinion does not seem acceptable. For this reason, when considering *multinational* intervention, and if the two conditions outlined above are met, we should give extra weight to the opinions of individuals from those states that provide most of the resources for humanitarian intervention. But when considering *unilateral* intervention, we should treat each individual's opinion equally, rather than calibrated according to the taxes they pay.

(iii) Individual self-government

The Resources Argument is persuasive as far as it goes, but it does not go far enough. It does not quite capture what is the main reason why an intervener's internal representativeness matters: individuals should have some control over their governing institution because it is *their* governing institution. More specifically, the citizens of the intervener should have their opinions on the intervention represented because it is *their* intervener: it is *their* state or *their* multinational organisation that is intervening. This sentiment was discernible in the early stages of the 2003 war in Iraq; many protesters in the U.K. claimed that the war was conducted 'not in our name'.¹²⁹ Their protest was not about the use of resources, it was against the fact that *their* government was undertaking

¹²⁹In using this example, I am not claiming that the war on Iraq was a humanitarian intervention.

an action which they opposed. Accordingly, I will now outline a third, more Rousseauian defence of the importance of an intervener's internal representativeness.

This third argument relies on the principle of individual self-government, which runs as follows: a governing institution should reflect the wishes of its citizens such that it governs as if those individuals were in authority themselves. To be fully compatible with the principle of individual self-government, both the structure of government and every law it makes would need to match each individual's opinions on how they wish to be governed. Yet, in all but the smallest of societies, complete self-government is unachievable. This is what Thomas Christiano (1996, 25) calls the 'incompatibility problem'. Given the inevitable conflict of opinions that arises in a society, the ability of a number of individuals to choose how they are governed will be frustrated. But this does not mean that the importance of an institution representing its citizens' opinions cannot be justified by the principle of individual self-government. The crucial point is that we are not concerned solely with achieving *full* individual self-government within a society (which is a chimera), but with increasing the *amount* of individual self-government. Hence, we are concerned with the relative, rather than absolute, level of individual self-government. An intervener that represents at least the majority of its citizens' opinions on the humanitarian intervention is likely to have *more* individuals who are self-governing on this issue than an intervener that does not. As Robert Dahl puts it, "majority rule maximizes the number of persons who can exercise self-determination in collective decisions" (1999, 138). For instance, requiring a super-majority (say of two-thirds of the voting population) for intervention would risk giving those who oppose intervention a

greater say than those that support it – and therefore decrease the overall amount of individual self-government on the issue of humanitarian intervention.¹³⁰

Individual self-government here is intrinsically valuable. Put generally, an individual's opinions on how he wishes to be governed have independent value, that is, they are valuable regardless of whether those opinions, if they were realised, would contribute to his well-being. Again in Dahl's words: "To govern oneself, to obey laws that one has chosen for oneself, to be self-determining, is a desirable end" (1989, 89). To see this, consider a (hypothetical) society whose government is hierarchical and unrepresentative. It never consults its citizens on how they wish to be governed – it makes decisions by decree – but is competent at promoting its citizens' interests. Although such a government would not be *that* morally objectionable because it would be promoting its citizens' interests, something morally important is still missing. That missing element is the value of individuals' having a voice in how they are governed and how their society is run.

The intrinsic value of individual self-government has a considerable impact on the argument for an intervener's internal representativeness. An individual's freedom to choose whether there should be intervention, who should do it, how long it should last, and what form it should take, matters intrinsically. An intervener should be internally representative and respond to its citizens' opinions because those are the opinions of *its* citizens. Suppose, for example, that the Vietnamese government were considering

¹³⁰Suppose a minority of two-fifths of the overall voting population oppose intervention, but the majority, three-fifths of the overall voting population, support it. The requirement of a super-majority of two-thirds of the voting population would mean that intervention would not occur.

intervening in Laos to tackle genocide. The Vietnamese people supported intervention, but only with UN Security Council authorisation. The views of the Vietnamese people matter, on the logic of this self-government argument, neither because taking account of those views will best serve international law and order, nor because doing so is the best for the Vietnamese people's enjoyment of basic human rights, but because it is *their* state, Vietnam, that is considering intervening.

An obvious objection is that the intrinsic value of individual self-government can conflict with other moral factors. Consider the Vietnam example again; suppose now that the majority of the Vietnamese people do not want to intervene, despite the genocide in Laos. In that case, the intrinsic value of individual self-government conflicts with the responsibility to prevent genocide. Is it more important that the Vietnamese government should represent its citizens' opinions, and so not intervene, than that it should prevent genocide? If the Vietnamese government can intervene effectively to prevent genocide, it seems that it is not. Individual self-government, then, is not always an overriding value; rather, more individual self-government is *by and large* desirable. Occasionally, other moral factors (such as highly beneficial consequences) can trump the importance of individual self-government, but this is not to deny its intrinsic value. A large part of a government's legitimacy depends on how it responds to its citizens' opinions. Indeed, it is perhaps more important that individuals are self-governing on the issue of humanitarian intervention than on other issues, given that the moral stakes of humanitarian intervention are extremely high.

It may help to summarise briefly the argument thus far. The first reason for the significance of an intervener's internal representativeness is consequentialist: an

internally representative intervener is more likely to be effective. The second is the Resources Argument, which asserts that the intervener's citizens should have their opinions reflected in its decision-making since they provide the resources for humanitarian intervention. The last reason is the value of individual self-government on humanitarian intervention. Together, these three reasons demonstrate that an intervener's internal representativeness is an important consideration for the legitimacy of humanitarian intervention.

III. LOCAL EXTERNAL REPRESENTATIVENESS

Let us now consider the importance of local external representativeness. To be locally externally representative, an intervener needs to represent the opinions of those in the political community that is potentially subject to its humanitarian intervention. For instance, a locally externally representative intervener would not undertake humanitarian intervention if those who would be subject to it do not want intervention. Similarly, if those individuals do not want a particular form of intervention, the decision-making of the locally externally representative intervener would reflect that.

To establish the opinions of those subject to its humanitarian intervention, a would-be intervener should, firstly, attempt to obtain direct access to these individuals. Sometimes there are obstacles to achieving this, but these are not always insurmountable. The International Committee of the Red Cross's *People on War* (2000) survey, for instance, comprised a series of comprehensive opinion polls and interviews on humanitarian intervention in a number of war-affected states. Amongst the findings was

that 66 percent of those surveyed wanted more intervention from the international community to deal with humanitarian crises, and only 17 percent wanted less (ICRC 2000, 54).¹³¹ In addition, they were able to distinguish between combatants and civilians, as well as identifying those who had suffered severe burdens caused by conflict. Of course, such useful information will not always be accessible before the launch of a humanitarian intervention. Access may be denied to researchers and the situation may be too dangerous (the ICRC also faced these difficulties with its research).

Where direct consultation with those suffering the humanitarian crisis is impossible, a locally externally representative intervener will not simply presume these individuals' opinions on the proposed intervention. Instead, it will use secondary sources or indicators of these citizens' opinions, provided, for instance, by intermediaries. The challenge for the intervener, if it is to be locally externally representative, is to find reliable agents that provide accurate information on the opinions of victims and affected bystanders. One way that the intervener can determine whether an agent provides accurate information is by examining its ethos, track record, and agenda. Another way is to compare the agent's account with that of the few citizens with whom direct access is possible (e.g. refugees). The agents that are perhaps most likely to be reliable are certain NGOs and what Mary Kaldor (1999, 121) calls 'islands of civility' (groups that have political support but are not involved in the violence).

¹³¹The ICRC also conducted its survey in a number of the states (such as the U.K., the U.S., and France) who typically play a large role in any force undertaking humanitarian intervention. These provided information on citizens' views on whether and how intervention should be undertaken by their state. Similar surveys could be used therefore to help ensure an intervener's internal representativeness.

An intervener, therefore, can be locally externally representative in a number of ways. Although these are not always easily achieved, in what follows I argue that an intervener should make a concerted effort to be locally externally representative. A significant part of its legitimacy depends on its doing so. This is the case even if Jacques deLisle is right in asserting that “most victims will not oppose intervention” (2001, 552). It is important to establish that this is true: that those subject to the humanitarian crisis clearly want intervention. Indeed, much of the opposition to humanitarian intervention revolves around the idea that it is paternalistic, forced upon people who do not want it (e.g. Walzer 1980). One logical corollary of this objection is that, if intervention is to be justifiable, the intervener’s local external representativeness is vital. As Tesón notes, “leaders must make sure before intervening that they have the support of the very persons they want to assist” (2003, 107).

Yet, the question remains: why exactly is it that the intervener should establish and represent the opinions of those in the political community that is subject to its intervention? The three reasons for the importance of an intervener’s local external representativeness mirror to a certain degree the three reasons presented for internal representativeness. The first claims that a locally externally representative intervener is more likely to be effective. The second is the ‘Burdens Argument’, which asserts that those subject to the humanitarian intervention should have their opinions represented because intervention is likely to burden them. The third emphasises the value of individual self-government.

(i) Increased effectiveness

I begin the defence of the moral importance of local external representativeness with a plainly consequentialist argument: an intervener that represents the opinions of those subject to its humanitarian intervention is more likely to be effective at preventing, reducing, or halting the mass violation of basic human rights. This is because, firstly, prior consultation with those who would be subject to the intervention can indicate whether there is widespread support for intervention in the target state. This is a key factor determining whether intervention will succeed (Gizeles and Kosek 2005). The official British peacekeeping manual thus states:

Without the broader co-operation and consent of the majority of the local population and the leadership of the principal ruling authorities, be they party to the dispute or government agencies, success is not a reasonable or realistic expectation... Put simply, consent (in its broadest form) is necessary for any prospect of success (in Kaldor 1999, 126).

Without such prior consultation, the intervener might undertake action that is unpopular with the local population and, as a result, face high levels of resistance, making successful intervention difficult. In addition, a locally externally representative intervener is more likely to know whether a particular course of action or mission during the intervention will be successful. In this context, Chopra and Hohe (2004, 291) assert that locals tend to have the best knowledge of the situation, including, we can surmise, the location of conflict hotspots, the terrain and weather conditions, and the underlying political factors. By consulting with locals, therefore, an intervener will have a greater awareness of this situation and, consequently, will be better placed to undertake

successful intervention. Moreover, since a locally externally representative intervener reflects, in its decision-making, the opinions of those subject to its intervention, it is more likely to make these individuals feel involved with the intervention. Theodora-Ismene Gizeles and Kristin Kosek (2005) argue that this feeling of involvement is necessary for effective intervention. Conversely, “a population that is largely uninvolved in humanitarian intervention is less likely to cooperate with the intervening parties or expend efforts to make the intervention successful” (Gizeles and Kosek 2005, 364).¹³²

(ii) The Burdens Argument

The second argument for local external representativeness is what I call the ‘Burdens Argument’. This asserts that an intervener should represent the opinions of those in the political community that is subject to its intervention because of the potential burdens imposed by humanitarian intervention. Those in this community might have to suffer civilian and military casualties, damage to vital infrastructure, increased levels of insecurity, and other costs associated with being in a war zone. Given that these individuals face these burdens, it is important that the intervener should reflect their opinions on the intervention.

This Burdens Argument is similar to the Resources Argument for internal representativeness in that it relies on the importance of individual choice. Whereas the underlying principle of the Resources Argument is that an individual should have some choice over how his resources are used, the underlying principle of the Burdens

¹³²See, further, Mersaides (2005).

Argument is that an individual should have some choice over the burdens he faces. The reason why individual choice regarding burdens matters is that those suffering burdens are negatively affected. More precisely, a burden of humanitarian intervention can be defined as a negative impact on an individual's basic human interests caused by that intervention. Examples of burdens therefore include injury, disruption of food supplies, and damage to vital infrastructure (e.g. basic medical services and running water). Hence, the Burdens Argument holds that those subject to the humanitarian intervention should have their opinions represented because intervention may have a negative impact on their basic human interests.

As it stands, this Burdens Argument is both too inclusive and too exclusive. It is too inclusive because it suggests that the intervener should reflect the opinions of *all* those in the political community that is subject to its intervention. This includes the opinions of those carrying out the violations of basic human rights, which create the need for intervention. For example, on the logic of this argument, NATO should have represented the opinions of the leaders of the Bosnian Serbs before undertaking its air strikes in 1995, since they were essentially the targets and were burdened by this action. We therefore need to amend the Burdens Argument to take into account moral culpability. In this context, Tesón (1997, 126) asserts that it is the victims of the oppression who must welcome intervention. More specifically, he argues:

in a tyrannical regime the population can be divided into the following groups: the victims; the accomplices and collaborators; and the bystanders... Of these groups, only the first, the victims, have (arguably) a right to refuse aid. The accomplices and bystanders who support the regime are excluded for obvious reasons. Their opposition to intervention does not count. And the bystanders who oppose the regime cannot validly refuse foreign aid on behalf of the victims (Tesón 2003, 107).

Although this typology is illuminating, it is too simplistic. I agree that the opinions of accomplices and collaborators should be given no weight. Any burdens of intervention they suffer are a consequence of their own morally reprehensible behaviour.¹³³ I also agree that we should assign greatest weight to the opinions of the victims. They are not usually morally culpable for the humanitarian crisis, yet often face some of the largest burdens of intervention, such as the bombing campaigns conducted in the regions in which they live. Moreover, if a potential intervener treats each individual's opinions equally, and if the majority of others (such as the bystanders) oppose humanitarian intervention, the victims would be left to suffer the humanitarian crisis. For this reason, we should give most weight to the opinions of the victims. Yet I disagree with Tesón's rejection of the importance of the bystanders' opinions. Although they are less important than the opinions of victims, some bystanders' opinions should be represented as well. In particular, we should include the opinions of those bystanders who are likely to be burdened by the intervention precisely because they are burdened bystanders: they are not (directly) responsible for the humanitarian crisis but might suffer in its resolution. Hence, a locally externally representative intervener will, firstly, give most weight to the opinions of the victims of the humanitarian crisis and, secondly, take into account the opinions of bystanders likely to be burdened by the intervention.¹³⁴ Of course, it is not

¹³³There may be, however, an instrumental reason for taking into account the opinions of the accomplices and collaborators: such individuals are less likely to resist an intervener if they feel that their opinions are being represented.

¹³⁴To be more specific than this would be a mistake. For instance, to specify the exact percentage of the support of the victims and the bystanders required for an intervener to be said to be externally

always easy to distinguish between victims, bystanders, collaborators, and accomplices.¹³⁵ But, although sometimes the line between the victims and the aggressors is blurred, on other occasions it is all too apparent who are the victims and who are the aggressors.

As it stands, this Burdens Argument is also too exclusive. Some of the burdens of humanitarian intervention may fall on those outside the borders of the target state. An obvious example is the creation of a refugee flow that destabilises a neighbouring state. Therefore, we need to amend the Burdens Argument so that, when individuals in other political communities will be burdened by the intervention – when they will also be burdened bystanders – the intervener gives some weight to their opinions too. That said, in most cases, the effects on those beyond the borders of the target state would not be significant enough to warrant the consideration of these individuals' opinions.

(iii) Individual self-government

representative would require too much detail. It would not fit in with the inexactness of establishing the opinions of those in the political community that is subject to the intervention. That is not to claim that an intervener cannot obtain a fairly accurate picture of the opinions of the victims and the bystanders. On the contrary, it can do so if it uses the measures outlined above. Rather, my point is that this information will not be easily quantifiable. See Chapter 7 for further discussion.

¹³⁵These categories could be further divided. For instance, the category of accomplices could be divided into those who are willing, those who are naive, and those who have little choice but to be accomplices. But the typology (as presented above) captures the most morally relevant distinctions.

Like the Resources Argument in relation to internal representativeness, the Burdens Argument does not provide a complete defence of the importance of an intervener's local external representativeness. That is, it does not encapsulate fully why an intervener should be locally externally representative. For a complete account, we need to turn to the third argument for local external representativeness, which invokes the instrumental and intrinsic value of individual self-government.¹³⁶

Let us start with the instrumental argument for individual self-government in this context (and, by implication, for an intervener's local external representativeness). This instrumentalist justification relies on a form of what Albert Weale (1999) terms the 'non-paternalist principle'. To be specific, individuals are the best judge of what enhances their well-being in most cases, although there are obvious exceptions.¹³⁷ Individual self-government is valuable, therefore, because self-governing individuals are more likely to realise their well-being. It follows that an institution that is representative, in that it reflects its citizens' opinions in its decision-making, is more likely to promote its citizens' well-being.¹³⁸ It also follows that an intervener that represents the opinions of

¹³⁶Strictly speaking, use of the term 'individual self-government' may not always be appropriate for local external representativeness because the intervener does not establish a government in the target state (unless it forms a transitional administration). Nevertheless, the underlying principle is essentially the same: individuals should have some degree of control over their ruling institutions. To show the mirroring of the argument for internal representativeness, I will continue to use the term 'individual self-government'.

¹³⁷Weale phrases this in terms of 'interests', but the argument can be applied to well-being.

¹³⁸It may be replied that, on an objective list view of well-being, we can define the constituents of a good life and hence what is necessary for well-being. However, within the broad categories of the values that contribute to the good life (such as friendship), the details of the good life for each individual cannot be known *a priori*. The particular individual is the best judge of these details.

those subject to its intervention – and is therefore locally externally representative – is more likely to promote (or, at least, not harm) these citizens' well-being. This is because the intervener, by reflecting these individuals' wishes, desires, and goals in its decision-making, will help them to attain what they themselves identify as being required for their well-being. For instance, suppose an intervener responds to a humanitarian crisis in a society which has strong religious customs. These customs form part of what constitutes the good life for many individuals. By consultation, a locally externally representative intervener would learn that these religious customs and practices contribute to many individuals' well-being in this society. It would therefore have a better understanding of what is necessary to promote these individuals' well-being. It might follow, for example, that the intervener involves religious leaders in a transitional administration and avoids damaging religious buildings.

I argued earlier that individual self-government matters in itself: it is intrinsically important that an individual should be self-governing even if his opinions, if realised, would not obviously promote his well-being. This intrinsic value of individual self-government adds to the importance of local external representativeness. A state, coalition of states, or multinational organisation should not intervene to protect those who do not want their political community to be subject to humanitarian intervention. This is the case even if intervention would promote these individuals' well-being in the short-term, for instance, by protecting them from being victims of oppression and from violation of their basic human rights.¹³⁹ Moreover, it is not only individuals' opinions on whether there

¹³⁹Note that this is an argument for the intrinsic worth of individual self-government, not communal self-government (which is sometimes used to defend non-intervention). Some accounts of the value of

should be intervention that matter for the representativeness of an intervener. Although this tends to be the most prominent issue, it also matters that an intervener responds to other opinions of those subject to its intervention, including their opinions on who should intervene, on the form intervention should take, and on how long it should last. The opinions of those subject to the intervention on these issues also have intrinsic value. For instance, those subject to a humanitarian crisis might desire intervention, but have grievances against the proposed intervener.¹⁴⁰ Responding to such grievances might not directly promote the well-being of those subject to the intervention – an alternative intervener might not be any more effective – but it is still important to be responsive to these opinions as a matter of individual self-government and, ultimately, local external representativeness.

IV. GLOBAL EXTERNAL REPRESENTATIVENESS

Having seen that an intervener's internal and local external representativeness are important conditions for the legitimacy of an intervener, it might be asked whether it is also important that an intervener represents worldwide public opinion. Should an

communal self-government would include communities with little or no individual self-government (e.g. Walzer 1980).

¹⁴⁰One example of this was the response by a number of Somalis to the proposal to send Kenyan, Ethiopian, and Djiboutian peacekeepers to Somalia in 2005. Their opposition to intervention by their neighbours (especially Ethiopian) was so great that a brawl erupted in the Somali parliament and Somali warlords claimed they would target Ethiopian peacekeepers (BBC 2005).

intervener take into account the opinions of everyone worldwide (minus those who are already considered under internal representativeness and local external representativeness)? In other words, is it important that an intervener is 'globally externally representative'?¹⁴¹ Let us now briefly consider this question. I will examine whether the three types of arguments made for internal and local external representativeness can also be applied to global external representativeness.

First, can an intervener's global external representativeness be instrumentally justified? It may be, as Alex Bellamy and Paul Williams (2004, 171) argue, that an intervener that enjoys worldwide support would receive extra assistance for the intervention and would therefore be more effective. But this is perhaps unlikely. A number of interveners, especially the UN, have seemed to enjoy the general support of worldwide public opinion for their humanitarian intervention, but have struggled to find the resources necessary for effective intervention. Second, is there an argument analogous to the Resources Argument or the Burdens Argument that could be made in favour of global external representativeness? Again, this is doubtful. The Resources Argument and the Burdens Argument rely on the premise that individuals should have some control over the use of their resources and the burdens that they must face (which negatively affect their basic human interests) respectively. But the individuals that are included under global external representativeness (everyone in the world minus those included in the other two sorts of representativeness) are unlikely to provide any significant resources for

¹⁴¹One indicator of this, especially in democracies, might be the statements of the relevant heads of states and government officials, but a more accurate measure of global external representativeness would be opinion polls carried out in a wide variety of countries, such as those conducted during the Iraq War.

the intervention or face any burdens that significantly and directly affect their basic human interests. There is no analogous argument, then, because these individuals are essentially international bystanders, generally not directly affected by the intervention.¹⁴²

Third, could an argument for the importance of individual self-government be used to defend the importance of an intervener's global external representativeness? Again, perhaps not, since the individuals in question are not in any way governed or ruled by the intervener. Individual self-government cannot be used therefore to justify the importance of an intervener representing these individuals' opinions.

Thus, whether the intervener reflects the opinions of those individuals in the wider international community is not relevant to its legitimacy because these people are not directly involved with the intervention. The individuals in the wider international community are typically unburdened bystanders, whose opinions ultimately do not matter for the legitimacy of an intervener that is using its own citizens' resources to undertake a military intervention for the sake of those suffering the humanitarian crisis.

V. CONCLUSION

The principal purpose of this chapter has been to highlight, and to make the case for, the moral significance of two largely overlooked factors for the legitimacy of humanitarian intervention: whether the intervener is representative of the opinions, firstly, of its citizens and, secondly, of those in the political community in which it intervenes. There

¹⁴²If people of a neighbouring state were burdened by the intervention, for instance by the creation of a refugee flow, these individuals' opinions would be included under the Burdens Argument.

are three, largely complementary, reasons why the first factor, the intervener's internal representativeness, is important. The first is consequentialist: an internally representative intervener is more likely to be effective because it is more likely to commit the resources necessary for successful humanitarian intervention. The second is the Resources Argument: the intervener should take into account its citizens' opinions on the intervention because its citizens provide the financial and human resources for intervention. The third is the value of individual self-government on humanitarian intervention. Three parallel reasons explain the importance of the second factor, the intervener's local external representativeness. The first is consequentialist: a locally externally representative intervener is more likely to be effective. The second is the Burdens Argument: the intervener should take into account the opinions of those in the political community in which it intervenes – and, in particular, the opinions of the victims and the potentially burdened bystanders – because humanitarian intervention may have a negative impact on these individuals' basic human interests. The third is the instrumental and intrinsic value of individual self-government.

Hence, internal and local external representativeness play a significant role in an intervener's legitimacy. For that reason, we need to pay them greater attention and, ultimately, to improve the extent to which current interveners are internally and locally externally representative. And, although it can be difficult for an intervener to obtain accurate information on the opinions of both its constituents and those suffering the humanitarian crisis, these difficulties are not insurmountable. For the reasons given in this chapter, an intervener should make a concerted effort to obtain and to take into

account such information and consequently be both internally representative and locally externally representative.

It is worth noting lastly that the arguments for the value of internal and local external representativeness cohere with the Moderate Consequentialist Approach, which leaves room in its primarily consequentialist conception of legitimacy for secondary factors. Indeed, they reinforce the objection made in the previous chapter against the Extreme Consequentialist Approach: effectiveness is not the sole moral concern when deciding who should intervene.

CHAPTER 7: ASSESSING CURRENT INTERVENERS WITH THE COMPLETE CONCEPTION OF LEGITIMACY

The previous chapters have outlined the parameters of legitimacy for humanitarian intervention, examined various theories of legitimacy for humanitarian intervention, and delineated the qualities that interveners need to be legitimate. The aim of this chapter is firstly to bring the findings of the previous chapters together to provide a complete conception of legitimacy for humanitarian intervention. This conception of legitimacy, with its emphasis on effectiveness, provides the framework for answering the question of who should intervene. The second aim of this chapter is to use the conception of legitimacy identified to answer that question. I consider who, out of the currently existing agents of intervention, is the most legitimate agent and who should therefore undertake humanitarian intervention. I conclude that, although some agents of intervention have a *degree* of legitimacy, no currently existing agent is *fully* legitimate according to the conception of legitimacy I have identified. Further, I argue, that in light of recent egregious violations of human rights, the current situation is problematic because there is a lack of any humanitarian intervention in many cases, largely due to a lack of willingness to intervene. Consequently, in the next chapter, I consider a number of proposals for improving the mechanisms of humanitarian intervention so that it will be undertaken, firstly, by more legitimate agents and, secondly, on a more frequent basis.

I. OUTLINE OF THE COMPLETE CONCEPTION OF LEGITIMACY

This first section will bring together the features of legitimacy identified in previous discussions into a complete conception of legitimacy for humanitarian intervention. Before outlining that complete *conception*, however, it will be helpful briefly to recap the account of the *concept* of legitimacy offered in Chapter 2.

Concept of legitimacy

I rely to a certain extent on Buchanan's (2004) concept of legitimacy. This treats legitimacy as the morally justifiable use of political power. A legitimate agent will have certain qualities that mean it can justifiably wield political power. I take legitimacy to be scalar, that is, a matter of the degree. We can distinguish between an intervener possessing full legitimacy and an intervener possessing an adequate degree of legitimacy. Intervention by an intervener possessing an adequate degree of legitimacy is morally acceptable. However, it is desirable to have an intervener possessing a more than adequate degree of legitimacy and, in particular, an intervener that is fully legitimate, for the simple reason that such an intervener's use of power would be more morally justified.

A number of different qualities contribute to the legitimacy of an intervener. To be fully legitimate, an intervener needs to have all of the relevant legitimating qualities. But an intervener does not have to have all of these qualities to possess an adequate degree of legitimacy. An intervener can also have varying degrees of these qualities, a high level of one quality but less of another. Any combination of qualities is acceptable,

as long as they each contribute enough legitimacy so that, when added together, the intervener has an adequate degree of legitimacy. Each of the qualities is limited in how much it can contribute to legitimacy and therefore an intervener needs to possess a number of the qualities in order to reach an adequate degree of legitimacy. In other words, most of these legitimating qualities, taken singularly, are neither necessary nor sufficient conditions of legitimacy. The only exception is effectiveness, which, given its importance, is necessary for an intervener to be legitimate (and which also can be a sufficient condition when highly beneficial consequences are likely).

In addition, there are four qualities that an intervener needs to be engaged in ‘humanitarian intervention’. That is, some qualities, outlined in Chapter 2, are implicit in the meaning of humanitarian intervention. These qualities are its defining conditions rather than its legitimating conditions. In other words, they help to define a humanitarian intervener, rather than what counts as a legitimate humanitarian intervener. In particular, it needs (i) to be engaged in military and forcible action; (ii) to be responding to a situation where there is impending or ongoing grievous suffering or loss of life; (iii) to be an external agent; and (iv) to have a humanitarian intention, that is, a predominant purpose of preventing, reducing, or halting the ongoing or impending grievous suffering or loss of life. Unless it has all four qualities, an intervener cannot be said to be undertaking ‘humanitarian intervention’. This is not to prejudge who should intervene; an intervener engaged in ‘humanitarian intervention’ might still be illegitimate. To be legitimate, it needs to have a number of other, moral qualities. I will now recap what these are.

Factors in an intervener's legitimacy

The most important factor for the legitimacy of an intervener is its effectiveness. This reflects the intuitive plausibility of consequentialist thinking on humanitarian intervention. According to the Moderate Consequentialist Approach, what matters most is that we can expect the intervener to achieve good consequences – that it will successfully prevent, halt, or decrease the egregious violations of human rights.

There are three forms of effectiveness. The first type of effectiveness is 'local external effectiveness', which depends on whether an intervener is likely to promote or harm the well-being of those in the political community that is subject to its intervention. In other words, to be locally externally effective, an intervener needs to be successful at tackling the humanitarian crisis. The second type of effectiveness is 'global external effectiveness'. This depends on whether an intervener promotes or harms the enjoyment of the basic human rights in the world as a whole, apart from the intervener's citizens and those subject to its intervention. The third type of effectiveness is an intervener's 'internal effectiveness', which depends on the consequences for the intervener's own citizens. Given the importance of an intervener's being effective in these three senses, it follows that an intervener's overall effectiveness is a necessary condition of its legitimacy. If, when combining its local external effectiveness, global external effectiveness, and internal effectiveness, an intervener is ineffective overall, it cannot be legitimate.

If they are to be effective, interveners need to have a number of characteristics. These include adequate military and non-military resources, a suitable strategy to use these resources successfully, and an appropriate mandate. Interveners also need to have

the commitment to intervene successfully. Regional interveners are likely to do well in this regard: their geographical proximity gives them extra reason to ensure that the humanitarian crisis is resolved and, in addition, means that fewer resources are required. It is also important for an intervener to intervene in a timely manner, i.e. quickly and when the situation is ripe for humanitarian intervention.

The overall effectiveness of an intervener depends, firstly, on the degree to which it has these characteristics and, secondly, on the circumstances in which it is acting. Both the probability and the magnitude of an intervener's effectiveness will vary according to the circumstances. When an intervener has a high probability of achieving a success with a large magnitude, effectiveness may be not only a necessary but also a sufficient condition for it to have an adequate degree of legitimacy. Consequently, effectiveness can be sufficient for an adequate degree of legitimacy in unusual circumstances where hugely beneficial consequences are more than likely. In most cases, however, effectiveness will not be sufficient because an intervener will not have a very high probability of achieving a very sizeable success. Normally, then, an intervener's legitimacy depends also on the degree to which it possesses other qualities.

Moreover, even where hugely beneficial consequences are more than likely, and effectiveness is sufficient for an intervener to have an adequate degree of legitimacy, the intervener will not be fully legitimate unless it possesses all of the relevant qualities. Hence, at most, effectiveness can be sufficient only for an adequate degree of legitimacy and, in the majority of circumstances, it will not be sufficient even for this. This is because the legitimacy of an intervener also depends on three other qualities that have intrinsic as well as instrumental value.

The first of these intrinsically valuable qualities is fidelity to the principles of *jus in bello*. These principles limit the means that an intervener can use to undertake humanitarian intervention. There are four principles of *jus in bello*. The first two principles – principles of ‘external *jus in bello*’ – are concerned with how the intervener should treat the population subject to its intervention. The first of these is a strict rule of non-combatant immunity, which maintains that civilian casualties are impermissible, and the second is a principle of proportionality, which limits the harm that the intervener can cause to combatants. The third and fourth principles – principles of ‘internal *jus in bello*’ – are concerned with how the intervener should treat its own citizens. The third principle restricts the sort of soldiers that the intervener can use (i.e. not conscripts or child soldiers). The fourth principle maintains that an intervener cannot use methods that cause its own soldiers excessive and avoidable harm.

In the previous chapter, I highlighted two other factors that are intrinsic to (as well as instrumental for) an intervener’s legitimacy. Both concern whether the intervener represents the opinions of two sets of people in its decision-making. First, it should represent the opinions of those individuals from whom it is collectively formed – it needs to be ‘internally representative’. Second, it should represent the opinions of those individuals in the political community that is subject to its intervention (and particularly the victims of the humanitarian crisis) – it needs to be ‘locally externally representative’. To establish that it is internally representative, an intervener can conduct referenda on humanitarian intervention, carry out opinion polls on some of the population, and, less scientifically, consider other indicators of the public mood. To ensure that it is locally externally representative, it can ascertain directly the opinions of those in the political

community that is subject to its intervention, or, given that this is often difficult, it can use indirect indicators, such as information provided by reliable intermediaries.

Therefore, a high degree of fidelity to the principles of internal *jus in bello* and external *jus in bello*, a satisfactory degree of internal representativeness and local external representativeness, and a reasonable expectation of internal effectiveness, global external effectiveness, and local external effectiveness are all important factors for the legitimacy of a humanitarian intervener.¹⁴³ These exhaust the catalogue of significant factors. Other factors commonly cited as important have, at best, small significance for the legitimacy of an intervener.

It is often assumed that interveners will be legitimate if they are legal. The current international law on humanitarian intervention, very briefly, is as follows. Article 2 (4) of the UN Charter provides a general prohibition on the use of force, to which there are two legal exceptions: instances of unilateral or collective self-defence, and Security Council-authorized intervention. The upshot is that (most) interveners require UN Security Council authorisation to be legal. This is essentially the same conclusion as reached by international legal positivists. Yet legality is at best a minor factor for the legitimacy of an intervener. The gap between the current international law and the demands of morality

¹⁴³Note that an intervener that is internally and globally externally representative and has a high degree of expected fidelity to the principles of internal and external *jus in bello* is more likely to be effective. This means that the conception of legitimacy presented is more complex than having the three types of effectiveness on the one hand and the four other factors on the other. The four other factors (i.e., internal and global external representativeness and fidelity to the principles of internal and external *jus in bello*) are important because of their contribution to an intervener's effectiveness, but also important because of their intrinsic value, independent of their contribution to effectiveness.

is too large: *lex lata* bears little relation to *lex ferenda*. A legal intervener is by no means certain to be a legitimate intervener. Indeed, being authorised by the UN Security Council has only a small positive impact on the legitimacy of an intervener. That legality has any positive impact means that it is, to some extent, desirable. But it is far from being a necessary or even important factor for the legitimacy of humanitarian intervention.

The argument that a legitimate intervener needs to have a humanitarian motive, or the weaker notion that a humanitarian motive will contribute to the legitimacy of an intervention, can be challenged. It is crucial to note the difference between a humanitarian intention and a humanitarian motive. An intervener with a humanitarian intention has the goal of preventing, reducing, or halting the humanitarian crisis. However, the reason for the intervener's having this humanitarian goal does not have to be humanitarian as well. By contrast, if an intervener is to have a humanitarian motive, not only must its goal be humanitarian, its reason for having that goal must be humanitarian too. Whilst a humanitarian intention is a necessary condition of any intervention being deemed 'humanitarian', a humanitarian intervention may or may not have a purely humanitarian motive, or may have mixed motives, and yet still be legitimate.

Three other commonly cited factors do not contribute much to the legitimacy of an intervener. First, an intervener may be selective in its intervention and still be legitimate. This goes against the argument that an intervener is illegitimate in State A because it has not intervened in a similar situation in State B. In fact, a certain degree of selectivity is desirable given that legitimate humanitarian intervention is not possible in every single circumstance. Second, Chapter 2 argued that having a humanitarian intention

is not, in itself, morally significant: we need to have further information in order to judge the legitimacy of an agent. Third, it does not matter whether an intervener's decision-making reflects the opinions of those individuals in the wider international community because these individuals are not directly involved in the intervention.

Summary

Let me summarise the complete conception of legitimacy. For an intervention to qualify as 'humanitarian intervention', an intervener needs to have a humanitarian intention, to be an external agent, to be responding to a serious humanitarian crisis, and to be engaged in a forcible military operation. To be *fully* legitimate, an intervener needs to be internally effective, globally externally effective, locally externally effective, to follow principles of internal *jus in bello*, to follow principles of external *jus in bello*, to be internally representative, and to be locally externally representative. To have *an adequate degree of* legitimacy, an intervener does not need to have all of these qualities. Whether it has an adequate degree of legitimacy depends on whether it possesses enough of these qualities cumulatively. An intervener could have an adequate degree of legitimacy, yet lack one of these qualities. It may, for instance, lack internal representativeness, but have an adequate degree of legitimacy overall because it is highly locally externally representative, follows closely all the principles of *jus in bello*, and will be extremely locally externally effective. Similarly, an intervener could have an adequate degree of legitimacy yet meet some of these qualities only *partially*. For instance, there are different levels of local external representativeness, ranging from none to full representativeness (depending on the

lengths to which an intervener goes to establish the opinions of those suffering the humanitarian crisis). An intervener can have an adequate degree of legitimacy even though it is only *partially* locally externally representative, perhaps because it will be extremely effective overall.

The only *necessary* condition of legitimacy is that the intervener is likely to be effective overall. This is because of the overwhelming significance this quality has for the legitimacy of an intervener. Indeed, in exceptional circumstances, where extremely beneficial consequences are highly likely, effectiveness can be a *sufficient* condition for the legitimacy of an intervener.

That effectiveness can be, on occasion, sufficient for an adequate degree of legitimacy shows, firstly, the impact of circumstances on my conception of legitimacy for humanitarian intervention. Circumstances determine whether qualities, other than effectiveness, are required if an intervener is to possess an adequate degree of legitimacy and, if so, the degree to which these are required. Secondly, it reflects the dominant position of effectiveness among the qualities which contribute to an intervener's legitimacy. Thus, my conception of legitimacy is, in large part, consequentialist, as encapsulated by the Moderate Consequentialist Approach. This is for good reason: consequentialist thinking on humanitarian intervention is intuitively compelling. What seems to matter, above all else, is that an intervener prevents, halts, or decreases egregious violations of human rights. But my account is not wholly consequentialist. In most cases, the degree to which an intervener possesses certain intrinsic qualities – internal representativeness, local external representativeness, and fidelity to principles of *jus in bello* – plays a large role in its legitimacy. And even when local external

effectiveness is sufficient for an adequate degree of legitimacy, an intervener needs these non-consequentialist qualities to be fully legitimate.

Vagueness and institutions

It might be claimed that the conception of legitimacy I have developed is too vague. First, it leaves open the possibility that an intervener can possess varying amounts of the morally relevant qualities outlined, including very little of some, yet still have an adequate degree of legitimacy. Second, the qualities identified are somewhat indeterminate: there can be differing interpretations and judgments about whether an intervener possesses them. These two problems mean that it will be difficult in practice to determine whether an intervener is legitimate. Moreover, given this indeterminacy, agents may be able to claim, with some plausibility, that they possess the morally relevant qualities, and are therefore legitimate, even when they are not.¹⁴⁴ This, the argument runs, could increase the risk of abusive non-humanitarian intervention or illegitimate humanitarian intervention.

There are a number of points to make in response. To start with, the conception of legitimacy identified above is not that vague. I have been careful to specify what exactly is required to possess the morally relevant qualities. For instance, for an intervener to be effective, I argued that it must be reasonably expected to make an improvement in the enjoyment of basic human rights in the long-term, compared to the counterfactual, of those suffering humanitarian crisis, of the intervener's citizens, or in the world at large. In

¹⁴⁴See Bellamy (2006a) for some further problems with such indeterminacy.

practice, this means that the intervener must be responding to a serious humanitarian crisis, where the degree of violations of human rights is both qualitatively and quantitatively significant, and to have a number of qualities, such as the necessary military and non-military resources, an appropriate mandate, a suitable strategy, sufficient commitment, the ability to intervene in a quick and timely manner, and also be likely to be perceived to be legitimate. Similarly, when discussing the importance of fidelity to the principles of *jus in bello*, I detailed what exactly is required for each of the principles and, in Chapter 2, I was particularly careful to define when an agent can be said to be engaged in ‘humanitarian intervention’ and what constitutes a humanitarian intention. Consequently, it would be extremely difficult for a non-humanitarian, abusive, or illegitimate agent to claim plausibly that they are a legitimate humanitarian intervener.

Given the varying characteristics of humanitarian crises, and the different considerations involved, it would be a mistake to be more determinate. We need to retain a degree of flexibility in the relevant normative factors so that we can apply them to the differing situations that will arise. The risk in being more determinate is that we may deny the legitimacy of an intervener in a particular case because it does not meet all the details of a certain factor, yet the specifics of the case – and common-sense – tell us that the intervener is legitimate overall (Chopra and Weiss 1992). For instance, although the assessment of an intervener’s effectiveness might be easier if we took the establishment of working political institutions in the target state to be a necessary condition of effective humanitarian intervention, this would rule out cases where an intervener has not established such institutions, yet we still generally regard it as having been effective. Hence, Weiss asserts that, in the messy world of humanitarian intervention, “[a]nalyse

and not formulas are required. The task is thus to be flexible rather than to take preset criteria and apply them rigidly” (2005, 213).¹⁴⁵

One solution to the problem of indeterminate factors, favoured by many (Ayoob 2002; Buchanan and Keohane 2004; Chopra and Weiss 1992; Pogge 2006), is to have institutions that formally decide whether an intervener possesses the morally relevant qualities. The goal here is to establish something akin to a (model) domestic legal system, which has set processes to determine an agent’s intention, as well to make judgments on other morally relevant concerns. It would silence much of the contestation by listening to competing claims and deciding in a fair and accurate manner which is correct. If put in place at the international level, such a system would be able to adjudicate on whether an intervener has the morally relevant qualities outlined and whether it would be legitimate overall. It would also be able to take into account the particularities of the case and rule accordingly, i.e., either authorise or reject the intervention.

The development of an international adjudicating institution would, of course, be highly desirable. Indeed, one of the benefits of the cosmopolitan democratic institutions that I propose in the next chapter is that they would be able to decide in a fair manner whether to authorise intervention. But we must tread carefully here: not all institutions are appropriate for this function. As it stands, the UN Security Council is not a suitable candidate to act as an adjudicating institution. Central to the credibility of an adjudicating institution is, firstly, that its processes are fair, transparent, and procedurally just, and secondly, that it makes the right judgment in most cases. The Security Council fails on both counts. As argued in Chapter 3, the functioning of the Security Council is highly

¹⁴⁵The section on reforming international law in the next chapter has further discussion of these issues.

problematic. In addition, it has failed to authorise humanitarian interventions that were legitimate overall (e.g. Kosovo) and its permanent members have opposed a number of potential humanitarian interventions that might have been legitimate, had they been undertaken (e.g. Darfur and Rwanda). The Security Council therefore lacks just procedures and regularly does not make the right decisions. For these reasons, it would be mistaken to let it decide whether an intervener is legitimate, for it could not be relied upon to make this decision in a morally responsible way. As Chesterman argues, “it is misleading to suggest that the Council ever worked effectively as an objective arbiter in the area of peace and security – or that it was ever realistically expected to do so. The council was and remains an inherently political body” (2005, 159).¹⁴⁶

What is *currently* the best way then of deciding whether an agent possesses the morally relevant qualities and would therefore be a legitimate intervener? My suggestion is that, *until we develop a more credible system of global governance*, we should leave the decision on whether an intervener possesses the morally relevant qualities, and is therefore legitimate, to the international community. That is to say, the international community currently acts as an adjudicator on humanitarian intervention and should continue to do so.¹⁴⁷ The decisions that it makes are able to constrain action before it is

¹⁴⁶See, further, Chesterman and von Einsiedel (2005, 755-756).

¹⁴⁷As already noted, the term ‘international community’ is ambiguous. By international community, I mean specifically the institutions of the UN, states (particularly the governments of states), regional, sub-regional, and collective security organisations, world public opinion, and global civil society (i.e. NGOs). For the international community to make a decision, not all these institutions have to be involved, nor do they all have to agree. Instead, there needs to be a general sense of agreement amongst a number of these institutions.

undertaken and the criticisms that it makes after illegitimate action has been undertaken have an impact on subsequent practice.¹⁴⁸ Of course, this system is not ideal; there are no formal processes for deliberation and the international community can make the wrong decisions. Even when it makes the right decisions, the decisions do not always constrain states. But we should not underplay the ability of the international community to make such decisions and for these decisions to carry weight. Consider, for instance, the widespread view in the international community, despite the claims of the U.S. and the U.K., that the 2003 war on Iraq was illegal and largely illegitimate. This view has certainly had a large impact on international relations (it is perhaps one of the main reasons why the U.S. has not yet attacked Iran). Hence, although the adjudicating function of the international community is not without its difficulties, it has greater transparency than the UN Security Council, and is more likely to make the right decisions.¹⁴⁹

¹⁴⁸Franck's (2003) work on the jurying powers of states when the Security Council decides not to act is quite informative here, but is more state-centric than the position I adopt.

¹⁴⁹It might be claimed that the Security Council does have one major draw: it has a significant ability to constrain agents. That is, intervention opposed by the UN Security Council is much less likely to go ahead than intervention opposed by the international community in general. This means that the Security Council's decision on whether an intervener possesses the morally relevant qualities (and whether an intervener would be legitimate) has more bite. However, it is far from certain that the UN Security Council does have a significant ability to constrain agents, especially powerful ones (see Chapter 3). It seems to be little better than the international community in this regard.

II. WHICH CURRENT AGENT SHOULD INTERVENE?

Having outlined the complete conception of legitimacy for humanitarian intervention, I will now use it to examine who, out of the current possible agents of intervention, is the most legitimate, and who therefore should undertake humanitarian intervention.

To do this, I will assess the track record of humanitarian interveners to see how they measure up to the conception of legitimacy I have developed.¹⁵⁰ An intervener's track record is only partially useful, however. An intervener may have been effective in the past because it has acted only in easy cases, so it might not be similarly effective in the future. Therefore, it is also important to consider the institutional characteristics of the intervener to assess whether its track record is likely to be repeated.

Some, such as Daniele Archibugi (2005), doubt the legitimacy of *all* current agents of humanitarian intervention, and argue that only reformed or new agents could be legitimate. If this view is correct, then no one should intervene until we develop intervening agents that are more satisfactory. As will become apparent, my reading of the current situation is less pessimistic. As argued above, it is not necessary for an intervener to be *fully* legitimate for its intervention to be justified, although, of course, full legitimacy is preferable. It is necessary, however, for an intervener to have *an adequate degree of* legitimacy. Given that a large number of the humanitarian interventions previously undertaken have had *some* degree of success (and we can assume are likely to

¹⁵⁰The interpretation of various case studies differs from author to author. I will rely mostly on the accounts presented in ICISS's (2001b) supplementary volume to *R2P*, which is probably one of the most reliable sources.

continue to do so), a number of the current agents of humanitarian intervention are likely to possess *some* degree of legitimacy. Whether this is sufficient for an adequate degree of legitimacy largely depends on the other morally relevant factors, but, overall, we should expect a number of current interveners to meet the threshold required for an adequate degree of legitimacy. Our concern should be primarily with who, amongst these, is the *most* legitimate agent of humanitarian intervention.

1. NATO

Amongst currently existing interveners, NATO would probably rank as the most legitimate. This is because of its effectiveness, which can be seen both in its success in previous missions (such as in Bosnia and in Kosovo) and in its level of military infrastructure. In Bosnia, the 1995 NATO air campaign forced the Bosnian Serbs to agree to peace after three unsuccessful years of UNPROFOR intervention. In Kosovo, although NATO's bombing campaign at first escalated the extent of the Serbian oppression, it avoided the ethnic cleansing on the scale of that seen in Bosnia. The effectiveness of these two operations was no coincidence. NATO has tremendous military and logistical resources (including a well-equipped rapid reaction force, the NATO Response Force). In addition, when NATO does intervene, it tends to do so with the commitment to ensure, firstly, a rapid resolution to the humanitarian crisis and, secondly, long-term peace and stability. As Terry Terriff (2004a, 128) asserts, NATO's post-conflict reconstruction efforts in the Balkans demonstrate its desire to stabilise these regions in order to provide democracy, rule of law, and human rights.

In addition, NATO intervention is likely to be internally representative. Its decision-making depends on consensus; each member state must consent to the use of force. Every NATO member state is a democracy and, as argued in the previous chapter, democratic states are most likely to be responsive to their citizens' opinions on the use of force. It follows that NATO decision-making is likely to be responsive to the opinions of citizens within the Alliance.¹⁵¹ It is questionable, however, whether NATO always uses humanitarian means. The Kosovo intervention was heavily criticised for its sole use of airpower and its reluctance to deploy ground troops (Chesterman 2001, 220-221, Habermas 2000, 2; Wheeler 2000, 290). The bombing campaign damaged vital infrastructure and killed a number of civilians, far more than probably would have occurred if the Alliance had been willing to undertake slightly more risky operations or to employ ground troops. On the other hand, Stromseth (2003, 249) claims that NATO made great efforts to conform to the law of armed conflict in the Kosovo campaign. Moreover, even if NATO's fidelity to the principles of *jus in bello* was doubtful in Kosovo, Terriff (2004a, 128) expects NATO to undertake any future humanitarian intervention as humanely as possible, with a minimum number of civilian casualties.

Hence, NATO, if it is willing to intervene, is likely to be the most legitimate agent, primarily because of its effectiveness. What matters most for legitimacy is the intervener's likely success at halting the humanitarian crisis and NATO is, at the moment, the agent most likely to be successful.

¹⁵¹In this context, NATO is also likely to be consistent with the Resources Argument because the U.S., which contributes the most towards NATO interventions, has usually the most control in NATO's decision-making.

But when is NATO willing to act? Although NATO now has a much broader notion of security and has widened the geographical scope of its mandate, it remains essentially a collective defence organisation, and this determines its decision-making (Terriff 2004a). Hence, in most cases it lacks the willingness to undertake humanitarian intervention. This does not undermine its legitimacy when it *does* act (selectivity does not harm an intervener's legitimacy), but it does mean that we need to consider other options.

2. States and coalitions of the willing

If NATO decides it does not want to get involved in a humanitarian crisis, a state acting by itself or a coalition of the willing is probably the next best option. The track record of humanitarian intervention by states and coalitions of the willing is somewhat uneven, but, on the whole, shows that they tend to be effective.

On the one hand, the following interventions by states and coalitions of the willing were probably not effective: the U.S.-led mission in Somalia to protect humanitarian corridors in 1992¹⁵²; French intervention in Rwanda in 1994, which was too late to stop the genocide and instead halted the advance of the RPF (Rwandan Patriotic

¹⁵²This intervention is generally regarded as unsuccessful, largely because of the infamous 'Blackhawk Down' incident in which a number of U.S. Rangers bodies were dragged through the streets of Mogadishu, but also because Somalia has since become a failed state (e.g. Gizeles and Kosek 2005, 369). However, ICISS (2001b, 97) suggests that the mission was not without its success; the impact of the famine was alleviated and perhaps only 50,000-100,000 of the 1.5 million threatened by starvation actually died. Oakley (1993) also claims that it was successful.

Front – a Tutsi force), thereby allowing the unchecked exodus of the *interahamwe* murder squads to DR Congo; and the 2002 French intervention in the Ivory Coast to arrest growing violence, which has exacerbated the situation.

On the other hand, the following interventions by states and coalitions of the willing were probably successful: India's 1971 intervention in East Pakistan that brought an end to the Pakistani oppression of Bengalis (Wheeler 2000, 55); Tanzania's 1979 intervention in Uganda that removed the Idi Amin from power (Wheeler 2000, 111); France's 1979 intervention in the Central Africa Republic that engineered a bloodless coup against the Emperor Bokassa (ICISS 2001b, 63); the creation by the U.S., the U.K., and France safe havens and no fly zones in northern Iraq to protect the Kurds in 1991; the Australian-led 1999 intervention to protect the East Timorese from the Indonesian army after the Timorese had voted for independence; the British intervention in Sierra Leone in 2000 to prevent the UN mission (UNAMSIL) from collapse; and the Australian-led 2003 intervention in the Solomon Islands to prevent the failing state from becoming a failed state (McDougall 2004, 214).¹⁵³

Overall, then, the number of successful interventions by states are greater than the number of unsuccessful interventions. States and coalitions of the willing have quite a good track record of effectiveness. Can we expect this trend to continue? Much depends on which particular state intervenes. In particular, many mid- and large-sized Western, liberal democratic states have the required military and non-military resources, and are therefore likely to be effective. But this effectiveness is likely to be limited: a number of

¹⁵³This, however, was arguably more of a peacekeeping mission than humanitarian intervention because of the lack of a strong military involvement.

these states would face a high level of local resistance. For instance, Archibugi (2005, 224) argues that, after the war on Iraq, the U.S. does not have credibility in the eyes of the world to carry out humanitarian intervention. Where it does intervene, it is likely to face extreme local opposition (which can harm the chances of a successful outcome) and lack local external representativeness.¹⁵⁴ Similarly, ex-colonial masters intervening in their former colonies may also be highly unpopular amongst the local inhabitants.¹⁵⁵ Conversely, non-western states, which might face less resistance, are limited to intervention in nearby or neighbouring states at best, given their lack of resources. This need not be a drawback, though. As Walzer (2002a, 2) argues, the most successful interventions in the past 30 years have been acts of war by neighbouring states.

But nearly all states are highly selective interveners, choosing to stand by on many occasions. When they do intervene, self-interested motivations often play a large role in their decision. As with NATO, this does not necessarily undermine the legitimacy of a state's humanitarian intervention. What it does mean, however, is that, on many occasions, no state is willing to undertake humanitarian intervention. So, again, we have to look for the next best option.

3. The United Nations

The third best option is the intervener commonly believed to possess the legal authority to intervene: the United Nations. The discussion that follows will consider intervention

¹⁵⁴We should not read too much into this though since the Iraq effect may be only temporary.

¹⁵⁵There may also be similar problems for a NATO force, if it comprises these nationalities.

by the UN itself, rather than UN-authorised humanitarian intervention. The latter option – UN Security Council-authorised intervention – encompasses a number of possible interveners, including NATO, states (or coalitions of the willing), and regional organisations. To provide a more detailed analysis, I consider these options one by one. As argued in Chapter 3, UN Security Council authorisation is mildly desirable, but is not morally significant and therefore does not alter the general conclusion about each intervener's legitimacy.

When the UN has intervened itself, the results have been mixed at best. The following three interventions, for example, all had questionable effectiveness. First, in Bosnia as many as 230,000 people died during the UNPROFOR mission (ICISS 2001b, 94). Second, the UN mission in Rwanda, UNAMIR, was unable to prevent the genocide of Tutsis and moderate Hutus, and was even downgraded in the middle of the killing. Third, the 1999 UN intervention in Sierra Leone, UNAMSIL, was unable to stop the atrocities committed by the RUF (Revolutionary United Front) and was at the point of collapse until the British intervention (ICISS 2001b, 109).

The lack of success of these missions is due largely to the way in which UN operations are undertaken. Rather than having a standing army of its own, readily available for quick deployment, the UN has to rely on ad hoc contributions of troops from member states. Since member states have been increasingly reluctant to commit their soldiers, UN missions often do not have enough troops to fulfil their mandates (Conetta and Knight 1995, xiii). An example is the recent UN operation in Liberia, which, for a long time, had real difficulties in getting up to its full strength of 15,000 troops. Western states, in particular, have shown a reluctance to contribute troops, which is unfortunate

since their troops tend to be the best trained and to have the most equipment.

Furthermore, the system of ad hoc troop deployment is laborious. First, it often takes some time for states to decide whether they will volunteer troops. If they do decide to commit troops, deployment can be painfully slow. For instance, after NATO intervention in Kosovo, it took the UN “over a year to deploy an adequate number of civilian police (CIVPOL), which led to the absence of police in regions and was a key contribution to the initial failure to establish the rule of law” (Bhatia 2003, 79). In addition to delays in deployment, it can also take the UN Security Council much time to authorise a UN intervention in the first place.

When the troops do actually arrive, they frequently lack the necessary equipment. They also tend to lack standardised equipment and many have inadequate training (Kinloch-Pichat 2004, 176). Hence, according to Carl Conetta and Charles Knight: “The UN peace operations system is today like a volunteer fire department in which all the firefighting assets are privately owned, and no assurance exists that volunteers will deploy to fires on time or with all of their necessary equipment in tow” (1995, 6). In the field, there is frequently a lack of clear lines of command and control, so that it is not clear whose orders troops should be following, the orders of the UN commander or the orders of their national commander. Troops also have trouble integrating with other troops; the multinational make-up of the force means that troops speak different languages and have different cultures (Kinloch-Pichat 2004, 176-177).

In addition to these problems of ineffectiveness, Stephen Kinloch-Pichat (2004, 178) argues that a lack of discipline, amoral personal behaviour, and the corruption of the contingents participating in UN missions have been recurrent themes in UN

interventions. The involvement of UN troops in child prostitution in DR Congo illustrates this point. The difficulty of legally sanctioning those involved in violations of human rights exacerbates these problems (Kinloch-Pichat 2004, 186). Hence, UN troops do not always show adequate fidelity to the principles of *jus in bello*.

There are also doubts over the UN's internal representativeness. The problem is that insufficient weight is given to the opinions of those countries that contribute most towards UN interventions on where and how their resources should be used; these decisions are left instead to the UN Security Council (Keohane 2003, 1137). This undermines the UN's internal representativeness because it goes against the claim of the Resources Argument, discussed in the previous chapter, which holds that those states that contribute more should have a greater say.

All that said, the UN seems to have learned from some of its past mistakes. It is now more willing to give its troops a stronger mandate, so that they have the necessary rules of engagement for success. Peter Langille (2000b, 6) points to the reorganisation of the Department of Peacekeeping, which he suggests is symptomatic of a number of heartening changes within the UN Secretariat over the past few years. Other improvements include the strengthening of the UN Stand-By Arrangements System (UNSAS), under which member states make conditional commitments of troops and resources to UN missions, and, as part of this scheme, the creation of the Stand-By High Readiness Brigade (SHIRBRIG), which provides the UN with some rapid reaction capability.¹⁵⁶

Moreover, even in the three operations discussed above, which are often presented

¹⁵⁶I consider these arrangements further in the next chapter.

as examples of the UN's ineffectiveness, UN intervention was partially effective and clearly better than no intervention at all. First, in Bosnia, the UN intervention provided humanitarian aid to 4.3 million victims and frustrated the war aims of Bosnian Serbs and Milosevic government for a greater Serbia (Gizeles and Kosek 2005, 370; ICISS 2001b, 94). Second, in Rwanda, Roméo Dallaire was widely credited for protecting a number of civilians, who would have been slaughtered if it were not for his leadership. Third, the UN mission in Sierra Leone, even though it needed support from the British, has since largely stabilised the country and has helped to establish a war crimes tribunal.

Overall, then, the UN does have a significant resources gap because of its reliance on ad hoc troops and this gap undermines its effectiveness. However, while the UN is not the most effective agent, even its interventions commonly regarded as ineffective have achieved some measure of success. And, given its recent improvements, we can probably expect humanitarian intervention by the UN to have some success in the future, although it would probably not be as effective as NATO or state intervention.

Ultimately, whether the UN intervenes depends on the UN Security Council. The permanent five Council members can block humanitarian intervention whenever they choose. When this happens, and when NATO and states choose not to act, who should then intervene?

4. Regional and sub-regional organisations

The next best option is for a regional or a sub-regional organisation to undertake humanitarian intervention. In general, intervention by regional organisations has had

mixed results (Emmers 2004, 134; Smith 2003). Regional organisations' ineffectiveness stems from their lack of resources. The majority of regional organisations do not possess the infrastructure, expertise, mandate, and money to tackle effectively a humanitarian crisis (Diehl 2005, 2). Of course, as with state intervention, much depends on which particular regional or sub-regional organisation intervenes.

The EU is by far the most capable regional organisation and is the only regional organisation able to intervene beyond its borders. Furthermore, the Helsinki Headline Goal, adopted in 1999, requires the EU to develop a 60,000-strong military force, to be deployable within sixty days and sustainable for at least one year in the field (Terriff 2004b, 152). If put in place, this would certainly give the EU a large capacity to undertake humanitarian intervention.¹⁵⁷ However, this force has not yet been established. The EU seems instead to have scaled back these proposals to a less ambitious 'battlegroups' concept. Their plan is to establish 13 battlegroups, each consisting of 1,500 soldiers (plus support), rapidly deployable and sustainable in the field for up to 120 days. At the moment, then, despite having some capability, the EU lacks the ability to undertake a large-scale humanitarian intervention. The EU's operation in Macedonia was successful, but this operation was much more like peacekeeping than humanitarian intervention. More recently, in 2003 the EU intervened in Bunia (in DR Congo) in response to growing international concern, but deployed its force (Operation Artemis) only for a short space of time.

Article 4 (h) of the Charter of the African Union allows for the AU to intervene in grave circumstances (war crimes, genocide, and crimes against humanity) in countries

¹⁵⁷See Olsen (2002) and Rasmussen (2002) for further analysis of the EU's plans for a rapid reaction force.

that have signed up to the treaty (Gueli 2004, 136).¹⁵⁸ There are also proposals for an African Standby Force, in the control of the AU, to be in place by 2010. But, although a great improvement on its predecessor, the Organisation of African Unity (OAU), the AU suffers from massive shortfalls in funding and equipment. The AU has intervened in Burundi, but this was a traditional peacekeeping mission and it did not even attempt to protect civilians from abuse (Nowrojee 2004, 4). Its mission in Darfur is closer to humanitarian intervention and has had a degree of success in halting genocide in the areas in which it has a presence. Yet the troops are too few in number to cover the whole region and have therefore been unable to make a significant difference.

ECOWAS is perhaps the most notable sub-regional organisation for humanitarian intervention, but it too has questionable effectiveness. Although its intervention in Liberia in 1990 (ECOMOG) successfully pushed back the rebel advances and restored law and order in Monrovia, it became more like a party in the conflict and was unable to establish authority in the interior (ICISS 2001b). In addition, its peacekeepers committed abuses against a number of civilians and suspected rebels and provided arms support to factions opposed to Charles Taylor, thereby aiding the proliferation of rebel groups (Nowrojee 2004, 5).¹⁵⁹ Similarly, its 1997 intervention in Sierra Leone was able to restore the ousted president, but rebels remained in control in rural areas and continued to brutalise the civilian population and, in 1999, overran Freetown, murdering thousands before ECOMOG could regain control (ICISS 2001b, 107). ECOWAS has also intervened in the

¹⁵⁸See the next chapter for further discussion.

¹⁵⁹ECOWAS redeployed in Liberia in 2003 after the country had descended into civil war again in 2000; its intervention calmed the situation in the capital and paved the way for the deployment of 15,000 UN troops, although it was not able to subdue the violence elsewhere (Nowrojee 2004, 6).

Ivory Coast, but its efforts stalled and it has had insufficient resources and ultimately necessitated French intervention (Nowrojee 2004, 7). Thus, although ECOWAS has been willing to undertake a long-term engagement in the country concerned, which makes it possible to achieve long-term success (de Waal 2000, 117-118), like the AU, and as the recent action in Ivory Coast has demonstrated, it ultimately lacks the funding and resources to intervene successfully.

Other regional organisations have more limited capacity still. Some even have the principle of non-intervention enshrined in their constitutions. A good example is the Association of South East Asian Nations (ASEAN), which explicitly rejects the notion of intervention to protect people against large-scale abuses of human rights and lacks the provision even for peacekeeping (Emmers 2004, 145).¹⁶⁰

At the moment, therefore, regional organisations have limited legitimacy. Most do not have the ability to undertake effectively a major peacekeeping or enforcement operation (DUPI 1999, 38). This harms the prospective effectiveness, and ultimately the legitimacy, of any future intervention by a regional organisation. Nonetheless, regional and sub-regional organisations are often more willing to intervene, given their geographical proximity to the humanitarian crisis, which means that they have a stake in local stability. If they had the resources to undertake effective humanitarian intervention, they might be willing to intervene more frequently than other agents. Hence, “regional organisations are useful for what they can become, not what they are” (The Stanley

¹⁶⁰Although the idea of an ASEAN peacekeeping force has been proposed by Indonesia, the Thai and Singaporean foreign ministers rejected the idea, the latter arguing that “we think that ASEAN is not really a security organization or defence organization” (Washington Post 2004, 1).

Foundation 2004, 3).

5. Other options?

There are essentially two non-state based options for intervention. The first is the use of mercenaries or private military companies (PMCs). This option should be taken seriously; as Weiss (2001, 43) asserts, we should avoid knee-jerk rejections of private armies. Indeed, the possibility of using PMCs for humanitarian intervention has been increasingly debated recently.¹⁶¹ Clients include the U.S., the U.K., and other states, NGOs, and even the UN, who has employed the services of PMCs, notably in Kinshasa in 1997 and in Somalia, where clansmen were hired as guards (Brayton 2002, 321). They have also been heavily employed by the U.S. recently in Iraq and Afghanistan. There are essentially three roles a private company can play in peacekeeping or humanitarian intervention: training services, logistics and technical support, and actual fighting. I will concentrate on the last of these.

Some PMCs are likely to have a degree of short-term effectiveness when engaged in actual fighting. For instance, in 1995, after the RUF had slaughtered, raped, and maimed thousands, the government of Sierra Leone employed Executive Outcomes, a South African PMC. Executive Outcomes successfully lifted the siege of Freetown and

¹⁶¹The option of completely handing over peacekeeping to PMCs was debated in the higher echelons of the U.S. and the UN (see Singer 2003b). For further discussion of issues surrounding the use of PMCs for humanitarian intervention and peacekeeping, see Chapter 8 and also Brayton (2002), Bures (2005), Lily (2000), and, particularly, Singer (2003a; 2003b).

destroyed the RUF's headquarters (ICISS 2001b, 105). The short-term effectiveness of PMCs in such operations comes from their ability to recruit some of the most capable troops, to scour markets for the best equipment, and to take quick and decisive actions (Singer 2003a, 4). As P. W. Singer asserts, these companies can "do peacekeeping faster, better, and cheaper" (2003a, 4).

But the use of privatised forces for humanitarian intervention raises serious questions.¹⁶² First, such companies fail to tackle the causes of the crisis, offering only short-term solutions (Singer 2003a, 7).¹⁶³ Second, and most importantly, these companies have extremely questionable credentials when it comes to *jus in bello*. In Sierra Leone, the government terminated the contract with Executive Outcomes after the company was subject to allegations of human rights abuses (ICISS 2001b, 105). In Bosnia, a U.S.-based company was implicated in a sex-slave scandal, but none of its employees were ever prosecuted, and the company later fired the whistle-blowers (Bures 2005, 541-542). What is more, Singer argues that "many former members of the most notorious and ruthless units of the Soviet and apartheid regimes have found employment in the industry. These individuals acted without concern for human rights in the past and certainly could do so again" (2003a, 6). These problems are exacerbated by the fact that PMCs operate outside the effective jurisdiction of international law. The only real form of accountability to which they are subject is market accountability, but even market constraints are imperfect and offer little incentive for PMCs to conform to principles of *jus in bello*, or even to

¹⁶²This is particularly the case for forcible operations. For other, non-forcible operations, such as training services and logistics and technical support, the use of PMCs might not be quite so problematic.

¹⁶³Walzer (2004b, 1) makes a similar criticism.

their contracts (Singer 2003a, 4).

The other non-state alternative is NGO intervention. Many NGOs are able to increase the well-being of those in the target state, partly because they are committed, have clear strategies, and are often perceived as legitimate by those receiving the aid and sometimes by the elites controlling access. However, they do not always deliver aid to those who need it and sometimes suffer from a lack of coordination. For instance, in the Great Lakes (Burundi, Uganda and the DR Congo), “[m]any, if not most, food security interventions failed to address the needs of people affected by crises” (Levine and Chastre 2004, 21). There are also doubts over whether they fuel humanitarian crises (Weiss 2003). Moreover, the sorts of intervention that they can undertake are limited. Given their lack of military capability, it is questionable whether they can actually undertake ‘humanitarian intervention’ by themselves, as defined in Chapter 2.

III. THE GENERAL PICTURE

Overall, then, no current agent of humanitarian intervention is fully legitimate according to the conception of legitimacy outlined in this thesis. Nevertheless, a number of agents of intervention – NATO, certain states, the UN, and certain regional organisations – would probably possess an adequate amount of legitimacy. This is largely because their intervention would be better than no intervention whatsoever; they are likely to be, at least partially, locally externally effective. Of these agents, NATO would be most desirable because it would probably be the most effective.

We cannot be satisfied with this situation. The problem is twofold. First, as the

preceding analysis demonstrates, no existing intervener is fully legitimate. This means that, when humanitarian intervention does occur, it will probably have some significant flaws. In particular, the intervener is likely to have at least one of the following failings: (1) it will lack internal effectiveness and so cause significant harm to its own citizens; (2) it will lack global external effectiveness and so cause significant harm to the international community; (3) it will lack local external effectiveness and therefore fail to tackle the humanitarian crisis effectively; (4) it will show inadequate fidelity to the principles of internal *jus in bello*; (5) it will show inadequate fidelity to the principles of external *jus in bello*; (6) it will lack internal representativeness and consequently fail to represent properly the opinions of those providing the resources needed to undertake the intervention; and (7) it will lack internal representativeness and therefore fail to take into account properly the opinions of those suffering the humanitarian crisis.

Second, there are too many occasions when humanitarian intervention should be undertaken, but is not. Too often NATO and capable states fail to act, and Security Council authorisation for UN operations is too often stymied. The result is that many mass violations of human rights continue unabated. Thus, as Michael Hirsh (2000, 4-5) concludes, if we stick to the present system, intervention is doomed to remain amateurish, late, and woefully under-resourced.

The inadequacies of the current situation have been highlighted by the ongoing humanitarian crisis in Darfur, where there is only a very limited AU presence. The AU force has struggled for enough money to keep running, with its troops going unpaid for months at a time, and it is perpetually running short of basic supplies, such as fuel and food (Polgreen 2006, 14). In the few places where it is deployed, it has had some success.

But in the vast swathes of Darfur where there is no AU presence, the *janjaweed* (with the support of the Sudanese government) continue to terrorise and to murder the local population. The Security Council has passed a number of resolutions on the crisis, but these have been watered down at the insistence of the Chinese, who have significant oil interests in Sudan (Farer 2005a, 246). Although the Council did agree in principle to send a UN peacekeeping force, this was rejected by the Sudanese government. There has been little appetite to impose a force on Sudan, even though a number of states have condemned the mass killing and some of the most capable states (such as the U.S.) have described it as ‘genocide’, which, under the Convention on the Prevention and Punishment of the Crime of Genocide, makes them legally obliged to intervene.¹⁶⁴

This is only ten years after the genocide in Rwanda, when the international community said “never again” (Langille 2004). These problems are not limited to Darfur. For instance, since 1997, 3.8 million people have been killed and 2.3 million people displaced in the DR Congo (Annan 2005, 49). Hence, as Langille (2004, 2) observes, “the ‘never again’ promise now echoes back as ‘again’ and ‘again’.”

¹⁶⁴Article 1 of this Convention states: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

CHAPTER 8: REFORM

From the discussion in the previous chapter, it is clear that we need to improve the mechanisms and agents of humanitarian intervention so that we can legitimately tackle egregious violations of human rights on a much more frequent basis. In short, we need to make sure that ‘never again’ means exactly that (Langille 2004, 3). In the words of David Gompert (2006), former president of RAND Europe and Special Assistant to George Bush Snr., we need to develop the ‘*capability to protect*’. This is necessary if we are to discharge effectively the *responsibility to protect*. But what can we do to ensure this? Using the conception of legitimacy outlined in the previous chapter, this chapter considers proposals for reform.

I evaluate four sets of proposals: (I) the codification of criteria for humanitarian intervention in international law; (II) the increased use and regulation of private military companies; (III) the extension of UN standby arrangements; and (IV) the creation of a cosmopolitan UN force. Although most of these proposals would have some merit if put in place, none would completely tackle the difficulties we currently face. I therefore present two suggestions for reform of my own. The first is a more long-term aim: (V) the creation of a large-sized cosmopolitan UN force under the control of cosmopolitan democratic institutions. Such an intervener would be fully legitimate according to the complete conception of legitimacy I have outlined. The second is a more short-term goal: (VI) the improvement of the capacity of regional organisations to undertake humanitarian intervention. Although this second option might not lead to fully legitimate intervention, it would, firstly, ensure a greater degree of legitimacy than interveners have at the

moment (primarily because of its increased expected effectiveness), and secondly, enable humanitarian intervention to be undertaken on a more frequent basis.

I. REFORM OF INTERNATIONAL LAW

As I argued in Chapter 3, there is a gap between international law and legitimacy for humanitarian intervention: an intervener that is legal – one that has UN Security Council authorisation – is not necessarily legitimate. One option to improve the legitimacy and frequency of humanitarian intervention is to reform the international law on humanitarian intervention, so that *lex lata* bears more relation to *lex ferenda*, thereby narrowing the gap between legal and legitimate interveners.

Most of the proposals for reform of international law suggest doing this by codifying certain criteria for humanitarian intervention in international law. These criteria usually constitute some form of the traditional Just War principles of *jus ad bellum* (i.e. just cause, right intention, legitimate authority, last resort, proportionality, formal declaration of war, and reasonable prospects of success). But, for our purposes, the criteria to be codified in international law would be the same as the factors of legitimacy outlined in the previous chapters: internal representativeness, local external representativeness, fidelity to the principles of internal and external *jus in bello*, local external effectiveness, global external effectiveness, and internal effectiveness. In order to ensure that such a law would apply only to interveners that are engaged in humanitarian intervention, it would also be necessary to include the defining qualities (outlined in Chapter 2) that are implicit in the meaning of humanitarian intervention: an

intervener needs (i) to be engaged in military and forcible action; (ii) to be responding to a situation where there is impending or ongoing grievous suffering or loss of life; (iii) to be an external agent; and (iv) to have a humanitarian intention, that is, a predominant purpose of preventing, reducing, or halting the ongoing or impending grievous suffering or loss of life.

These criteria can be codified in international law in three ways.¹⁶⁵ The first strategy is to change international law so that the interveners that are already legal according to the current international law – those that have UN Security Council authorisation – have to meet these criteria as well. If an intervener were not to meet one of these criteria, or if it were not to receive UN Security Council authorisation, then its intervention would be illegal. Given that this proposal adds extra legal restrictions to the status quo, I shall call this the ‘Restrictive Approach’.¹⁶⁶ The second approach is to create a new legal right of humanitarian intervention which permits certain agents (such as states and regional organisations) to intervene legally without Security Council authorisation as long as they meet these criteria. This is the ‘Additional Right Approach’, for it supplements the current international law with an additional legal provision on humanitarian intervention. Interveners authorised by the UN Security Council would still be legal and would not need to meet these criteria. The third approach is both to create a

¹⁶⁵The ensuing discussion builds upon categories detailed by the Danish Institute of International Affairs (DUPI) (1999) and Stromseth (2003).

¹⁶⁶Archibugi (2005, 224) endorses this position. Similarly, the British and Dutch governments have recently attempted to formalise criteria to govern the circumstances in which the Security Council should be prepared to authorise intervention (Blair 1999; Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law 2000).

new legal right of humanitarian intervention and to reform current international law, so that *all* legal interveners, including those that receive the UN Security Council's authorisation, meet these criteria. This is the 'Comprehensive Right Approach'. Unlike the second approach in which Security Council-authorised interventions need to meet only the requirements of *current* international law, on this approach the Security Council-authorised interventions must also conform to the criteria.

All three approaches aim to improve the legitimacy of interveners. The Restrictive Approach would increase the legitimacy of interveners authorised by the UN Security Council, but would do little to alter the legitimacy of unauthorised interveners. By contrast, the Additional Right Approach would improve the legitimacy of unauthorised interveners, but would do little to alter the legitimacy of interveners authorised by the UN Security Council. The third approach, the Comprehensive Right Approach, would improve the legitimacy of both interveners authorised by the Security Council and unauthorised interveners. For this reason, this would seem to be, on the face of it, the best approach.

Objections

There are various objections to reforming international law in each of these three ways. The first set of objections claim that a legal right of humanitarian intervention would allow for *too much* intervention. These objections apply to the Additional Right Approach and the Comprehensive Right Approach since they envisage a new legal right to intervene for unauthorised interveners. (The Restrictive Approach, by contrast, does

not propose a new legal right to intervene, but a modification of the current legal provisions on humanitarian intervention.) Some of these objections are similar to those encountered in Chapter 3 and so do not need to be considered in detail.

Thomas Franck and Nigel Rodley argue that a legal right to undertake humanitarian intervention would be “an unlimited fiat for larger states to oppress their smaller neighbors” (1973, 304). To be sure, the concern is not that such a legal right would lead to more cases of *humanitarian* intervention (as defined in Chapter 2). Rather, it is that, if such a rule existed, states would have more opportunity to undertake abusive (i.e. *non-humanitarian*) intervention. They would cite humanitarian justifications to justify abusive, imperialistic wars. Franck and Rodley (1973, 284) give the example of Hitler’s letter to Chamberlain in 1938, which claimed justification for the invasion of Czechoslovakia because of that country’s poor treatment of ethnic Germans.

However, it is questionable whether a new legal right of humanitarian intervention would provide many additional opportunities for states to undertake abusive interventions (Farer 2003, 79). Against this largely Realist argument, codification of criteria for humanitarian intervention in international law would restrict the opportunity of abuse. Generally, Franck and Rodley’s objection underestimates the constraining power of international law and international norms. A large number of states would probably behave as if they were constrained by these criteria. Furthermore, even if a few states attempted to present a mendacious humanitarian justification for an abusive war, it would be difficult for them to maintain, with any plausibility, to their domestic publics and to the international community that they meet these criteria. Such states would have to claim and to appear to meet *all* these criteria. This would be quite demanding. It would

not be enough that they simply claim and appear to be acting with a humanitarian intention (which would be all that is required if one were to create instead a new legal right to undertake unauthorised humanitarian intervention without codifying the accompanying normative criteria). As Jarat Chopra and Thomas Weiss assert, a “high degree of proof could be demanded from states claiming this right of intervention” (1992, 3).

It might be argued that a few states would disregard the opinions of their domestic publics and the international community, and undertake abusive intervention anyway. But for these states, establishing a new legal right of humanitarian intervention would not provide many *additional* opportunities to undertake abusive intervention. States that are determined to undertake abusive wars, regardless of the plausibility of justification, would be able to invoke self-defence as the justification for their force. As ICISS suggests, the argument that “the promotion of an international regime of humanitarian intervention would give interveners a legal pretext ignores one fact. Strong states which are – for reasons good or bad – determined to intervene in a weak state have no shortage of legal rationalizations for their actions” (2001b, 67).

A more plausible objection to codifying criteria for humanitarian intervention in international law is that it would not tackle one of the main problems that the current international system faces: the lack of willingness to undertake humanitarian intervention. As Chesterman argues, “the problem is not the legitimacy of humanitarian intervention but the overwhelming prevalence of inhumanitarian nonintervention” (2003, 54).¹⁶⁷ Reforming the legal architecture of humanitarian intervention is unlikely to mean that

¹⁶⁷Pogge (2006), Weiss (2005a, 235), and Wheeler (2005, 241) make similar points.

states would be more willing to undertake humanitarian intervention. Hence, Brown argues, “setting up a system of rules designed to prevent them [states] from acting seems a somewhat pointless activity. Instead, we ought to be thinking of ways of encouraging states to intervene more often” (2005, 227).

Although strictly correct, this objection misses the point of the codification of criteria for humanitarian intervention in international law. It should not be seen as an attempt to tackle the problem of reluctance to undertake humanitarian intervention. Instead, its aim is to tackle the other problem that besets current humanitarian intervention: the lack of legitimacy of those that undertake it. By insisting that interveners meet certain normative criteria, an intervener would (we can presume for now) be legitimate if its intervention were legal. The objection claims that reforming international law in this way would lead to *better* humanitarian intervention, when what is really needed are *more* cases of humanitarian intervention. In fact, both are needed: more and better humanitarian intervention. Codification of criteria for humanitarian intervention in international law could help to achieve the latter.

That said, there is a risk that establishing criteria for humanitarian intervention in international law could lead to *too little* humanitarian intervention. Certain states may use the excuse of not meeting the criteria to avoid fulfilling their moral obligation to undertake humanitarian intervention (ICISS 2001b, 172). Further, an agent might claim that its intervention would not meet these criteria when in fact it would.

The Restrictive Approach could certainly be criticised for leading to too little humanitarian intervention since, by limiting occasions on which the UN Security Council could legally authorise humanitarian intervention, it would decrease opportunities for

legal humanitarian intervention. The General Right Approach may also be subject to this criticism since it too would restrict the ability of the UN Security Council to authorise humanitarian intervention. But, for the Additional Right Approach, and perhaps for the General Right Approach, this objection might be too harsh. At the moment, states can use the excuse of illegality for not undertaking humanitarian intervention. They can hide behind the fact that they require UN Security Council authorisation for their intervention to be legal, and never seek that authorisation. Legal criteria that allow states and regional organisations to intervene, without UN Security Council authorisation, would remove the ability of states to use the UN Security Council as an excuse for their inaction.

At this point, the following question might be asked: why is it problematic if the Restrictive Approach and the General Right Approach restrict humanitarian interveners that do not meet the relevant criteria? Surely, if an intervener does not satisfy these criteria, it would be illegitimate. But this line of reasoning is mistaken. In fact, it leads us to a significant problem with the codifying legal criteria for humanitarian interveners in international law: it requires a categorical approach to legitimacy.

On the categorical approach, an intervener that does not meet even one factor would be illegal. To be legal, an intervener needs to possess *all* of the relevant qualities. But on the conception of legitimacy I outlined in the previous chapter (and in Chapter 2), which adopts a scalar approach to legitimacy, an intervener can be legitimate even though it lacks one of these qualities (depending on the other factors, the circumstances, and so long as it is effective). So, there is a problem with creating a new international law using strict criteria: it would still leave a gap between legal and legitimate interveners. Some legitimate interveners would be legal, but other legitimate interveners would be illegal.

For instance, State A might intervene effectively to stop genocide in State B, use humanitarian means, and be careful to conduct intervention in the manner desired by those suffering the humanitarian crisis, but lack internal representativeness. In that case, although State A would be legitimate overall, it would be illegal because it lacked internal representativeness. What is more, if all potential agents were to obey this reformed international law, a number of legitimate, but illegal, interveners would not intervene. This could lead to further instances of non-intervention.¹⁶⁸

A further problem with codifying criteria for humanitarian intervention in international law is that achieving the necessary agreement among states for the amendment of existing treaties (such as the UN Charter) or the creation of a new treaty would be extremely difficult. For instance, to amend the UN Charter, there needs to be two-thirds majority support in the General Assembly and unanimous support among the permanent members of the UN Security Council, both of which are unlikely to be achieved (Buchanan 2003, 138; Stromseth 2003, 259; Wheeler 2005, 237). The other potential way of reforming international law – by the gradual evolution of customary international law – is notoriously unpredictable and would be unlikely to deliver these particular criteria. Similarly, even if it were possible to achieve agreement on a new, treaty-based international law permitting humanitarian intervention when certain criteria

¹⁶⁸It might be argued that if humanitarian intervention were more clearly outlined in international law, dictators would be less willing to violate their citizens' rights, so there would be less need for humanitarian intervention. See Caney (2005, 256). Yet there is already provision for humanitarian intervention in current international law (i.e., when it is authorised by the Security Council). The deterrent effect that would be gained by allowing other interveners to intervene if they met certain criteria would probably add little to the deterrent effect of current international law.

are met, it is unlikely that states would agree to the criteria outlined above. A different list of criteria would further increase the discrepancy between legal and legitimate interveners. A different list of criteria may also be far more restrictive, including morally dubious clauses such as last resort, which would further decrease the number of humanitarian interventions.¹⁶⁹ As Stromseth asserts: “At worst, a document severely restrictive of any future humanitarian interventions will emerge” (2003, 260).

One solution would be to reject the categorical, criteria-based approach to reform of international law and to adopt a scalar approach instead. Intervenors would be legal even though they failed to meet certain criteria. To be specific, they would be required to meet five criteria, the first four of which are necessary for their intervention to be humanitarian. The only necessary condition affecting an intervener’s legitimacy would be that it is effective. The other factors affecting the legitimacy of humanitarian intervenors would not be legal criteria; there would be no legal requirements for an intervener to be internally representative, locally externally representative, have fidelity to the principles of internal *jus in bello*, or have fidelity to the principles of external *jus in bello*.

This scalar approach is not without its difficulties, however. The danger is that there could still be a significant gap between legal and legitimate intervenors. This gap, however, would be the inverse of the gap discussed before. All legitimate intervenors would be legal, but so too would some *illegitimate* intervenors. For instance, State A might be expected to make a small improvement in State B, but be internally and externally unrepresentative, use child soldiers to intervene, and cause a number of

¹⁶⁹For criticisms of the last resort criterion of Just War Theory, see Caney (2005, 249) and Walzer (2002a, 4).

civilian casualties. Although its intervention would be illegitimate, it would still be legal.

We therefore face a dilemma: a criteria-based approach to codifying factors in international law may be too restrictive, but a scalar-based approach may be too permissive. This dilemma cannot be easily overcome. Perhaps the most desirable solution would be to adopt a criteria-based approach, but to admit that on certain occasions there may be mitigating circumstances that permit the overriding of a particular criterion. This solution gains in persuasiveness if we use the Additional Right Approach, which is the least restrictive of the three. Overall, then, if we use the Additional Right Approach in this way, the creation of a new legal right to undertake humanitarian intervention would be desirable. It would certainly be an improvement on the current situation, which is much more restrictive, given that only interveners authorised by the UN Security Council can intervene legally.

But perhaps a more desirable, long-term aim would be to insist not only that there is a legal right to undertake intervention when certain criteria are met, but also that there is a legal duty to do so. (I shall leave open for now the question of on whom in particular this duty should fall.) Having a legal duty to intervene would also help to tackle the problem of the lack of willingness to undertake intervention. All agents that can intervene legitimately would be not only morally, but also legally, compelled to do so when no one else acted.

In reality, establishing a legal duty – or even a legal right – to undertake humanitarian intervention is unlikely in the near future. As already discussed, it is not foreseeable (in the short-term at least) that states would agree on this particular set of criteria. Nonetheless, we need not abandon legal reform. The law on humanitarian

intervention can be reformed in another way that does not involve the adoption of criteria. That is, we can reform regional organisations' legal structures so that they can legally undertake humanitarian intervention within their own regions. This reform would create an additional legal basis for humanitarian intervention (in the form of a treaty) which would supplement the UN Charter's provisions on the legality of humanitarian intervention.¹⁷⁰ The model here could perhaps be the AU's constitution, which, recall, allows the AU to intervene in grave circumstances in countries that have signed up to the treaty (Gueli 2004, 136).¹⁷¹ Such reform does not require a criteria-based approach and is therefore not so restrictive. A regional organisation could intervene when it deems that its intervention would be legitimate. Consequently, this approach to reforming the international legal system places trust in regional organisations and the UN Security Council (since it would retain its ability to authorise humanitarian intervention). This

¹⁷⁰Although technically the UN Charter takes precedence over other international treaties, such reform would not clearly be in contravention of the UN Charter. It is less clear, however, whether a regional organisation would be able to agree legally to undertake humanitarian intervention beyond its borders without having UN Security Council authorisation or the permission of the target state. This issue could arise for the European Union.

¹⁷¹There are some problems with the AU's arrangements for humanitarian intervention, however. First, as Bellamy (2006a) points out, it is not entirely clear how the AU would authorise intervention against a host state's consent. The AU Assembly must defer its responsibility to the AU's Peace and Security Council, but the Assembly meets only annually and requires a two-thirds majority which might be hard to achieve (Bellamy 2006a, 158). Second, it could lead to the UN Security Council deferring to the AU even though the AU lacks the capacity to act effectively (Bellamy 2006a, 159-160). Third, again as Bellamy (2006a, 160) notes, it may lend credence to the notion that the Security Council ought to refrain from imposing its will on Africans, and thereby risk further increasing Western pretexts for standing by.

trust would be more justified if regional organisations and the UN Security Council were to adopt the reforms suggested in sections (V) and (VI).

Yet legal solutions can be only ever part of the solution. Even if we could establish a legal duty to undertake legitimate humanitarian intervention, this duty would have little merit unless it were accompanied by the capacity to undertake humanitarian intervention. Reform of the legal architecture cannot be sufficient. This also applies to the reform of regional legal structures – we need to strengthen regional organisations' capabilities to intervene if the legal right or duty is to have moral significance. In short, legal solutions are not enough: we need practical and political ones. It is to these I now turn.¹⁷²

¹⁷²Buchanan and Keohane (2004) have recently proposed the creation of a democratic coalition to authorise preventative war, including humanitarian intervention. This coalition would be based on agreement among its members, with its practice becoming part of customary international law (Buchanan and Keohane 2004, 19). The coalition would be a second body to refer to if the Security Council opposes intervention. There are a number of problems with this proposal (in relation to humanitarian intervention), however. First, it would be likely that powerful non-democratic states, such as Russia and China, would vehemently oppose such a coalition. This is because it would, in effect, water down their veto – any proposed intervener that had its intervention blocked by a Russian or Chinese veto could still be legal if authorised by the coalition. Second, it is not clear what such a coalition would add to the status quo and, in particular, how it would better NATO or the EU undertaking or authorising intervention without UN Security Council approval, perhaps with the open support of other democratic states. Third, adding another level of bureaucratic decision-making is likely to lead to delays and innocent lives would be lost in the meantime. Last, and most serious, it does not tackle the problem of a lack of willingness to intervene. Creating such a coalition would do little to make actors keener to intervene to stop egregious violations of human rights. See Bellamy (2006b, 10) for further criticisms of this proposal.

II. REGULATION OF PRIVATE MILITARY COMPANIES

One possible option for increasing capacity to undertake humanitarian intervention is to make use of private military companies (PMCs). (As in the previous chapter, my concern here is with PMCs undertaking actual fighting, rather than with their providing training, or logistics, or technical support.) In the previous chapter, I argued that PMCs are illegitimate. This is largely because of their lack of accountability, which means that they are likely to violate principles of *jus in bello* in the field. Would PMCs be legitimate interveners if they were subject to more and better regulation?

There are a number of ways of regulating PMCs. For instance, we can place limits on who can employ PMCs, so that only the UN Security Council can legally authorise their use. This would mean that the wrong people (e.g. TNCs and corrupt governments) could not hire their services. We could also require PMCs to have a licence to operate, withdrawing the licence from companies who use methods that are morally objectionable. The most important reform would be to bring PMCs under international law. According to Singer, this would “require both the extension of the International Court of Justice to their activities and clear contract provisos that military firm personnel fall under the jurisdiction of international tribunals” (2003a, 9).

These reforms could reduce the chances of PMCs violating the principles of *jus in bello*. However, it would not be easy to achieve such regulation. As Stephen Brayton (2002, 321) asserts, states have shown little interest in internationally regulating PMCs, which often offer them a high degree of political convenience. Furthermore, if these

regulations were put into place, it might mean that many operations would become unprofitable. The extra resources necessary to comply with these regulations could mean that PMCs no longer wished to undertake humanitarian intervention.

This leads us to a significant problem: PMCs intervene only when, and where, it is profitable. In the more difficult cases, these companies are unlikely to operate. As Brayton asserts: “If companies accepted the constraints of impartiality, minimum force and achieving a ceasefire, as under UN mandate, for instance, their effectiveness and economic viability would decline” (2002, 324). It is therefore doubtful whether they would provide a reliable solution to the problem of the general lack of willingness in the international community to undertake humanitarian intervention. Again as Brayton argues, “the reality of business is that private military companies can only take on low-cost and high-return assignments” (2002, 324-325).

We can also question whether PMCs have the ability, let alone the desire, to undertake the more difficult operations that require a large-scale employment. According to Damian Lily: “It is doubtful whether there is a company that exists at the moment that could recruit and deploy the thousands of personnel needed to patrol entire conflict areas” (2000, 59).

Moreover, when PMCs do actually intervene, it is uncertain whether they are effective. This raises serious questions over their legitimacy – the main (perhaps only) reason for the legitimacy of PMCs is their supposed effectiveness. The problem (which I alluded to in the previous chapter) is that, although PMCs can have some short-term effectiveness, the sustained deployment necessary for lasting success is not profitable, and this means that PMCs are unlikely to be effective in the long-term. The sort of

operations necessary for a successful long-term resolution (and post-conflict reconstruction), which would restore torn social fabrics and foster cooperation among local parties, are not profitable. These include the setting up of local infrastructure, the mediation between rival political groups, the supervision of elections, and the overseeing of demilitarisation (Singer 2003a, 7). As a result, the humanitarian crisis may well reignite quickly after the PMC has left. In Angola and Sierra Leone, for example, Executive Outcomes and Sandline International's involvement did not address the fundamental issues that prompted the conflict and, as a consequence, did not secure a final peace (Brayton 2002, 322). Indeed, the use of private force is "likely to reinforce the idea that power belongs only to those with the ability to afford it" (Singer 2003a, 7). Thus, in the short-term, where violence is necessary to tackle violence, PMCs can be effective. However, in the long-term, when other, non-violent measures are required, they are unlikely to be effective. The regulations described above would do little to alter this situation.

Furthermore, PMCs have an incentive *not* to be effective, especially in the long-term. Their fortune relies on continued business. If they are too successful, if they tackle effectively the humanitarian crisis straightaway, their services will no longer be required. As a result, PMCs have good reason to prolong insecurity, so that they continue to be employed (Bures 2005, 542). This incentive to be ineffective may be somewhat counter-balanced by the need to have a good reputation to be employed again. However, a PMC may be able to prolong the conflict without it being obvious that it is doing so and consequently without harming its reputation (Bures 2005, 540).

Overall, then, even if regulated, PMCs would struggle to be legitimate interveners. Even if the problems of accountability and fidelity to the principles of *jus in bello* could be remedied – something that may not be easily achieved – the effectiveness of PMCs is doubtful. Hence, the privatisation of humanitarian interveners is not the solution to the problem of the lack of legitimate humanitarian interveners.

III. ENHANCEMENT OF UN STANDBY ARRANGEMENTS

The third potential reform to current mechanisms and agents of humanitarian intervention is for the enhancement of UN standby arrangements. These arrangements take two forms. First, under the United Nations Stand-By Arrangements System (UNSAS), member states make conditional commitments of troops and resources (such as military formations, specialised personnel, and equipment) to the UN. The resources which member states commit are on standby in their home countries until they are needed. This system provides the UN with a detailed knowledge of the forces and other capabilities that states have available in a state of readiness. In addition, leading expert on UNSAS, Peter Langille (2000b, 7) observes, that the system also helps with planning, training, and preparation and provides the UN with a variety of potential options if certain member states choose not to participate in an operation. Furthermore, although these arrangements are conditional, it may be that those that have committed to providing resources will be more forthcoming than would have otherwise been the case. By March 2000, 88 member states had signed up to UNSAS, which represents 147,500 personnel (Langille 2000a, 5).

The second form of standby arrangement is the Stand-By High Readiness Brigade

for United Nations Operations (SHIRBRIG). SHIRBRIG is a Danish-led initiative, formed in response to the calls for such a force in Boutros Boutros-Ghali's *Supplement to an Agenda for Peace*. It is based on UNSAS, but goes further than this arrangement, particularly in the integration of troops. More specifically, SHIRBRIG comprises 16 states that together provide a standby rapid reaction force of 4,000-5,000 troops. This force is deployable within 15 to 30 days for a maximum of six months, following which the mission is either terminated or replaced (SHIRBRIG 2003, 1). Overall, SHIRBRIG offers the UN relatively prompt access to a pre-established, well-trained, cohesive, versatile force capable of a number of peacekeeping capabilities (Langille 2000a, 2).

A potential solution to the current problems with the agents of humanitarian intervention – and specifically to the problems that the UN faces – is to extend both forms of standby arrangement. This would involve the continued development, expansion, and improvement of UNSAS and the creation of more rapid response units like SHIRBRIG. It would also involve the extension of the mandates of these standby arrangements to include Chapter VII peace enforcement operations such as humanitarian intervention (these arrangements are currently limited to Chapter VI operations).¹⁷³ Such developments would improve the capacity of the UN to undertake humanitarian intervention itself. An enhanced UNSAS would mean that the UN would have a wide knowledge of available troops, have improved planning of humanitarian operations, and

¹⁷³Chapter VII authorisation gives the troops much stronger rules of engagement (in essence, powers of enforcement) and is usually a prerequisite for a UN operation (or a Security Council-authorized operation) to be regarded as humanitarian intervention rather than peacekeeping. There has already been some indication by the members of SHIRBRIG that they would be willing to undertake Chapter VII operations (SHIRBRIG 2003, 1).

be able to deploy troops more quickly. The extension of this conditional agreement may also mean that member states would be more willing to commit troops and resources. Additional SHIRBRIGs would provide the UN with rapidly deployable units readily available to fulfil the mandates of the UN Security Council.

Does standby mean standing by in the face of a humanitarian crisis?

Little can be said against any moves to enhance these standby arrangements. They would clearly improve the UN's ability to undertake legitimate humanitarian intervention. But these proposals are limited: although an improvement, they fail to resolve some of the fundamental problems that are inherent in the system of voluntary, ad hoc contributions by member states to UN missions.

Like the current UN arrangements, these standby arrangements would face a shortage in a number of areas, including headquarters, communications, and sea- and air-lift capacity (Langille 2000b, 8). Any operation by UNSAS (although perhaps not by SHIRBRIG) is also likely to face problems with the integration of troops (Langille 2000b, 11). Problems with command and control, as well as logistical issues are likely to persist (Conetta and Knight 1995, 10). Furthermore, the deployment of UNSAS and SHIRBRIG depends on Security Council approval, which may not be forthcoming, and even if forthcoming, can be time consuming, thereby reducing rapid reaction capability (which is one of the main supposed benefits of these arrangements).¹⁷⁴

¹⁷⁴Furthermore, Ryan (2004, 75) argues that arrangements such as SHIRBRIG are highly limited since they have only a light combat capability and, in addition, are a 'one-shot option' – the force is not available for

The greatest problem with these arrangements, though, is that, like any UN mission dependent on the ad hoc contribution of troops, both SHIRBRIG and UNSAS depend on national approval. States retain the prerogative on whether or not to deploy troops. To be sure, this is not necessarily a bad thing, given the value of internal representativeness.¹⁷⁵ However, this requirement of national authorisation is often time consuming and can slow deployment (Kinloch-Pichat 2004, 173). This will further decrease rapid reaction capability. Most significantly, the need for national approval means that, on many occasions, states choose not to provide troops. The participating members of SHIRBRIG, for instance, declined to act in Darfur (Langille 2004, 2). Consequently, the need for national approval means that a UN mission may lack the necessary number of troops or may not be undertaken at all. Hence, Langille argues: “With respect to UNSAS, there are few, if any, certainties” (2000b, 11).

One potential solution would be to remove the need for national approval. Once states had signed up to UNSAS, SHIRBRIG, or a similar model, they would be legally bound to provide troops. In addition to tackling the problem of member states’ lack of willingness to contribute troops, this would also mean that states would have to retain their troops in a higher state of readiness, and would therefore provide the UN with a stronger rapid reaction capability. Yet it is unlikely that, firstly, states would sign up to such an agreement and, secondly, even if they did sign up to it, would act as if bound by it. The Convention on the Prevention and Punishment of the Crime of Genocide is supposed to ensure that states will always act in response to genocide, but states have

eight months after its use (while the troops are rested and the brigade is reconstituted).

¹⁷⁵See Chapter 6.

been unwilling to act in a number of cases of genocide, such as in Rwanda and Darfur. We can envisage a similar reaction to an automated standby system. Moreover, even if states did agree to be bound to commit troops under such an automated standby system, the UN missions would lack legitimacy because they would not be internally representative. Those providing the resources for the intervention – the citizens of the various member states who signed up to UNSAS, SHIRBRIG, or a similar alternative – would have no say in whether, where, and how these resources are used.¹⁷⁶ Hence, removing national approval of standby arrangements is neither feasible nor an especially desirable solution.

Overall, then, enhancing UN standby arrangements cannot be the solution to the problems with the current mechanisms and agents of humanitarian intervention because such standby arrangements suffer from the same inherent weaknesses as the UN ad hoc national contingents (Kinloch-Pichat 2004, 175). That is, with a *standby* system, states will simply *stand by* in the face of a humanitarian crisis on too many occasions. This inherent problem of UN standby forces cannot be overcome easily. Perhaps a better option would be to concentrate instead on developing a UN *standing* force. Conetta and Knight argue that “[i]f the goal is a truly rapid, multilateral capability to deploy for peace operations, there is no good substitute for a UN standing force” (1995, xiii). The next section will consider whether they are right.

¹⁷⁶The automated provisions of the Genocide Convention contradict internal representativeness. Does this mean that we should abandon the Genocide Convention? In short, no, because, as argued in Chapter 5, when extremely beneficial consequences are at stake, such as genocide, effectiveness can be sufficient for legitimacy. This means that an intervener can be legitimate overall even if it lacks internal representativeness.

IV. CREATION OF A (SMALL) COSMOPOLITAN UN VOLUNTEER, STANDING ARMY

There have been many proposals for a UN standing army, from Trygve Lie (the first UN Secretary-General) in the 1950s, Brian Urquhart (a former UN Under-Secretary-General) in the early 1990s, to a number of proposals more recently.¹⁷⁷ Although these proposals differ in detail, most of them share the same core ideas. Essentially, what is envisaged is a standing military force of around 5,000-10,000 troops to undertake humanitarian intervention. This force would be authorised by the UN Security Council and deployable within a few days. The troops would be truly cosmopolitan in character: they would be volunteers (rather than conscripts, although still paid); they would not have any national allegiance; and they would be motivated by considerations of humanity (Kinloch-Pichat, 2004). They would also be an elite force, similar to the French Foreign Legion, and have a strong *esprit de corps*.

The attractiveness of such a force is clear: rather than the current situation, where the UN has to beg, often unsuccessfully, for ad hoc contributions of troops from

¹⁷⁷These include: Caney (2005), Conetta and Knight (1995), Held (1995; 1998), Langille (2004), Smith (1998), Tan (2006), Urquhart (2003), and Woodhouse and Ramsbotham (2005). See Kinloch-Pichat (2004) for a detailed history of the proposals for a UN standing army. A slightly different yet interesting proposal (although largely heuristic) is made by Bernard Williams (1995, 3-4). He suggests the creation of an international rescue army of private relief agencies such as Oxfam, which would be funded by billionaire philanthropists, consist of idealistic soldiers, and be guided by a committee of reputable international figures.

unwilling member states in order to fulfil its mandates, there would be a readily available standing army to deploy quickly and effectively. This force would also overcome three of the central problems outlined with any standby arrangement such as UNSAS or SHIRBRIG (Kinloch-Pichat 2004). First, these troops would not be subject to national authorisation, since they would have no national allegiance. Second, the troops would be able to train together, and so would be much more integrated. Third, this force would provide a real rapid reaction capability.

So, having seen what this force would look like, the question is this: would such a UN force be able to ensure legitimately that we can effectively prevent mass violations of human rights on a more frequent basis? I will begin this discussion with three common, but unpersuasive, sets of objections.

The first objection is that the creation of such a force is unfeasible. It is claimed that states would not agree to a cosmopolitan UN force for a number of reasons. For instance, the anti-UN stance of the Bush Administration means that it would block any moves to establish a standing army for the UN. Similarly, former Australian foreign affairs minister, Gareth Evans (1993, 58), argues that states in the South would also strongly oppose such a force, for fear it may be used against them. Thus, Marrack Goulding, a former Under-Secretary-General for Peacekeeping Operations, claims that a cosmopolitan military force “will continue to be a bigger pill than sovereign states will feel able to swallow” (2004, 114).

This criticism is unconvincing. The sceptics are right to point to the current political difficulties of establishing such a force, but these problems are not innate to the international system. We should not assume that American or Southern opposition will

remain in perpetuity.¹⁷⁸ Moreover, the proposed force would be fairly small and, as such, its creation would not be excessively demanding. It would not take *that* much effort to achieve. Although the estimated cost of \$500 million to set up and \$200 million per year certainly raises funding issues, this expense is not so large as to be insurmountable (Kinloch-Pichat 2004, 208; Oakley 1993, 53). Further, there is a growing realisation in the international community that a rapid response to a humanitarian crisis before it escalates is highly cost effective, since it avoids the need for a much more extensive (and expensive) mission later on. So, the creation of a cosmopolitan UN army, as proposed, is certainly feasible and a realistic goal to work towards.

A second common objection concerns not the feasibility of a cosmopolitan force, but its desirability. The suggestion is that a UN standing army would lead to an increase in supranational governance, which, it is feared, would ultimately result in a tyrannical world state.¹⁷⁹ As Langille (2000b, 16) points out, if the small cosmopolitan UN force proposed gains a reputation for being successful, there probably *would* be moves to extend its size and power. However, even if this were true, we would still be a very long way from a world state. Furthermore, although one may rightly reject a world state, supranational governance short of this might well be desirable. As David Held (1995b) and Daniele Archibugi (2004a) have demonstrated, given the current lack of democratic and effective control over globalising forces, there is a need to increase the amount of

¹⁷⁸In fact, for most of the latter part of the 20th-century, the U.S. was the main supporter of this proposal (Kinloch-Pichat 2004, 165).

¹⁷⁹As Kant argues in the *First Supplement to Perpetual Peace*: “The amalgamation of states under one superior power... would end in one universal monarchy, and laws always lose in vigor what government gains in extent” (1795, 3). See, also, Scully (2000, 2) and Zolo (1997, 121).

(democratic) supranational governance. In sum, even if we admit that a cosmopolitan UN force sits on a slippery slope that could end in supranational governance, this is not necessarily a bad thing, and it would be an extremely long slide to a world state.

A third set of objections raises doubts over the troops who would form the cosmopolitan UN force. On the one hand, it is alleged that there would not be enough volunteers. However, this argument can be easily dismissed. The elite nature of the force, the likelihood of combat, and the desire to fight for humanitarian causes could reasonably be expected to draw volunteers (Kinloch-Pichat 2004, 212).¹⁸⁰ On the other hand, it is claimed that, although there would be enough troops for the force, they would be, in effect, mercenaries (Roberts in Kinloch-Pichat 2004, 215). And, as Niccolò Machiavelli argues, mercenaries “are useless and dangerous... disunited, thirsty for power, undisciplined, and disloyal... The reason for all this is that there is no loyalty or inducement to keep them on the field apart from the little they are paid, and this is not enough to make them want to die for you” (1961, 38).

However, the use of the term ‘mercenary’ is ambiguous. If mercenaries are taken to be soldiers who have no national allegiance and who are paid for their services, it might be accurate to label the troops of a cosmopolitan UN force ‘mercenaries’. Yet, on this understanding, it is not clear what is wrong with being a mercenary. In modern times, soldiers who have no national allegiance yet are paid for their services would not necessarily have the negative moral qualities that Machiavelli highlights. Although I

¹⁸⁰An example of this is the recent television marketing of U.K. Navy, which uses a humanitarian intervention-type (hypothetical) situation to recruit volunteers. Similarly, Walzer (2002a, 6) gives the example of the International Brigade in the Spanish Civil War.

doubted the legitimacy of PMCs as humanitarian interveners in both this chapter and in the previous chapter, it was not for these reasons; indeed, I argued that, even if they are ultimately unpersuasive, we need to take seriously arguments for increasing the use of such companies. Moreover, as Urquhart (1993b) outlines in his proposal, the troops of a cosmopolitan UN force would be based on outstanding leadership, high standards of recruitment, training, and performance, and a dedication to the principles and objectives of the UN. As a result, even if they were classified as mercenaries, they would avoid the negative qualities associated with that term. Alternatively, if we adopt a stricter definition of mercenaries which includes such negative qualities, such as that found in the various legal classifications, Machiavelli's criticisms may be more appropriate – it may be more likely that mercenaries are thirsty for power, undisciplined, and disloyal.¹⁸¹ Yet, it would not be accurate to label the troops of a cosmopolitan UN army as mercenaries, since they would not have the required, more specific, characteristics, such as being specially recruited for a particular conflict.

Having discussed three common, but unpersuasive, objections to the legitimacy of the proposed cosmopolitan UN force, I want to turn now to two criticisms that are more telling. These will show that, although the need remains for a cosmopolitan UN force, it would need to be substantially different in two respects.

The first problem with the proposed force is that it would be severely limited in what it could do. Given the size of the force envisaged, 5,000-10,000 troops, it would be too small to intervene successfully in many situations (Elliott and Cheeseman 2004, 282; Evans 1993, 58; Hillen 1994, 62; Kinloch-Pichat 2004, 142; Wheeler 2000, 306). Most

¹⁸¹See Kinloch-Pichat (2004, 214-217) on the various legal classifications.

humanitarian crises would require a much greater number of troops. For instance: 20,000 troops were required to implement the no-fly zones in Northern Iraq in 1991 (ICISS 2001b, 88); 30,000 American troops alone were used for the 1992 operation in Somalia (Oakley 1993, 52); 21,000 troops were needed for the multinational force in Haiti in 1994 (ICISS 2001b, 104); and over 50,000 NATO troops were needed to keep Kosovo peaceful (Goulding 2004, 106). So, the problem is this: a cosmopolitan UN force of only 5,000-10,000 troops would not be able to respond to many humanitarian crises.

To be fair, most of its proponents would accept this criticism. They tend to see such a force as having three roles: first, to deploy rapidly in the early stages of a crisis, thereby achieving a successful resolution without needing to be replaced; second, to deploy rapidly with ad hoc troops replacing it after a few months; and third, to fill gaps in ad hoc coalitions where member states have not contributed enough troops. Hence, the role of the cosmopolitan UN force, as envisaged by its proponents, would not be to replace the role of ad hoc UN coalitions or other agents, who would still be needed, especially for large-scale missions (Kinloch-Pichat 2004, 219). Rather, it would be to fill gaps in current UN capacity, especially its lack of a rapid reaction capability.

But there would be two problems with having such a force fulfil these three roles. First, as discussed earlier, the existing options on humanitarian intervention are inadequate and offer little guarantee that effective action will be taken to halt a serious and large-scale humanitarian crisis, such as Darfur. The three roles outlined for the cosmopolitan UN force are quite limited and would seem to do little to change this situation. Second, this force would have difficulty performing even these three quite limited roles. To start with, if the force fulfilled one of its roles in one region in the world,

it would not be able to intervene elsewhere. Yet it is common for there to be more than one humanitarian crisis at a time that needs tackling. Hence, Wheeler states: “The UN Fire Brigade could not have been sent to save Rwandans, because it would already have been committed to firefighting in Somalia or Bosnia” (2000, 304). In addition, too few of the proposals take into account the need for rotation (Evans 1993, 58). The need for rotation of troops means that the force would be, as Alan Ryan (2004, 75) suggests with regard to SHIRBRIG, a ‘one-shot option’: after undertaking one mission, it would not be available for a number of months afterwards whilst its troops regenerate. Furthermore, when the force is used as an initial rapid reaction force, no backup troops may be forthcoming from member states to replace it (Hillen 1994, 61). This would confront the force with an unenviable dilemma of either leaving, thereby letting the humanitarian crisis go unresolved, or staying, thereby depriving others of access to its protection (although there may be some pressure on states to provide backup). Lastly, having funded the force, states would most likely expect it to remove some of their peacekeeping and humanitarian intervention burden, and therefore may be less willing to provide troops themselves. As a result, the gaps in UN ad hoc missions may be much larger.¹⁸² The upshot is that a cosmopolitan UN force, as proposed, would be likely to have little utility. Proposals that lead to one legitimate, but limited, agent of intervention, and to much non-intervention, are far from the solution to the problem of who should intervene.¹⁸³

¹⁸²Kuperman (2001, 116) presents a comparable argument about proposals for extending standby arrangements for the UN.

¹⁸³In section (V), I suggest a way to resolve the problem of the force’s size.

It would not be only the size of the force proposed that would limit its utility. First, it would have to rely on powerful states – especially the U.S. – for lift capacity, communications, and logistics, which would reduce its ability to operate independently of the wishes of powerful states (Kinloch-Pichat 2004, 210-211). Second, the force would be dependent on the financial contributions of member states (again, especially the U.S.), who could use this dependency to control the force (Kinloch-Pichat 2004, 206-211). Third, and perhaps most serious, it would be dependent on UN Security Council authorisation. This would severely restrict its use since it would be deployed only where the permanent members allowed it to be (Wheeler 2000, 304; Walzer 2002a, 6; 2004a, 80). To that extent, Kinloch-Pichat (2004, 237) argues that the UN force would not be used against any of the permanent members of the Security Council (although this might be justified on grounds of prudence) or against any other states they wished to shield. Indeed, the permanent members would most likely authorise its use only where they did not deem their interests to be at stake.¹⁸⁴ So, even if the force were large enough and had the military, logistical, and financial resources to intervene, it would not have been deployed in Darfur, given China's opposition, or in Kosovo, given Russia's opposition, and perhaps not even in Rwanda, given the behaviour of the permanent members at that time. Thus, the force, as proposed, would lack the political autonomy necessary to make a substantial difference.

¹⁸⁴A related objection here is that the authorisation of the UN force would still be reliant on the morally objectionable Security Council, which lacks insufficient representation and equality (Kinloch-Pichat 2004, 235; Abbot 2005, 6). Although this is an accurate, intrinsic criticism of the functioning and representation of the UN Security Council, my point is more instrumental: the Security Council would restrict the ability of the force to act.

Hence, Kinloch-Pichat (2004, 211) argues that the idea of a UN force, which was designed by its proponents to relieve the dependence of the UN on powerful states for humanitarian intervention, brings us back to square one. Its deployment is dependent on the wishes of powerful states, who are likely to block humanitarian intervention on a number of occasions, meaning that threatened populations will be left to their fate.

V. A LARGER COSMOPOLITAN UN FORCE AND COSMOPOLITAN DEMOCRATIC INSTITUTIONS

We should not abandon the idea of a cosmopolitan UN force, however. There are serious problems with the current agents of humanitarian intervention and the situation clearly needs improving. Moreover, a cosmopolitan UN force would, as suggested above, certainly have some merits, such as being an elite force and providing a rapid reaction capability. Indeed, such a force, if revised, could be fully legitimate according to the conception of legitimacy outlined in the previous chapter. For this reason, I will now argue that, to have substantial moral worth – to be a significant goal worth working towards – it is necessary to make two amendments to the existing proposals.

As the first objection shows, a cosmopolitan UN force would need to be much larger to be effective. Michael O'Hanlon (2003, 85) argues that 200,000 troops would be needed to tackle all the humanitarian crises in the world at any one time, which translates into 600,000 troops after taking into account the need for rotation. Given the elite nature of the cosmopolitan UN force, it would perhaps require 75,000 troops to be available at any time, with support staff and rotation taking this to 175,000 troops (although this

might still be a little optimistic). Such a force would be able to intervene in larger humanitarian crises, such as Darfur, and be able to intervene in more than one place at a time. It would also be able to continue its deployment without reliance on ad hoc troops for backup.¹⁸⁵

As the second objection shows, the force would also need to have the necessary autonomy. For this, it would need to be provided with financial, military, and logistical resources, and freed from the self-interested decision-making of major states.

Yet we should not simply place the decision on where and when to authorise the force in the hands of the UN Secretary-General and the Secretariat. Although this would reduce the influence of major states, and therefore help the force to be more autonomous, it would give much power to unelected officials, who could easily abuse it. It is important then that this force should be accountable, and, specifically, democratically accountable.

Why is *democratic* accountability in particular valuable?¹⁸⁶ My reasoning here is similar to that of Held (1998). Democratic decision-making should be extended to significant decisions that are global in scope. This would include the decision to deploy a large-scale cosmopolitan UN force, for such a deployment would have not only significant global effects, it would be undertaken by a global force in the name of humanity. More broadly, democratic decision-making is generally valuable for intrinsic

¹⁸⁵This was the sort of size of force envisaged originally under Article 43 of the UN Charter, which, although never implemented, was meant to provide a large number of troops readily available to the UN Security Council. The U.S. estimated that it would provide 300,000 troops under this Article (Urquhart 1993a, 3).

¹⁸⁶There are other forms of accountability apart from democratic accountability, such as fiscal, market, public relational, and hierarchical accountability. See Keohane (2003) and Grant and Keohane (2005).

and instrumental reasons. Intrinsically, democratic decision-making maximises individual self-government. Democratic control (or, more specifically, majoritarian control) over a certain issue maximises the number of individuals who are self-governing on this issue. In addition, Christiano (1996) argues that democratic decision-making is needed for equality, particularly the equal consideration of interests. That is, democracy is required for each person's interests to be given equal consideration. Instrumentally, democratic decision-making tends to be more likely to deliver the right results. As Richard Arneson argues, "what renders the democratic form of governance... morally legitimate (when it is) is that its operation over time produces better consequences for people than any feasible alternative mode of governance" (2003, 122).¹⁸⁷ Thus, for these three reasons (two intrinsic, one instrumental), having democratic control over a cosmopolitan UN force is morally important.¹⁸⁸

A satisfactory level of democratic accountability could not come from having the Security Council in charge of the force. In addition to restricting the potential usefulness of such a force by making its deployment dependent on the self-interested decision-making of major states, both the functioning of the Council, which heavily favours the permanent five members and lacks transparency, and its composition, which includes

¹⁸⁷Space precludes a more detailed discussion of these reasons here. In Chapter 6, I present a number of comparable arguments, including for the importance of individual self-government, how individual government is maximised by majoritarianism, and the instrumental importance of representativeness.

¹⁸⁸The compatibility of these three sorts of justifications is subject to much dispute. Indeed, Christiano (1996) rejects the argument from self-government and Arneson (2003) gives a purely instrumentalist defence of democracy. Nevertheless, it is not altogether clear why these different justifications should conflict and therefore why we should reject a plural justification of democracy.

three European permanent members but none from the South, are undemocratic. Even if the force were handed to states on a more equal basis, for instance by resolution of the General Assembly, there would still not be sufficient democratic accountability. This is because, firstly, a system based on the equality of states treats states of massively differing sizes (such as Luxembourg and India) as equals, and therefore gives much more weight to individuals from smaller states, and, secondly, because many states are currently undemocratic.¹⁸⁹

Given the problems with the democratic credentials of the current international system, to achieve a satisfactory level of democratic control over the large-scale cosmopolitan UN force we would need to develop cosmopolitan democratic institutions by reforming current institutions and developing new ones. The sort of institutions that would fit the bill include the following: a reformed UN Security Council, with regional organisations replacing the current permanent members and a watering down (and ultimate removal) of the veto¹⁹⁰; an intelligence gathering and monitoring institution to help to decide when and where intervention would be appropriate; a larger Secretariat with the ability to manage deployment of the force; international legal institutions with greater jurisdiction and resources, including the capacity to prosecute those who commit egregious violations of basic human rights (thereby creating the need for humanitarian intervention in the first place) and the ability to ensure that the cosmopolitan UN force follows principles of *jus in bello*; and a global parliament formed of representatives from

¹⁸⁹See, further, Buchanan (2004, 317-320).

¹⁹⁰Paul and Nahory (2005) suggest this can be done if Japan, Brazil, India, and Germany press for reform rather than campaigning to become permanent members (which is unlikely to be successful anyway).

constituencies of the same size.¹⁹¹

These institutions would be in charge of authorising, running, and monitoring the use of force by the cosmopolitan UN standing army. Here is how they might work. The intelligence gathering institution would report to the global parliament a serious humanitarian crisis which it believes could be tackled by the cosmopolitan UN force. The global parliament would meet quickly to debate deployment of the force in this case, and perhaps resolve that the force should undertake humanitarian intervention to remedy this crisis.¹⁹² The reformed UN Security Council would retain power to block the intervention, but only if there were a level of consensus in the Council (since none of the permanent members, who would be regional organisations, would have the power of veto). The international legal institutions would make recommendations on the legality of the proposed intervention to both the global parliament and the reformed Security

¹⁹¹This institution is perhaps most ambitious, but, according to Falk and Strauss (2001), is certainly realisable. They argue that, like the early European Parliament, a relatively weak assembly created by global civil society and business leaders (perhaps with the endorsement of a relatively small number of countries to start with), and initially equipped with largely advisory powers, could begin to address concerns about democratic deficit, while posing only a long-term threat to the realities of state power. Formal powers could follow as the assembly becomes the practical place for clashing interests to be resolved.

¹⁹²Archibugi (2004b, 10) also believes that a world parliament is the ideal institution to deliberate on humanitarian intervention. He also goes on to propose the creation of a UN army. However, his proposal, unlike mine, is for a *standby* rather than a *standing* army. The (main) problem with such standby arrangements, as argued in section IV, is that states retain the prerogative of whether or not to deploy troops, and this means that, on many occasions, states do not provide troops. For further criticisms of Archibugi's proposal, see Farer (2005b).

Council. In addition, they would review the intervention afterwards, making detailed assessments of the action and recommendations for the future.¹⁹³

In fact, it is unlikely that a cosmopolitan UN force of this size could be realised without these accompanying cosmopolitan democratic institutions. Unless we create cosmopolitan democratic institutions to go alongside the UN standing army, states would be likely to oppose the force *ad infinitum* (Ryan 2004, 66). To give the UN more power, states will need to have more confidence in the UN, and this can come only with increased democratic control.¹⁹⁴ Cosmopolitan democratic institutions would therefore be an essential and desirable accompaniment to a large-scale cosmopolitan UN force.

But if there were such cosmopolitan democratic institutions, why would there need to be such a force? It may seem that such institutions would remove much of the need for humanitarian intervention because they could prevent conflict through measures such as eradication of poverty, provision of education, and demilitarisation. They would also be able to undertake a number of coercive measures short of military action, such as the freezing of bank accounts, international criminal prosecution, and arms embargoes.¹⁹⁵

¹⁹³To be sure, I am not endorsing world government. The role of these institutions is limited to global issues, such as serious humanitarian crises that require humanitarian intervention. On local and national issues, cosmopolitan democracy requires the decentralisation of decision-making. See Archibugi (2004a) and Pogge (1992, 65).

¹⁹⁴Certain states (i.e., the U.S.) may oppose increasing the democratic credentials of the UN because this would create a rival, legitimate institution. Although this might be the case, it is unlikely that other states would agree to increase significantly the capacity of the UN to govern without such reform.

¹⁹⁵In addition, improving the prosecution powers and capabilities of international legal institutions may deter governments and militias from violating human rights.

Nevertheless, the existence of cosmopolitan democratic institutions might not mean that local rivalries and conflicting interests were resolved completely and instantly.¹⁹⁶ Although some of the measures available to cosmopolitan democratic institutions could help to defuse many such situations, others may still flare up to a full-scale humanitarian crisis. We need to be ready to address them if they do. As Held (1995a, 276) argues, cosmopolitan democratic institutions require teeth. The international community learnt this lesson with the League of Nations, which was severely handicapped because it lacked powers of coercion.¹⁹⁷

Hence, there are two parts to this proposal. First, there should be a new agent to *undertake* humanitarian intervention – a large-sized cosmopolitan UN force. Second, existing institutions should be reformed and new international institutions should be created to *authorise* humanitarian intervention – to decide when the relevant normative criteria have been met and when an intervener would be legitimate. In the hands of such global institutions, a large cosmopolitan UN force could intervene effectively to prevent mass violations of human rights in challenging situations on a much more frequent basis and with much greater democratic control. In short, it would be *fully* legitimate according to the conception of legitimacy outlined in the previous chapter.

¹⁹⁶As I will argue below, these proposals are part of nonideal theory.

¹⁹⁷An additional benefit of such institutions is that they would also be able to act as legitimate authorising institutions. That is to say, they would be able to authorise other agents' humanitarian interventions and the stamp of approval from these institutions would legitimise the authorised agents. Hence, even if we do not create a large UN force, there are still good reasons (related to humanitarian intervention) to create such cosmopolitan democratic institutions.

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Tyranny of the global majority

One frequently voiced objection to the idea of global institutions is the danger that such institutions would be tyrannical. A particular variant of this objection can be made against my two-part proposal: these institutions might authorise the force to undertake abusive intervention. This situation could arise if these institutions fell into the hands of a single leader or corrupt elite. But the more pertinent objection is that abusive non-humanitarian intervention could be authorised by the global *demos*. In short, there would be a danger of the tyranny of the global majority. Individuals (through their representatives) in a global parliament may vote to intervene to repress vulnerable minorities (such as the Romany). Alternatively, the converse problem could arise: the global *demos* may not approve humanitarian intervention that *is* warranted.

Both situations would be more likely to arise if the global public, when voting on such issues, were uninformed or misguided. In this context, Dahl (1999, 24) argues that, within the current international system, the complexity of a number of international matters puts them beyond the immediate capacities of most citizens. In his words: “many citizens are confused, hold weak opinions, or have no opinions at all” (Dahl 1999, 27). This problem, Dahl argues, is likely to be worse at the level of global democratic institutions.

In response, we should take steps to ensure that these cosmopolitan democratic institutions would authorise humanitarian intervention in the right cases and not in the wrong ones. I have already indicated that the global parliament’s decision to deploy the cosmopolitan UN force could be blocked by the reformed UN Security Council. A further check on the power of the global *demos* would be the codification of certain criteria in

international law to restrict when humanitarian intervention can be legally authorised. Legal criteria such as this, if subject to independent judicial review (by strengthened international legal institutions), would limit the opportunities that the global parliament would have to authorise abusive intervention.¹⁹⁸ We should also provide for the possibility that the global *demos* might choose not to authorise intervention by the cosmopolitan UN army when it would be legitimate. In some of these cases, regional organisations should step in. To be sure, these regional organisations should be reformed so that they are democratic and so that their intervention is subject to review by the global cosmopolitan democratic institutions. I consider this further below.

Ultimately, though, whether we find this tyranny of the global majority objection persuasive depends on whether we think that democratic decision-making is instrumentally justified. As suggested above, there is good reason for thinking that it is. Any *demos* may sometimes support the wrong options; Dahl is mistaken to highlight international issues in particular. Domestically, individuals often hold mistaken, misguided, and immoral views, yet democracy, on the whole, seems to be the best way of producing the right results.¹⁹⁹ The same can be said for the global *demos* in control of the UN force: although they might make the wrong decision sometimes, these occasions would probably be outweighed by the times they get it right. Furthermore, they would be more likely to perform better in this regard than any other potential arrangement which works with the current international system. This response points to an important feature

¹⁹⁸As discussed above, codification of legal criteria on humanitarian intervention is not without its problems, however. Specifically, it would be difficult to achieve agreement on which particular criteria should be included, with the danger of either a legal proscription that is too permissive or too restrictive.

¹⁹⁹For a detailed discussion of how democracy is instrumentally justified, see Weale (1999).

of arguments for cosmopolitan democracy: cosmopolitan democratic institutions are best judged not simply on their own merits (or shortcomings). They are instead better judged in comparison with current arrangements and other possible alternatives. Let me explain.

In *A Theory of Justice*, Rawls (1999a) distinguishes between two sorts of theorising: ideal theory and nonideal theory. The former, ideal theory, “assumes strict compliance and works out the principles that characterize a well-ordered society under favourable circumstances” (Rawls 1999a, 216).²⁰⁰ By contrast, nonideal theory is concerned with “the principles that govern how we are to deal with injustice” (Rawls 1999a, 8). The proposals for a cosmopolitan UN force and accompanying cosmopolitan democratic institutions should be treated as an exercise in nonideal theory, not ideal theory. Their aim is to tackle a far-from-well-ordered international society where injustice is widespread. Indeed, any theory of the legitimacy of a humanitarian intervener will inevitably be an exercise in nonideal theory, given that it is concerned with grave circumstances (i.e. egregious violations of basic human rights).²⁰¹

Accordingly, any nonideal theory will still have some potential drawbacks – after all, it is not ideal. Although potential drawbacks are undesirable, these are unavoidable given the degree of injustice that a nonideal theory must work with. Therefore, it would be mistaken to reject a nonideal theory, such as my proposal for cosmopolitan democratic institutions and a large-scale cosmopolitan UN force, because of the (small) possibility of abuse by the global *demos*. We should instead compare it to other nonideal theories. One

²⁰⁰The theory of justice that Rawls (1999a) develops for a domestic society is an example of an ideal theory.

²⁰¹See Buchanan (2004, 55-56).

leading alternative to the proposals is a statist order, but compared to the proposals outlined above for cosmopolitan democratic institutions, the likelihood of egregious abuse of power in such an order is much greater. As Caney asserts, the statist system “grants states untrammelled power to persecute their peoples. Unlike a multilevel system of cosmopolitan governance, the rights and interests of the people are entirely dependent on the conduct of their state” (2005, 165).

There are two responses then to the challenge that the global majority could use the UN force to undertake an abusive intervention against a minority. The first is that we could insist on a system of checks and balances to help guard against abuse. The second is that a permanent UN force in the hands of cosmopolitan democratic institutions should not be judged absolutely, but instead judged in comparison with the alternatives – it would be better than an international system of states.

VI. IMPROVED REGIONAL ORGANISATIONS

A further objection to my proposal is that both aspects, the intervening force and the authorising institutions, are unattainable. This objection is too strong. Although these proposals are unlikely to be realised in the short-term, they are certainly possible. The existence of the EU and the UN proves that transnational institutions can be created (Held 1998, 28). There is no reason to think that, given time, global democratic institutions with a cosmopolitan UN force could not be created as well.

Of course, such reforms are unlikely to happen overnight. They are best seen instead as mid- to long-term solutions to the problems with the current agents and

mechanisms of humanitarian intervention. As the desirability of a cosmopolitan UN force is increased by making the two changes suggested above (by increasing its size and by putting it under the control of cosmopolitan democratic institutions), the likelihood of achieving this goal in the short-term diminishes. Creating a small-scale cosmopolitan UN force, such as that proposed by Urquhart and others, is more likely to be attainable, yet its lack of autonomy and utility limit the desirability of this reform. It may be more fruitful, therefore, to concentrate our immediate efforts elsewhere. To that extent, a better short-term option would be to strengthen certain regional and sub-regional organisations so that they have a greater ability to undertake effective humanitarian intervention within their regions. This has more immediate political viability than a small-scale standing UN force (given the likely opposition to this force). It is also more desirable. Unlike a small-scale standing UN force, which would have limited utility (for instance, being able to tackle only one humanitarian crisis at a time) and which would be reliant on major states, regional organisations, if improved, could intervene without being subject to the whims of major states and could provide the capacity to tackle a number of different humanitarian crises in different regions across the world at the same time.²⁰²

As suggested in the previous chapter, regional organisations often have the willingness to intervene. The proximity of regional interveners means that they typically have a vested interest in resolving the crisis (ICISS 2001b, 210). A nearby humanitarian crisis may cause border incursions, an influx of refugees, financial hardship, and political

²⁰²Kinloch-Pichat (2004, 235) also proposes improving regional organisations' capability to intervene. My proposal differs from his in that he proposes creating a UN standing army *before* pursuing regional options. This gets things the wrong way round: it would be far simpler and more beneficial to improve regional organisations' capabilities first.

instability for the whole region. Indeed, it would be odd if member states of regional organisations did *not* benefit from humanitarian intervention within their regions. This element of self-interest makes the necessary commitment – as well as the willingness to undertake intervention – more likely to be forthcoming. It is in regional organisations' interests to stay the course, thereby ensuring a successful resolution to the humanitarian crisis in the long-term. The problem though with regional organisations at the moment is that they lack the resources to undertake humanitarian intervention successfully. I discussed the problems of ECOWAS, the EU, and the AU in this respect in the previous chapter. The suggestion, then, is to utilise the potential willingness of regional organisations to undertake humanitarian intervention by strengthening their capabilities to do so.

There are a number of potential improvements that might be made. The most obvious is to develop the military resources of regional organisations. This would not require an enormous effort; regional organisations will rarely require extensive lift capacity to intervene within their own regions. Particular attention should be paid to the strengthening of African regional organisations, such as the AU and ECOWAS, given the large number of humanitarian crises on this continent and the general reluctance of other agents to intervene in what are regarded as African quagmires. In this context, practical measures of improvement include assistance with funding²⁰³ and the further training of African troops in peacekeeping with programs such as the Global Peace Operations

²⁰³The UN may now be more willing to use some of its peacekeeping budget to help fund AU interventions (Annan 2005, 52). This is a positive development.

Initiative.²⁰⁴ The latter would help to overcome some of the previous problems with African peacekeepers' abuse of civilians (Nowrojee 2004, 8). In addition, Gompert (2006) proposes a partnership between NATO and regional organisations, particularly the AU. He argues that we should, firstly, expand the capabilities of AU forces so as they are more combat capable and, secondly, have NATO members reinforce these troops if escalation is necessary (Gompert 2006, 14). This partnership, he argues, is both consistent with NATO's new aim of extending security beyond Europe and would be sustainable politically in the West and in Africa (Gompert 2006).

In addition, proposals for the African Standby Force under the control of the AU should be put into place, and the 15,000 troops projected for this force will probably need to be increased, given the number of conflicts in Africa and the need for a sustained troop presence. Likewise, the proposals for EU battlegroups would be a positive development if put in place, but would still need to be increased in size and capacity (perhaps to include greater lift capacity and logistics) so that the EU can successfully intervene to tackle large-scale humanitarian crises beyond its borders.

A further improvement would be to reform certain regional organisations' treaties or constitutions so that humanitarian intervention by the relevant regional organisation within its own borders is legally permissible. I discussed this option briefly in section (I). Such reform could mean that regional organisations would be able to intervene legally within their own regions without requiring UN Security Council authorisation. Further in

²⁰⁴This U.S.-initiative aims to provide 75,000 extra peacekeepers worldwide, most of them African (Gompert 2006, 7). However, some argue that such training programs ought to be treated carefully because of the danger of increasing the conflict capabilities of unstable states (Bhatia 2003, 143). For a reply, see O'Hanlon (2003, 104-105).

the future, it would be desirable if regional organisations had not only the legal right to undertake humanitarian intervention within their borders, but also the legal duty to do so.

Either solution, a legal right or a legal duty to undertake humanitarian intervention, places much trust in regional organisations. A potential objection here is that this trust would be abused by regional hegemons that would use the cover of legality to engage in abusive intervention. The trust in regional organisations would be more justified if regional organisations were reformed so that they were more democratic, both in composition (by the democratisation of member states) and in functioning (by increasing transparency and by ensuring a large role for regional parliaments). These revisions would mean that humanitarian intervention undertaken by regional organisations is much more likely to be internally representative and, ultimately, legitimate.²⁰⁵ However, such democratic reforms would not be necessary for regional organisations to have a satisfactory degree of legitimacy in the short-term. Although these proposals for improving the *authorising* mechanism of regional organisations are desirable, the immediate aim is to improve the capacity of regional organisations to *undertake* intervention within their regions.

We need to be careful that these proposals for strengthened regional organisations – and in particular African regional organisations – would not lead to the international community completely washing their hands of crises not in their region (Bellamy and Williams 2004, 195; Weiss 2001, 423). It is important, then, that other agents, such as

²⁰⁵As with cosmopolitan democratic institutions, humanitarian crises still may occur despite regional organisations being more legitimate. Although such crisis may be less likely, we should still expect them to occur occasionally. The crisis that arose after Hurricane Katrina struck New Orleans, in a country that has long and prestigious democratic history, is proof that we should not rest on our laurels.

states and the UN, realise that they have a moral duty to undertake humanitarian intervention even if there are regional mechanisms in place. In anticipation of this problem, it would be a good idea, firstly, to strengthen regional organisations' capability to intervene even further so that other agents' lack of willingness to intervene would not be too detrimental, and, secondly, for regional organisations to highlight that they may not always be able to act and that other agents still may have the responsibility to protect.

Hence, reforming regional organisations is the most constructive short-term solution to the problem of a lack of legitimate interveners to undertake humanitarian intervention. But it may be asked here, if regional organisations were democratic and effective, why would we require a cosmopolitan UN force with accompanying cosmopolitan democratic institutions?

The first point to note is that these two options are, for the most part, complementary. The provisions for increasing regional organisations' ability to intervene effectively and democratically would be consistent with the general ethos of cosmopolitan democracy. And, as suggested earlier, even with a cosmopolitan UN force and accompanying democratic institutions, it may still be important to have regional organisations with a capability to undertake humanitarian intervention (for cases where the global *demos* decides against authorising intervention).²⁰⁶ As Walzer argues, the world would not be "improved by having only one agent of international rescue. The men and women in the burning building are probably better served if they can appeal to more than a single set of firefighters" (2004a, 103).

²⁰⁶That said, regional organisations should intervene only if the global bodies have not expressly ruled that humanitarian intervention would be impermissible in the particular case at hand.

Second, beyond the issue of humanitarian intervention, there are many additional reasons of cosmopolitan justice for creating cosmopolitan democratic institutions, which could not be dealt with if we were to rely simply on strengthened regional organisations. Cosmopolitan democratic institutions are required if we are to tackle poverty, nuclear proliferation, and environmental concerns effectively and democratically (Pogge 1992, 62-64).

Third, whilst regional organisations reformed in this way (including democratically) would have a more than adequate degree of legitimacy, a cosmopolitan UN force could be fully legitimate according to the conception of legitimacy outlined in the previous chapter. Unlike reformed regional organisations, a large-scale cosmopolitan UN force would have much greater capacity to be locally externally representative and is much more likely to follow principles of *jus in bello* (given the strengthening of the global legal institutions). Most importantly, a cosmopolitan UN force would be more likely to be effective because it would be a highly-motivated, elite force with rapid reaction capability, and with significant experience of intervening in humanitarian crises.

Thus, whilst reformed regional organisations would be a desirable short- to mid-term solution to the problem of who should intervene, in the long-term, to achieve fully legitimate humanitarian intervention, we would need the sort of democratic and effective intervention that can come only from a large UN force under control of cosmopolitan democratic institutions. Whilst this is not on the cards today, nor will it be tomorrow, or any time in the near future, it is in the realm of the possible. And as Urquhart argues (when outlining his more limited proposal): “There are plenty of arguments against such a force. There is one overwhelming argument for it. It is desperately needed” (2003, 2).

CHAPTER 9: CONCLUSION

Having considered various proposals for improving the mechanisms of humanitarian intervention in the previous chapter, and having defended two reforms in particular, I will conclude this thesis by considering how we can improve the international community's will to achieve these reforms.

Since Chapter 7 provided a detailed summary of the arguments from the previous chapters, I will not recap the main arguments of the thesis here. Instead, I will complete the analysis of the thesis by considering how we can achieve, in the short-term, the strengthening of regional organisations and, in the long-term, the development of a cosmopolitan UN force in the hands of cosmopolitan democratic institutions. I will also consider how we can increase the international community's will to undertake humanitarian intervention more generally, which I suggest is central to achieving such reforms. In particular, I offer some proposals for amending states' perceptions of their national interest. However, I argue that it is important not to overemphasise arguments concerning interests; the more salient point is that there is a duty to intervene and to achieve these reforms. Finally, I consider who, in particular, has these duties.

Achieving these reforms

We should not be too pessimistic about the chances of achieving the two main reforms suggested in the previous chapter. First, the fact that there have been a number of *proposals* for reform, such as the Helsinki Headline Goal and the creation of the African

Union Standby Force, demonstrates that there is a certain degree of will in the international community to reform the current mechanisms of humanitarian intervention. Second, the fact that there have been a number of *actual* reforms, such as improvements made to the UN, the creation of SHIRBRIG, and the development of EU battlegroups demonstrates that the will to reform is sometimes sufficiently strong to achieve reform. However, we need to increase significantly this will to reform if we are to achieve fully legitimate humanitarian intervention, that is, to develop a large-sized cosmopolitan UN army in the hands of cosmopolitan democratic institutions.

Central to improving the international community's will to reform the mechanisms and agents of humanitarian intervention is improving the will to undertake humanitarian intervention. If international actors are keener to intervene to tackle egregious violations of human rights, then they will be more likely to push for reforms to the current mechanisms and agents of humanitarian intervention that will enable them to do so more effectively and, ultimately, legitimately. More generally, improving the will to undertake humanitarian intervention is a desirable goal. It will help to tackle one of the key problems in the current international system highlighted in Chapter 7: the lack of willingness to intervene to protect human rights.

Conversely, one way to improve the international community's will to intervene is to improve the mechanisms and agents of humanitarian intervention. Most of the reforms discussed in the previous chapter, if put in place, would help, to some extent, to overcome the reluctance to undertake intervention. In particular, one of the benefits of increasing the ability of regional organisations to undertake humanitarian intervention is that this would take advantage of their greater willingness to intervene, which is currently

limited by their lack of capacity (Hirsh 2000, 6). There are, then, two interlinked challenges: to increase the international community's willingness to undertake humanitarian intervention and to increase the international community's will to reform current institutional arrangements so that humanitarian intervention can be undertaken legitimately.

A practical way of improving the international community's will in these two regards, suggested by John Clarke (2001), is to highlight the successes of previous interventions. Commitment and willingness often depends on the support for intervention from the agent of intervention's home population. This support is more likely to be forthcoming when this population has been shown by the media and by the UN that previous interventions have been successful.²⁰⁷

Another way of improving the international community's will to undertake humanitarian intervention and to reform the current mechanisms and agents of intervention is to encourage a subtle adjustment in states' perceptions of their national interest. In this context, Kofi Annan has called for a new, broader definition of the national interest in which states recognise that the collective interest is identical with their national interest (Abbott 2005, 7). To that extent, humanitarian intervention carried out effectively by states (or other agents) can have massive potential benefits for that intervener, such as increased international status, greater standing in regional organisations, and the opening up of new foreign markets. More generally, most of us have an interest in a just global order. A more narrow understanding of the national interest misses such benefits.

²⁰⁷ Also see Stromseth (2003, 270).

Furthermore, Brown (2005, 227) argues that we need to get away from treating humanitarianism as a separate category of state behaviour. This is the product of a Realist mindset, he argues, since it takes states to be rational egoists who act in the pursuit of their material interest, with anything that varies from this requiring explanation (Brown 2005, 227). The danger with this mindset is that it will be reinforcing. That is to say, it will lead to a lack of humanitarian intervention, with states regarding standing by in the face of a humanitarian crisis as the behaviour expected of them, unless there is a material interest clearly involved. Brown (2005, 228) proposes instead that we adopt a more ideational notion of interests, which would remove the need for a separate category of humanitarian action.

But even on narrow understandings of self-interest, such as those favoured by Realists, humanitarian intervention can be justified. There has been a growing realisation that the disruption caused by a humanitarian crisis far away can have significant domestic effects. For instance, failed states are increasingly being regarded as breeding grounds for international terrorism (Terriff 2004a; Welsh 2004, 189). It is important, therefore, that we emphasise these links between humanitarian intervention and national interest, thereby tapping into a potential source of political will to undertake humanitarian intervention and to reform.

The duties to intervene and to reform

I do not want to overemphasise these arguments concerning national interest, however. The more salient point is that we have a duty to do what we can to prevent, to halt, and to

decrease substantial human suffering, such as that found in genocide and large-scale violations of human rights.²⁰⁸ This more general duty to tackle human suffering translates, firstly, for certain international actors, into a more specific duty (and a right) to undertake humanitarian intervention. Second, this more general duty to tackle human suffering translates into other duties, which include the duty to reform the mechanisms of humanitarian intervention. Such reforms are required if human suffering is to be prevented legitimately. That is to say, there is a duty to create a large-scale cosmopolitan UN force with accompanying democratic institutions and to enhance regional organisations' capabilities to intervene because these are central to ensuring that substantial human suffering is tackled.

Who exactly has these duties? Tan (2006) suggests a number of potential ways of identifying who has the duty to intervene, some of which were discussed in detail in Chapter 5. The most persuasive of these is that the most capable agent has the duty to act. This is similar to my argument at the end of Chapter 7: out of the currently existing agents, other things being equal, NATO should intervene because it is most likely to tackle successfully the humanitarian crisis. It is also similar to the general position taken in this thesis (especially in Chapters 4 and 5): the most legitimate intervener, which tends to be the most effective intervener, should intervene. It is necessary, though, to make a small modification to this approach. This approach is more persuasive if the most *legitimate* intervener, rather than the most *effective* intervener, has the duty to intervene. The benefit of this reformulated approach is that it gives the appropriate weight to other morally relevant qualities, such as internal representativeness, instead of emphasising

²⁰⁸For further discussion, see Chapter 2.

effectiveness alone. This change is subtle because, in most cases, the most effective intervener will be the most legitimate.²⁰⁹

Tan's preferred option, however, is to institutionalise the duty so that it is effectively carried out. Yet the institutional approach to resolving the agency problem is incomplete. As formulated by Tan, it requires merely that the duty to intervene be effectively carried out by the designated intervener. The problem with this, as discussed in Chapter 5, is that the designated intervener might not be the *most* legitimate. Suppose, for instance, that we were to institutionalise the duty to intervene at the UN. As argued in Chapter 7, the UN has an adequate degree of legitimacy and, in some cases at least, might be expected to carry out any future humanitarian intervention efficiently. Nevertheless, NATO may still be the preferred intervener given its much greater effectiveness. There is at least one significant argument for institutionalising the duty to intervene, however.²¹⁰ This is that it would help to ensure that humanitarian intervention is more *frequently* undertaken. It will be harder for actors to avoid fulfilling their duty to intervene if this duty is assigned formally.

My suggestion, then, is to combine these two approaches. This brings together the

²⁰⁹To give an example where it would not be, suppose Thailand has the expectation of saving 1,001 lives in a (hypothetical) humanitarian crisis in Laos, but has only adequate levels of internal and local external representativeness. Vietnam has the expectation of saving 1,000 lives and has extremely high levels of internal and local external representativeness. Although Thailand would have a reasonable degree of legitimacy and be the most capable intervener, intervention by Vietnam would be preferable because it would be the most legitimate.

²¹⁰In addition, having an agent with the institutionalised duty to intervene may help to resolve some of the issues of vagueness discussed in Chapter 7.

reformulated version of the first approach, which says that the most legitimate intervener should intervene, with the second, which institutionalises this duty. We can do this either by first identifying the most legitimate intervener, and then giving it the legal duty to intervene, or by ensuring that the organisation that has the legal duty to intervene is the most legitimate, for instance, by providing it with the resources necessary for effective intervention. On this combined approach, the agent that would be the most legitimate humanitarian intervener would have the institutionalised duty to intervene, and having this institutionalised duty to intervene should mean that in general it undertakes intervention when necessary.

One way I have already suggested of implementing this combined approach is to increase regional organisations' capacity to undertake humanitarian intervention within their own regions, so that they are the most legitimate interveners, and to institutionalise this by reforming regional organisations' constitutions so they have the legal duty to intervene. But we should go further than this. It should not be merely the *most* legitimate intervener that has the institutionalised duty to intervene, but the intervener that is *fully* legitimate according to the conception outlined in Chapter 7. We will achieve this goal if we act on the proposals for a large-sized cosmopolitan UN force in the hands of cosmopolitan democratic institutions.

Until we achieve this combined approach, we should adopt the reformulated version of the first approach. This is preferable to the second approach because the second approach might assign the institutionalised duty to intervene to agents that are not the most legitimate, such as the UN (at the moment) or a small-scale standing UN army (as discussed in section (IV) of the previous chapter). Instead, on the amended first

approach, the most legitimate agent has the duty to intervene.²¹¹

Other agents do not have the duty to intervene. They do have, however, a duty to prevent human suffering, which means that they should work towards improving the capacity to undertake legitimate humanitarian intervention by helping achieve the reforms outlined in the previous chapter. As Tan argues, “all members are obliged to *do what is necessary* to establish and support the cooperative arrangement required to carry out the duty to protect” (2006, 104; emphasis in original). To prevent human suffering *legitimately* and *frequently*, we need to create a cosmopolitan UN force and place it in the hands of cosmopolitan democratic institutions. Again as Tan argues, the duty to intervene “can generate the duty to create a global humanitarian defence force if the creation of this force is required to ensure that the response to humanitarian emergencies is acceptably efficient” (2006, 105).

Hence, in this thesis, I have considered who should undertake humanitarian intervention. I have argued that we should look to the intervener that will be the most legitimate, which in most cases will be the intervener that will be the most effective. However, the currently existing agents of humanitarian intervention are inadequate. We therefore need to reform the mechanisms and agents of humanitarian intervention, by, in

²¹¹If the most legitimate intervener does not intervene, the duty to intervene would fall upon the next most legitimate intervener (states), and so on. This can only go so far, however. For any agent to have the duty to intervene, it is also necessary that they have an adequate degree of legitimacy. Otherwise, it would not have the right to intervene – no intervention would be better than intervention by an illegitimate intervener. This also fits in with our intuition that an intervener cannot have a duty to intervene if intervention will be excessively costly for it. Such an intervener would not be internally effective, so could not legitimately intervene in the first place; as Tan (2006) argues, it would not have the *right* to intervene.

the short-term, improving regional organisations' abilities to intervene and, in the long-term, developing a cosmopolitan UN force and cosmopolitan democratic institutions.

Although only the most legitimate intervener has the duty to intervene, it falls on all of us in the international community to accept that we have the duty to reform the current mechanisms and agents of humanitarian intervention in these two ways. These reforms are vital if states are to fulfil legitimately the responsibility to protect endangered populations that they agreed to at the 2005 UN World Summit. More broadly, these reforms are essential if we are to fulfil our duty to prevent human suffering. As I have argued, it is not merely in our interests to secure these reforms. It is our duty.

REFERENCES

Abbott, Chris (2005) "Rights and Responsibilities: The Dilemmas of Humanitarian Intervention" Global Dialogue, 7 (1-2), 1-15.

Abiew, Francis Kofi (1999) The Evolution of the Doctrine and Practice of Humanitarian Intervention, London: Kluwer Law International.

Advisory Council on International Affairs and Advisory Committee on Issues of Public International Law (2000) Advisory Report 13: Humanitarian Intervention.

Available online at

<http://cms.web-beat.nl/ContentSuite/upload/aiv/doc/AIV_13_Eng.pdf> (Last accessed 04/09/06).

Annan, Kofi (1999) "Secretary-General Presents His Annual Report to General Assembly" UN Press Release, 20th September 1999, SG/SM7136 GA/9569.

Available online at

<<http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>> (Last accessed 04/07/2006, 4 pages).

Annan, Kofi (2005) In Larger Freedom: Towards Development, Security and Human Rights for All. Available online at <<http://www.un.org/largerfreedom/>> (Last accessed 25/10/2005).

Aquinas, Thomas (1972) Summa Theologiae, Volume 35, Consequences of Charity, Thomas R. Heath trans., New York: Blackfriars.

Archibugi, Daniele (2004a) "Cosmopolitan Democracy and its Critics: A Review" European Journal of International Relations, 10 (3), 437-473.

Archibugi, Daniele (2004b) "Cosmopolitan Guidelines for Humanitarian Intervention" Alternatives, 29, 1-21.

Archibugi, Daniele (2005) "Cosmopolitan Humanitarian Intervention is Never Unilateral" International Relations, 19 (2), 220-224.

Arneson, Richard (2003) "Defending the Purely Instrumental Account of Democratic Authority" Journal of Political Philosophy, 11 (1), 122-132.

Arneson, Richard (2005) "Sophisticated Rule Consequentialism: Some Simple Objections" Philosophical Issues, 15, 235-251.

Atack, Iain (2002) "Ethical Objections to Humanitarian Intervention" Security Dialogue, 33 (3), 279-292.

Ayoob, Mohammed (2002) "Humanitarian Intervention and State Sovereignty"

International Journal of Human Rights, 6 (1), 81-102.

Bagnoli, Carla (2006) "Humanitarian Intervention as a Perfect Duty: A Kantian Argument" in Terry Nardin and Melissa Williams eds, NOMOS XLVII: Humanitarian Intervention, New York: New York University Press, 117-140.

BBC (2005) "Peacekeepers for Somalia Approved" BBC News Online. Available online at <http://news.bbc.co.uk/1/hi/world/africa/3736371.stm> (Last accessed 04/08/2006, 2 pages).

Beach, Hugh and Roy Isbister (2000) "ISIS Briefing on Humanitarian Intervention, No. 3: Old Wine, New Bottle: The Just War Tradition and Humanitarian Intervention" ISIS UK. Available online at http://www.isisuk.demon.co.uk/0811/isis/uk/hiproject/no3_paper.html#1.2 (Last accessed 04/07/2006, 14 pages).

Beitz, Charles R. (1979) Political Theory and International Relations, First Edition, Princeton: Princeton University Press.

Beitz, Charles R. (1980) "Nonintervention and Communal Integrity" Philosophy and Public Affairs, 9 (4), 385-391.

Bellamy, Alex J. (2004) "Motives, Outcomes, Intent and the Legitimacy of Humanitarian

Intervention” Journal of Military Ethics, 3 (3), 216-232.

Bellamy, Alex J. (2005) “Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq” Ethics and International Affairs, 19 (2), 31-53.

Bellamy, Alex J. (2006a) “Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit” Ethics and International Affairs, 20 (2), 143-169.

Bellamy, Alex J. (2006b) “Preventing Future Kosovos and Future Rwandas: The Responsibility to Protect after the 2005 World Summit” Policy Brief No. 1. of the Initiative: Ethics in a Violent World: What Can Institutions Do?, New York: Carnegie Council.

Bellamy, Alex J. and Paul D. Williams (2005) “Who’s Keeping the Peace? Regionalization and Contemporary Peace Operations” International Security, 29 (4), 157-195.

Bhatia, Michael (2003) War and Intervention: Issues for Contemporary Peace Operations, Bloomfield USA: Kumarian Press.

Birch, Anthony H. (1971) Representation, London: Macmillan.

Blair, Tony (1999) "Doctrine of the International Community" The Economic Club, Chicago, 24th April 1999. Available online at <<http://www.pm.gov.uk/output/Page1297.asp>> (Last accessed 04/09/2006, 8 pages).

Bodansky, Daniel (1999) "The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?" American Journal of International Law, 93 (3), 596-624.

Brandt, R. B. (1972) "Utilitarianism and the Rules of War" Philosophy and Public Affairs, 1 (2), 145-165.

Brayton, Stephen (2002) "Outsourcing War: Mercenaries and the Privatization of Peacekeeping" Journal of International Affairs, 55 (2), 303-330.

Brown, Chris (2005) "What, Exactly, is the Problem to which the 'Five-Part Test' is the Solution?" International Relations, 19 (2), 225-229.

Brownlie, Ian (1963) International Law and the Use of Force by States, Oxford: Clarendon Press.

Brownlie, Ian (1973) "Thoughts on Kind-Hearted Gunmen" in Richard B. Lillich ed.,

Humanitarian Intervention and the United Nations, Charlottesville: University Press of Virginia, 139-148.

Buchanan, Allen (1999) "The Internal Legitimacy of Humanitarian Intervention" Journal of Political Philosophy, 7 (1), 71-87.

Buchanan, Allen (2000) "Justice, Legitimacy, and Human Rights" in Victoria Davion and Clark Wolf eds, The Idea of a Political Liberalism: Essays on Rawls, Oxford: Rowman and Littlefield, 73-89.

Buchanan, Allen (2002) "Political Legitimacy and Democracy" Ethics, 112, 689-719.

Buchanan, Allen (2003) "Reforming the International Law of Humanitarian Intervention" in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal, and Political Dilemmas, Cambridge: Cambridge University Press, 130-174.

Buchanan, Allen (2004) Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law, Oxford: Oxford University Press.

Buchanan, Allen (2006) "Institutionalizing the Just War" Philosophy and Public Affairs, 34 (1), 1-38.

Buchanan, Allen and Robert O. Keohane (2004) "The Preventative Use of Force: A

Cosmopolitan Institutional Proposal" Ethics and International Affairs, 18 (1), 1-22.

Bull, Hedley (1984) "Conclusion" in Hedley Bull ed., Intervention in World Politics, Oxford: Clarendon Press, 181-196.

Bures, Oldrich (2005) "Private Military Companies: A Second Best Peacekeeping Option?" International Peacekeeping, 12 (4), 533-546.

Byers, Michael and Simon Chesterman (2003) "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law" in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal and Political Aspects, Cambridge: Cambridge University Press, 177-203.

Caney, Simon (2005) Justice Beyond Borders, Oxford: Oxford University Press.

Caron, David D. (1993) "The Legitimacy of the Collective Authority of the Security Council" American Journal of International Law, 87 (4), 552-588.

Carr, E. H. (2001) The Twenty Years Crisis 1919-1939: An Introduction to the Study of International Relations, New York: Palgrave.

Chandler, David (2002) From Kosovo to Kabul: Human Rights and International Intervention, London: Pluto Press.

Chesterman, Simon (2001) Just War or Just Peace? Humanitarian Intervention and International Law, Oxford: Oxford University Press.

Chesterman, Simon (2003) "Hard Cases Make Bad Law: Law, Ethics, and Politics in Humanitarian Intervention" in Anthony Lang Jr. ed., Just Intervention, Washington: Georgetown University Press, 46-61.

Chesterman, Simon (2005) "Legitimacy and the Use of Force in Response to Terrorism – a Comment" in Paul Eden and Thérèse O'Donnell eds, September 11, 2001: A Turning Point in International and Domestic Law?, New York: Transnational Publishers, 149-161.

Chesterman, Simon and Sebastian von Einsiedel (2005) "Dual Containment: The United States, Iraq and the U.N. Security Council" in Paul Eden and Thérèse O'Donnell eds, September 11, 2001: A Turning Point in International and Domestic Law?, New York: Transnational Publishers, 725-756.

Chopra, Jarat and Tanja Hohe (2004) "Participatory Intervention" Global Governance, 10 (3), 289-305.

Chopra, Jarat and Thomas G. Weiss (1992) "Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention" Ethics and International Affairs. Available

online at <http://hwproject.tufts.edu/publications/electronic/e_sinls.html> (Last accessed 19/07/2006, 16 pages).

Christiano, Thomas (1996) The Rule of the Many: Fundamental Issues in Democratic Theory, Oxford: Westview Press.

Christiano, Thomas (2004a) "Authority" in Edward N. Zalta ed., The Stanford Encyclopedia of Philosophy, Fall 2004 Edition. Available online at <<http://plato.stanford.edu/archives/fall2004/entries/authority/>> (last accessed 07/09/04, 19 pages).

Christiano, Thomas (2004b) "The Authority of Democracy" The Journal of Political Philosophy, 12 (3), 266-290.

Clarke, John (2001) "A Pragmatic Approach to Humanitarian Intervention" Journal of Humanitarian Assistance. Available online at <<http://www.jha.ac/articles/a072.pdf>> (Last accessed 18/11/2002).

Coady, C. A. J. (2002) "The Ethics of Armed Humanitarian Intervention" United States Institute of Peace, PeaceWorks Report No. 45. Available online at <www.usip.org/pubs/peaceworks/pwks45.pdf> (Last accessed 04/07/2006).

Cohen, Julius (1968) "Commentary: Representation and the Problem of Identity" in J.

Roland Pennock and John W. Chapman eds, NOMOS X: Representation, New York: Atherton Press, 43-48.

Conetta, Carl and Charles Knight (1995) Vital Force: A Proposal for the Overhaul of the UN Peace Operations System and for the Creation of a UN Legion, Project on Defense Alternatives Research Monograph 4, Cambridge, Massachusetts: Commonwealth Institute.

Crisp, Roger (2005) "Well-Being" in Edward N. Zalta ed., The Stanford Encyclopedia of Philosophy, Winter 2005 Edition. Available online at <http://plato.stanford.edu/archives/win2005/entries/well-being/> (Last accessed 05/01/2006, 9 pages).

Cumings, Bruce (2001) "Korean War" in Joel Krieger ed., The Oxford Companion to Politics of the World, Second Edition, Oxford: Oxford University Press, 474-475.

Dahl, Robert (1989) Democracy and its Critics, London: Yale University Press.

Dahl, Robert (1999) "Can International Organizations Be Democratic? A Skeptic's View" in Ian Shapiro and Casiano Hacker-Cordon eds, Democracy's Edges, Cambridge: Cambridge University Press, 19-36.

Damrosch, Lori Fisler (2000) "The Inevitability of Selective Response? Principles to

Guide Urgent International Action” in Albrecht Schnabel and Ramesh Thakur eds, Kosovo and the Challenge of Humanitarian Intervention, New York: United Nations University, 405-419.

Danish Institute of International Affairs (DUPI) (1999) Humanitarian Intervention. Legal and Political Aspects, Copenhagen: The Danish Institute of International Affairs.

de Waal, Alex (2000) Who Fights? Who Cares? War and Humanitarian Action in Africa, Eritrea: Africa World Press.

deLisle, Jacques (2001) “Humanitarian Intervention: Legality, Morality, and the Good Samaritan” Orbis, 45 (4), 535-556.

Diehl, Paul F. (2005) “Nations Agree Genocide Must Be Stopped. Can They Find the Mechanism to Do It?” Washington Post, 15th May 2005. Available online at <<http://www.globalpolicy.org/security/peacekpg/reform/2005/0515again.htm>> (Last accessed 20/03/2006, 4 pages).

Diggs, B. J. (1968) “Practical Representation” in J. Roland Pennock and John W. Chapman eds, NOMOS X: Representation, New York: Atherton Press, 28-37.

Doyle, Michael (2001) “The New Interventionism” Metaphilosophy, 32 (1/2), 212-235.

Durning, Patrick (2003a) "Joseph Raz and Instrumental Justification of a Duty to Obey the Law" Law and Philosophy, 22, 597-620.

Durning, Patrick (2003b) "Political Legitimacy and the Duty to Obey the Law" Canadian Journal of Philosophy, 33 (3), 373-390.

Elliott, Lorraine and Graham Cheeseman (2004) "Introduction" in Lorraine Elliott and Graham Cheeseman eds, Forces for Good: Cosmopolitan Militaries in the 21st Century, Manchester: Manchester University Press, 1-6.

Emmers, Ralph (2004) "Regional Organisations and Peacekeeping: A Study of the ARF" in Lorraine Elliott and Graham Cheeseman eds, Forces for Good: Cosmopolitan Militaries in the 21st Century, Manchester: Manchester University Press, 134-149.

Evans, Gareth (1993) "A UN Volunteer Force – Four Views" New York Review of Books, 24th June 1993, 58.

Falk, Richard and Andrew Strauss (2001) "Towards a Global Parliament" Foreign Affairs, 80 (1), 212-220.

Farer, Tom J. (1973) "Humanitarian Intervention: The View from Charlottesville" in Richard B. Lillich ed., Humanitarian Intervention and the United Nations, Charlottesville: University Press of Virginia, 149-164.

Farer, Tom J. (1991) "Human Rights in Law's Empire: The Jurisprudence War" American Journal of International Law, 85 (1), 117-127.

Farer, Tom J. (2003) "Humanitarian Intervention Before and After 9/11" in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal, and Political Dilemmas, Cambridge: Cambridge University Press, 53-90.

Farer, Tom J. (2005a) "Cosmopolitan Humanitarian Intervention: A Five-Part Test" International Relations, 19 (2), 211-220.

Farer, Tom J. (2005b) "Response to the Commentators" International Relations, 19 (2), 242-247.

Fixdal, Mona and Dan Smith (1998) "Humanitarian Intervention and Just War" Mershon International Studies Review, 42, 283-312.

Foot, Philippa (1988) "Utilitarianism and the Virtues" in Samuel Scheffler ed., Consequentialism and its Critics, Oxford: Oxford University Press, 224-241.

Franck, Thomas M. (2002) Recourse to Force: State Action against Threats and Armed Attacks, Cambridge: Cambridge University Press.

Franck, Thomas M. (2003) "Interpretation and Change in the Law of Humanitarian Intervention" in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal and Political Aspects, Cambridge: Cambridge University Press, 204-231.

Franck, Thomas M. and Nigel S. Rodley (1973) "After Bangladesh: The Law of Humanitarian Intervention by Military Force" American Journal of International Law, 67 (2), 275-305.

Frankena, William K. (1968) "Two Notes on Representation" in J. Roland Pennock and John W. Chapman eds, NOMOS X: Representation, New York: Atherton Press, 49-52.

Gaer, Felice (2000) "Effective Indignation? Building Global Awareness, NGOs, and the Enforcement of Norms" in Albrecht Schnabel and Ramesh Thakur eds, Kosovo and the Challenge of Humanitarian Intervention, New York: United Nations University, 285-401.

Gizeles, Theodora-Ismene and Kristin E. Kosek (2005) "Why Humanitarian Interventions Succeed or Fail: The Role of Local Participation" Cooperation and Conflict, 40 (4), 363-383.

Gompert, David C. (2006) "For a Capability to Protect: Mass Killing, the African Union

and NATO" Survival, 40 (1), 7-18.

Goulding, Marrack (2004) "Cosmopolitan Purposes and the United Nations" in Lorraine Elliott and Graham Cheeseman eds, Forces for Good: Cosmopolitan Militaries in the 21st Century, Manchester: Manchester University Press, 101-116.

Graham, Gordon (1987) "The Justice of Intervention" Review of International Studies, 13, 133-146.

Grant, Ruth W. and Robert O. Keohane (2005) "Accountability and Abuses of Power in World Politics" American Political Science Review, 99 (1), 29-43.

Gray, Christine (2000) International Law and the Use of Force, Oxford: Oxford University Press.

Gray, Christine (2005) "Peacekeeping and Enforcement Action in Africa: The Role of Europe and the Obligations of Multilateralism" Review of International Studies, 31, 207-223.

Green, Leslie (1988) The Authority of the State, Oxford: Clarendon Press.

Green, Leslie (1989) "Law, Legitimacy, and Consent" Southern California Law Review, 62, 795-825.

Gueli, Richard (2004) "Humanitarian Intervention in Africa: Towards a New Posture"

Scientia Militaria: South African Journal of Military Studies, 32 (1), 120-142.

Habermas, Jürgen (2000) "Bestiality and Humanity: A War Between the Border

Between Law and Morality" The Global Site. Available online at

<<http://www.theglobalsite.ac.uk/press/011habermas.htm>> (Last accessed

17/05/2005, 5 pages).

Hall, Stephen (2001) "The Persistent Spectre: Natural Law, International Order and the

Limits of Legal Positivism" European Journal of International Law, 12 (2), 269-

307.

Hare, R. M. (1972) "Rules of War and Moral Reasoning" Philosophy and Public Affairs,

1 (2), 166-181.

Hart, H. L. A. (1994) The Concept of Law, Second Edition, Oxford: Clarendon Press.

Hashmi, Sohail H. (2003) "Is There an Islamic Ethic of Humanitarian Intervention?" in

Anthony Lang Jr. ed., Just Intervention, Washington D.C.: Georgetown University

Press, 62-83.

Heinze, Eric A. (2003) "Waging War for Human Rights: Towards a Moral-Legal Theory

of Humanitarian Intervention” Human Rights and Human Welfare, 3, 83-94.

Heinze, Eric A. (2004) “The Moral Limits of Humanitarian Intervention: Reconciling Human Respect and Utility” Polity, 36 (4), 543-558.

Heinze, Eric A. (2005) “Commonsense Morality and the Consequentialist Ethics of Humanitarian Intervention” Journal of Military Ethics, 4 (3), 168-182.

Heinze, Eric A. (2006) “Humanitarian Intervention and the War in Iraq: Norms, Discourse, and State Practice” Parameters: US Army War College Quarterly, 36 (1), 20-34.

Held, David (1995a) Democracy and the Global Order: From the Modern State to Cosmopolitan Governance, Cambridge: Polity Press.

Held, David (1995b) “Democracy and the New International Order” in Daniele Archibugi and David Held eds, Cosmopolitan Democracy: An Agenda for a New World Order, Cambridge: Polity Press, 96-120.

Held, David (1998) “Democracy and Globalization” in Daniele Archibugi, David Held and Martin Köhler eds, Re-imagining Political Community: Studies in Cosmopolitan Democracy, Oxford: Polity Press, 11-27.

- Herring, Eric (2002) "Between Iraq and a Hard Place: A Critique of the British Government's Case for UN Economic Sanctions" Review of International Studies, 28, 39-56.
- Hillen, John F. III (1994) "Policing the New World Order: The Operational Utility of a Permanent U.N. Army" Strategic Review, 22 (2), 54-62.
- Hirsh, Michael (2000) "Calling All Regio-Cops: Peacekeeping's Hybrid Future" Foreign Affairs, 79 (6), 2-8.
- Hoffmann, Stanley (1984) "The Problem of Intervention" in Hedley Bull ed., Intervention in World Politics, Oxford: Oxford University Press, 7-28.
- Holzgrefe, J. L. (2003) "The Humanitarian Intervention Debate" in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal, and Political Dilemmas, Cambridge: Cambridge University Press, 15-52.
- Hooker, Brad (2000) Ideal Code, Real World: A Rule-Consequentialist Theory of Morality, Oxford: Clarendon Press.
- Hooker, Brad (2004) "Rule Consequentialism" in Edward N. Zalta ed., The Stanford Encyclopedia of Philosophy, Spring 2004 Edition. Available online at <<http://plato.stanford.edu/archives/spr2004/entries/consequentialism-rule/>> (Last

accessed 07/09/04, 13 pages).

Hooker, Brad (2005) "Reply to Arneson and McIntyre" Philosophical Issues, 15, 264-281.

ICISS (2001a) The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, Ottawa: International Development Research Centre.

ICISS (2001b) The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty, Ottawa: International Development Research Centre.

Independent International Commission on Kosovo (2000) The Kosovo Report, Oxford: Oxford University Press.

International Committee of the Red Cross (2000) The People on War: ICRC Worldwide Consultation on the Rules of War. Available online at <[http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0758/\\$File/ICRC_002_0758.PDF!Open](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0758/$File/ICRC_002_0758.PDF!Open)> (Last accessed 05/10/2005).

Joffe, George (1994) "Sovereignty and Intervention: The Perspective from the Developing World" in Marianne Heiberg ed., Subduing Sovereignty: Sovereignty and the Right to Intervene, London: Pinter, 68-95.

Kaldor, Mary (1999) New and Old Wars: Organized Violence in a Global Era, Oxford: Polity Press.

Kant, Immanuel (1795) First Supplement to *Perpetual Peace*. Available online at <http://www.mtholyoke.edu/acad/intrel/kant/firstsup.htm> (Last accessed 18/07/2006, 5 pages).

Keohane, Robert O. (2003) "The Concept of Accountability in World Politics and the Use of Force" Michigan Journal of International Law, 24 (4), 1121-1141.

Kinloch-Pichat, Stephen (2004) A UN 'Legion': Between Utopia and Reality, London: Frank Cass.

Krisch, Nico (2002) "Review Essay: Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo" European Journal of International Law, 13 (1), 323-335.

Ku, Charlotte and Harold K. Jacobson (2003) "Broaching the Issues" in Charlotte Ku and Harold K. Jacobson eds, Democratic Accountability and the Use of Force in International Law, Cambridge: Cambridge University Press, 3-38.

Kuperman, Alan J. (2001) The Limits of Humanitarian Intervention: Genocide in Rwanda, Washington D.C.: Brookings Institution Press.

Kurth, James (2006) "Humanitarian Intervention after Iraq: Legal Ideas vs. Military Realities" Orbis, 50 (1), 87-101.

Langille, H. Peter (2000a) "SHIRBRIG: A Promising Step Towards the United Nations that Can Prevent Deadly Conflict" Global Policy Forum. Available online at <<http://www.globalpolicy.org/security/peacekpg/reform/canada.htm>> (Last accessed 27/03/2006, 6 pages).

Langille, H. Peter (2000b) "Conflict Prevention: Options for Rapid Deployment and UN Standing Forces" Global Polity Forum. Available online at <<http://www.globalpolicy.org/security/peacekpg/reform/canada2.htm>> (Last accessed 16/01/2006, 26 pages).

Langille, H. Peter (2004) "Preventing Genocide: Time for a UN 911" Globe and Mail, 19th October 2004. Available online at

<<http://www.globalpolicy.org/security/peacekpg/reform/2004/1019timefor.htm>>

(Last accessed 16/01/2006, 3 pages).

Lepard, Brian D. (2002) Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions, Pennsylvania: Pennsylvania State University Press.

Levine, Simon and Claire Chastre (2004) "Missing the Point: An Analysis of Food Security Interventions in the Great Lakes" Humanitarian Practice Network, Network Paper 47, London: Overseas Development Institute.

Lilly, Damian (2000) "The Privatization of Peacekeeping: Prospects and Realities" Disarmament Forum, 3, 53-62.

Linter, J. E. (2005) "Humanitarian Intervention: Legitimising the Illegal?" Defence Studies, 5 (2), 271-294.

Luard, Evan (1984) "Collective Intervention" in Hedley Bull ed., Intervention in World Politics, Oxford: Oxford University Press, 157-179.

Lucas, George R., Jr. (2003) "From *jus ad bellum* to *jus ad pacem*: Re-thinking Just War Criteria for the Use of Military Force for Humanitarian Ends" in Deen K. Chatterjee

and Don E. Scheid eds, Ethics and Foreign Intervention, Cambridge: Cambridge University Press, 72-96.

Lyons, David (1965) Forms and Limits of Utilitarianism, Oxford: Oxford University Press.

Macfarlane, Neil, Carolin Thielking, and Thomas Weiss (2004) “*The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?*” Third World Quarterly, 25 (5), 977-992.

Machiavelli, Niccolò (1961) The Prince, George Bull trans., London: Penguin Books.

Mason, Andrew (2000) Community, Solidarity and Belonging: Levels of Community and their Normative Significance, Cambridge: Cambridge University Press.

Mason, Andrew and Nicolas J. Wheeler (1996) “Realist Objections to Humanitarian Intervention” in Barry Holden ed., The Ethical Dimensions of Global Change, London: Macmillan, 94-110.

Mayall, James (2000) “The Concept of Humanitarian Intervention Revisited” in Albrecht Schnabel and Ramesh Thakur eds, Kosovo and the Challenge of Humanitarian Intervention, New York: United Nations University, 319-333.

McCabe, David (2001) "Joseph Raz and the Contextual Argument for Liberal Perfectionism" Ethics, 111 (3), 493-522.

McDougall, Derek (2004) "Intervention in Solomon Islands" The Round Table, 93, 213-223.

McMahan, Jeff (2004) "The Ethics of Killing in War" Ethics, 114, 693-733.

Mehta, Pratap Bhanu (2006) "From State Sovereignty to Human Security (via Institutions?)" in Terry Nardin and Melissa Williams eds, NOMOS XLVII: Humanitarian Intervention, New York: New York University Press, 259-285.

Mersaides, Michael (2005) "Peacekeeping and Legitimacy: Lessons from Cambodia and Somalia" International Peacekeeping, 12 (2), 205-211.

Mill, John Stuart (1984) "A Few Words on Non-Intervention" in John M. Robson ed., Collected Works of John Stuart Mill Volume XI: Essays on Equality, Law, and Education, Toronto: University of Toronto Press, 111-124.

Moellendorf, Darrel (2002) Cosmopolitan Justice, Oxford: Westview Press.

Moore, Michael S. (1989) "Authority, Law, and Razian Reasons" Southern California Law Review, 62, 827-896.

Morris, Christopher (1996) "Well-Being, Reasons, and the Politics of Law" Ethics, 106 (4), 817-833.

Munck, Gerardo L. and Chetan Kumar (1995) "Civil Conflict and the Conditions for Successful International Intervention: A Comparative Study of Cambodia and El Salvador" Review of International Studies, 21, 159-181.

Murphy, Liam (2000) Moral Demands in Nonideal Theory, New York: Oxford University Press.

Murphy, Sean D. (1996) Humanitarian Intervention: The United Nations in an Evolving World Order, Philadelphia: University of Pennsylvania Press.

Nagel, Thomas (1972) "War and Massacre" Philosophy and Public Affairs, 1 (2), 123-144.

Nardin, Terry (2003) "The Moral Basis for Humanitarian Intervention" in Anthony F. Lang Jr ed., Just Intervention, Washington D.C.: Georgetown University Press, 11-27.

Nardin, Terry (2006) "Introduction" in Terry Nardin and Melissa Williams eds, NOMOS XLVII: Humanitarian Intervention, New York: New York University Press, 1-28.

Newman, Edward (2002) "Humanitarian Intervention, Legality and Legitimacy" International Journal of Human Rights, 6 (4), 102-120.

Nowrojee, Binaifer (2004) "Africa on its Own: Regional Intervention and Human Rights" Human Rights Watch World Report. Available online at <hrw.org/wr2k4.4htm> (Last accessed 08/04/2005, 9 pages).

Nozick, Robert (1974) Anarchy, State, and Utopia, Oxford: Blackwell.

O'Hanlon, Michael E. (2003) Expanding Global Military Capacity for Humanitarian Intervention, Washington D.C.: Brookings Institution Press.

Oakley, Robert (1993) "A UN Volunteer Force – the Prospects" New York Review of Books, 15th July 1993, 52-53.

Olsen, Gorm Rye (2002) "The EU and Conflict Management in African Emergencies" International Peacekeeping, 9 (3), 87-102.

Parekh, Bhikhu (1997a) "Rethinking Humanitarian Intervention" International Political Science Review, 18 (1), 49-69.

Parekh, Bhikhu (1997b) "The Dilemmas of Humanitarian Intervention: Introduction"

International Political Science Review, 18 (1), 5-7.

Parfit, Derek (1984) Reasons and Persons, Oxford: Clarendon Press.

Paul, James and Celine Nahory (2005) "Theses Towards a Democratic Reform of the UN Security Council" Global Policy Forum, 13th July 2005. Available online at <http://www.globalpolicy.org/security/reform/2005/0713theses.htm> (Last accessed 16/01/2006, 6 pages).

Pennock, J. Roland (1968) "Political Representation: An Overview" in J. Roland Pennock and John W. Chapman eds, NOMOS X: Representation, New York: Atherton Press, 3-27.

Pitkin, Hanna (1967) The Concept of Representation, London: University of California Press.

Pogge, Thomas (1992) "Cosmopolitanism and Sovereignty" Ethics, 103, 48-75.

Pogge, Thomas (2005) "Recognized and Violated by International Law: The Human Rights of the Global Poor" Leiden Journal of International Law, 18 (4), 717-745.

Pogge, Thomas (2006) "Moralizing Humanitarian Intervention: Why Jurying Fails and How Law Can Work" in Terry Nardin and Melissa S. Williams eds, NOMOS

XLVII: Humanitarian Intervention, London: New York University Press, 158-187.

Polgreen, Lydia (2006) "Shaky Peace in Darfur at Risk, As a New Confrontation Looms"
The New York Times, 31st August 2006.

Ramsbotham, Oliver and Tom Woodhouse (1996) Humanitarian Intervention in Contemporary Conflict: A Reconceptualization, Cambridge: Polity Press.

Rasmussen, Mikkel Vedby (2002) "Turbulent Neighbourhoods: How to Deploy the EU's Rapid Reaction Force" Contemporary Security Policy, 23 (2), 39-60.

Rawls, John (1999a) A Theory of Justice, Revised Edition, Oxford: Oxford University Press.

Rawls, John (1999b) The Law of Peoples, London: Harvard University Press.

Raz, Joseph (1986) The Morality of Freedom, Oxford: Clarendon Press.

Raz, Joseph (1989) "Facing Up: A Reply" Southern California Law Review, 62, 1153-1235.

Raz, Joseph (1994) Ethics in the Public Domain: Essays in the Morality of Law and Politics, Revised Edition, Oxford: Clarendon Press.

Raz, Joseph (2003) "Comments and Responses" in Lukes H. Meyer, Stanley L. Paulsen and Thomas W. Pogge eds, Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz, Oxford: Oxford University Press, 253-274.

Regan, Donald H. (1989) "Authority and Value: Reflections on Raz's Morality of Freedom" Southern California Law Review, 62, 995-1095.

Reisman, Michael and Myers S. McDougal (1973) "Humanitarian Intervention to Protect the Ibos" in Richard B. Lillich ed., Humanitarian Intervention and the United Nations, Charlottesville: University Press of Virginia, 167-195.

Ridge, Michael (2002) "Mill's Intentions and Motives" Utilitas, 14, 54-70.

Roberts, Adam (1993) "Humanitarian War: Military Intervention and Human Rights" International Affairs, 69 (3), 429-449.

Roth, Kenneth (2004) "War in Iraq: Not a Humanitarian Intervention" Human Rights Watch World Report 2004. Available online at <<http://hrw.org/wr2k4/3.htm>> (Last accessed 29/07/2005, 9 pages).

Roth, Kenneth (2006) "Was the Iraq War a Humanitarian Intervention?" Journal of Military Ethics, 5 (2), 84-92.

Ryan, Alan (2004) "Cosmopolitan Objectives and the Strategic Challenges of Multinational Military Operations" in Lorraine Elliott and Graham Cheeseman eds, Forces for Good: Cosmopolitan Militaries in the 21st Century, Manchester: Manchester University Press, 65-78.

Scheffler, Samuel (1988) "Introduction" in Samuel Scheffler ed., Consequentialism and its Critics, Oxford: Oxford University Press, 1-13.

Scheffler, Samuel (2004) "Doing and Allowing" Ethics, 114, 215-239.

Scully, Sean (2000) "Armed Troops Sought for UN" Washington Times, 1st June 2000.
Available online at
<<http://www.globalpolicy.org/security/peacekpg/reform/mcgovern.htm>> (Last
accessed 27/03/2006, 3 pages).

Seybolt, Taylor (2000) "What Makes Humanitarian Military Interventions Effective?" Stockholm International Peace Research Institute (SIPRI). Available online at
<<http://projects.sipri.se/conflictstudy/EffectiveHumInt.pdf>> (Last accessed
09/09/2004).

Shapiro, Scott (2002) "Authority" in Jules Coleman and Scott Shapiro eds, The Oxford Handbook of Jurisprudence and Philosophy of Law, Oxford: Oxford University

Press.

SHIRBRIG (2003) "Facts" SHIRBRIG Online. Available online at <http://www.shirbrig.dk/shirbrig/html/facts.html> (Last accessed 27/03/2006, 2 pages).

Simmons, A. John (1979) Moral Principles and Political Obligations, Oxford: Princeton University Press.

Simmons, A. John (1999) "Justification and Legitimacy" Ethics, 109, 739-771.

Simons, Penelope C. (2001) "Humanitarian Intervention: A Review of Literature" Project Ploughshares, Institute of Peace and Conflict Studies. Available online at <http://www.ploughshares.ca/libraries/WorkingPapers/wp012.html> (Last accessed 04/11/2006, 28 pages).

Singer, P. W. (2003a) "Peacekeepers, Inc." Policy Review, 119. Available online at <http://www.policyreview.org/jun03/singer.html> (Last accessed 27/03/2006, 9 pages).

Singer, P. W. (2003b) Corporate Warriors: The Rise of the Privatized Military Industry, New York: Cornell University Press.

Singer, Peter (2002) One World: The Ethics of Globalization, London: Yale University Press.

Sinnott-Armstrong, Walter (2006) "Consequentialism" in Edward N. Zalta ed., The Stanford Encyclopedia of Philosophy, Spring 2006 Edition. Available online at <<http://plato.stanford.edu/entries/consequentialism/>> (Last accessed 07/08/2006, 25 pages).

Smart, J. J. C. (1973) "An Outline of a System of Utilitarian Ethics" in J. J. C. Smart and Bernard Williams, Utilitarianism: For and Against, Cambridge: Cambridge University Press.

Smith, Edwin M. (2003) "Collective Security, Peacekeeping, and ad hoc Multilateralism" in Charlotte Ku and Harold K. Jacobson eds, Democratic Accountability and the Use of Force in International Law, Cambridge: Cambridge University Press, 81-103.

Smith, Michael J. (1998) "Humanitarian Intervention: An Overview of the Ethical Issues" Ethics and International Affairs, 12, 63-79.

Stanley Foundation (2000) "Problems and Prospects for Humanitarian Intervention" The Stanley Foundation's Thirty-Fifth United Nations of the Next Decade Conference.

Available online at <<http://reports.stanleyfoundation.org/UNND00.pdf>> (Last accessed 09/09/2004).

Stanley Foundation (2004) “The Use of Force” Issues Before the UN’s High-Level Panel.

Available online at <<http://reports.stanleyfoundation.org/UNHLP04a.pdf>> (Last accessed 09/09/2004).

Stein, Mark S. (2004) “Unauthorized Humanitarian Intervention” Social Philosophy and Policy, 21 (1), 14-38.

Stromseth, Jane (2003) “Rethinking Humanitarian Intervention: The Case for Incremental Change” in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal and Political Aspects, Cambridge: Cambridge University Press, 232-272.

Tan, Kok-Chor (2006) “The Duty to Protect” in Terry Nardin and Melissa Williams eds, NOMOS XLVII: Humanitarian Intervention, New York: New York University Press, 84-116.

Terriff, Terry (2004a) “NATO: War Fighters or Cosmopolitan Warriors?” in Lorraine Elliott and Graham Cheeseman eds, Forces for Good: Cosmopolitan Militaries in the 21st Century, Manchester: Manchester University Press, 117-133.

Terriff, Terry (2004b) "The European Union Rapid Reaction Force: An Embryonic Cosmopolitan Military?" in Lorraine Elliott and Graham Cheeseman eds, Forces for Good: Cosmopolitan Militaries in the 21st Century, Manchester: Manchester University Press, 150-167.

Tesón, Fernando (1997) Humanitarian Intervention: An Inquiry into Law and Morality, Second Edition, New York: Transnational Publishers.

Tesón, Fernando (1998) A Philosophy of International Law, Oxford: Westview Press.

Tesón, Fernando (2003) "The Liberal Case for Humanitarian Intervention" in J. L. Holzgrefe and Robert O. Keohane eds, Humanitarian Intervention: Ethical, Legal, and Political Dilemmas, Cambridge: Cambridge University Press, 93-129.

Tesón, Fernando (2005a) "Ending Tyranny in Iraq" Ethics and International Affairs, 19 (2), 1-20.

Tesón, Fernando (2005b) "Reply to Terry Nardin: Of Tyrants and Empires" Ethics and International Affairs, 19 (2), 27-30.

Tesón, Fernando (2005c) Humanitarian Intervention: An Inquiry into Law and Morality, Third Edition, New York: Transnational Publishers.

Tesón, Fernando and William Twining, Ward Farnsworth and Stefan Vogenauer (2003)

“The Role of Academics in the Legal System” in Peter Kane and Mark Tushnet eds, The Oxford Handbook of Legal Studies, Oxford: Oxford University Press, 920-949.

Tharoor, Shashi and Sam Daws (2001) “Humanitarian Intervention: Getting Past the Reefs” World Policy Journal, 18 (2), 21-30.

UN (2005) 2005 World Summit Outcome. Available online at <<http://daccess-ods.un.org/TMP/6556450.html>> (Last accessed 08/10/2005).

UN Secretary-General’s High-level Panel on Threats, Challenges and Change (2004) A More Secure World: Our Shared Responsibility. Available online at <<http://www.un.org/secureworld/report.pdf>> (Last accessed 04/09/2006).

Urquhart, Brian (1993a) “For a UN Volunteer Military Force” New York Review of Books, 10th June 1993, 3-4.

Urquhart, Brian (1993b) “A UN Volunteer Force – the Prospects” New York Review of Books, 15th July 1993, 56.

Urquhart, Brian (2003) “A Force Behind the UN” New York Times, 7th August 2003.
Available online at

<<http://www.globalpolicy.org/security/peacekpg/reform/2003/0807behind.htm>>

(Last accessed 19/03/2006, 2 pages).

Vincent, R. J. (1974) Nonintervention and International Order, Princeton: Princeton University Press.

Vincent, R. J. (1986) Human Rights and International Relations, Cambridge: Cambridge University Press.

Waldron, Jeremy (1989) "Autonomy and Perfectionism in Raz's Morality of Freedom" Southern California Law Review, 62, 1097-1152.

Walzer, Michael (1980) "The Moral Standing of States: A Response to Four Critics" Philosophy and Public Affairs, 9 (3), 209-229.

Walzer, Michael (1992) Just and Unjust Wars, Second Edition, USA: BasicBooks.

Walzer, Michael (2000a) Just and Unjust Wars, Third Edition, USA: BasicBooks.

Walzer, Michael (2000b) "The Ethics of Humanitarian Intervention" Ethics on the Curriculum Lecture Series, January 2000. Available online at <http://ethics.acusd.edu/video/Walzer/Workshop/Humanitarian_Intervention_Lecture.html> (Last accessed 08/03/2005).

Walzer, Michael (2002a) "The Argument about Humanitarian Intervention" Dissent, Winter 2002. Available online at
<http://www.dissentmagazine.org/menutest/archives/2002/wi02/walzer_hum.shtm>
(Last accessed 09/06/2004, 7 pages).

Walzer, Michael (2002b) "Arguing for Humanitarian Intervention" in Nicolaus Mills and Kira Brunner eds, The New Killing Fields: Massacre and the Politics of Intervention, New York: Basic Books, 19-35.

Walzer, Michael (2004a) Arguing about War, London: Yale University Press.

Walzer, Michael (2004b) "The Abuse of Prisoners in Iraq" Dissent, Spring 2004.
Available online at
<http://www.dissentmagazine.org/menutest/articles/sp04/walzer_abuse.htm> (Last
accessed 09/06/2004).

Washington Post (2004) "Singapore Sidesteps ASEAN Peacekeeping Force"
Washingtonpost.com, 4th March 2004. Available online at
<www.washingtonpost.com/wp-dyn/articles/A29542-2004Mar4.html> (Last
accessed 18/01/2006, 2 pages).

Weale, Albert (1999) Democracy, New York: St Martin's Press.

- Weiss, Thomas G. (2001) "Researching Humanitarian Intervention: Some Lessons" Journal of Peace Research, 38 (4), 419-428.
- Weiss, Thomas G. (2003) "Principles, Politics, and Humanitarian Action" in Anthony Lang Jr. ed., Just Intervention, Washington: Georgetown University Press, 84-103.
- Weiss, Thomas G. (2004) "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era" Security Dialogue, 35 (2), 135-153.
- Weiss, Thomas G. (2005a) "Cosmopolitan Force and the Responsibility to Protect" International Relations, 19 (2), 233-237.
- Weiss, Thomas G. (2005b) Military-Civilian Interactions: Humanitarian Crises and the Responsibility to Protect, Second Edition, New York: Rowman and Littlefield Publishers, Inc.
- Welsh, Jennifer M. (2004) "Authorizing Humanitarian Intervention" in Richard M. Price and Mark W. Zacher eds, The United Nations and Global Security, Basingstoke: Palgrave Macmillan, 177-192.
- Wheeler, Nicholas J. (2000) Saving Strangers, Oxford: Oxford University Press.

- Wheeler, Nicholas J. (2005) "Legitimizing Humanitarian Intervention: A Reply to Farer's Five-Part Test" International Relations, 19 (2), 237-241.
- Wheeler, Nicholas J. and Tim Dunne (2001) "East Timor and the New Humanitarian Interventionism" International Affairs, 77 (4), 805-827.
- Wight, Martin (1991) International Theory: The Three Traditions, Leicester: Leicester University Press.
- Williams, Bernard (1995) "Is International Rescue a Moral Issue?" Social Research.
Available online at
<http://www.findarticles.com/p/articles/mi_m2267/is_n1_v62/ai_18544652/print>
(Last accessed 06/10/2006, 4 pages).
- Wilson, George (2002) "Action" in Edward N. Zalta ed., The Stanford Encyclopedia of Philosophy, Summer 2002 Edition. Available online at
<<http://plato.stanford.edu/archives/sum2002/entries/action/>> (Last accessed 09/07/2006, 13 Pages).
- Windsor, Philip (1984) "Superpower Intervention" in Hedley Bull ed., Intervention in World Politics, Oxford: Oxford University Press, 45-66.

Winston, Morton (2005) "The Humanitarian Argument for the Iraq War" Journal of Human Rights, 4, 45-51.

Woodhouse, Tom and Oliver Ramsbotham (2005) "Cosmopolitan Peacekeeping and the Globalisation of Security" International Peacekeeping, 12 (2), 139-156.

Zolo, Danilo (1997) Cosmopolis: Prospects for World Government, Cambridge: Polity Press.