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## Justifying Coercive and Non-Coercive Intervention: Strategic and Humanitarian Arguments

The world's political and military leaders are under increasing pressure to intervene in the affairs of sovereign nations. Although the sovereignty of states and the corollary principle of nonintervention have been part of the foundation of international law, there is some latitude for states, as well as collective security organizations, to intervene in another state's domestic and foreign affairs, thus making sovereignty and the principle less than absolute. In this paper I first sketch a reasonable foundation for the sovereignty of states and the principle of nonintervention. Second, I offer a decision-making procedure for justified intervention. Finally, I argue that there is an important difference between the strategic argument and the humanitarian argument, a difference that may have profound implications for the future use of the latter argument by our political leaders.

*Keywords:* just war theory, intervention, sovereignty, strategic argument, humanitarian argument, genocide, Kosovo

If the next fifty years are anything like the last half century, countries like the United States, France, and Great Britain, as well as organizations such as the UN, NATO, and the EU, will be under increasing pressure to intervene in the affairs of sovereign nations. Although the sovereignty of states and the corollary principle of nonintervention have been part of the foundation of international law, there is some latitude for states (and collective security organizations) to intervene in another state's domestic affairs making sovereignty and the corollary principle less than absolute.<sup>1</sup>

<sup>1</sup> Barbara Harff, "Bosnia and Somalia: Strategic, Legal, Moral Dimensions of Humanitarian Intervention," *Report from the Institute for Philosophy and Public Policy* 12 (Summer/Fall 1992): 1-3. In fact, the Dayton Peace Agreement can be understood as signaling a trend in limiting state sovereignty. As F.L. Morrison, in "The Constitution of Bosnia-Herzegovina," *Constitutional Commentary* 13 (1996), has so insightfully pointed out: "These arrangements ... may have a more general significance. Nation states, which once asserted an exclusivity of their internal administrative apparatus

Of course, future crises will not all be alike. In all likelihood, there will be a multitude of conflicts around the world, some of which will be like the ethnic conflicts in Bosnia, Rwanda, East Timor, and Kosovo, that will weigh heavily on the mind's of global leaders and their citizenry.<sup>2</sup> Sometimes the argument for intervention will be based on none other than a strategic concern or national interest (or in the case of collectives like the UN and NATO, international and regional interest, respectively). This sort of argument could be defined in terms of concrete and specific economic and political interests, or it could be understood in broader terms to be related to an interest in preventing or lessening threats to peace, breaches of the peace, or acts of aggression, i.e., matters of security.<sup>3</sup> At other times the argument will be humanitarian, an argument that calls for the protection of human rights regardless of how national or collective interest is construed.

No matter which argument is invoked for intervention, the tension between the principles of nonintervention and intervention must be relaxed and a set of conditions satisfied before intervention is morally justified. The just-warist perspective on the moral justification of going to war — the *jus ad bellum* — provides several important conditions that are worthy guides. With the backdrop of just war theory, however, can we say that there is no significant difference between the strategic and humanitarian arguments? Are the arguments merely occasions for soliciting intervention, while what really matters is whether the just war criteria are satisfied? Or, do the arguments themselves or the historical process through which they

tus and a virtually unconditional requirement that their governors also be their citizens, may be undergoing radical transformation ... We may be entering a time in which the geographic nation state no longer has the exclusivity of governing power that it once claimed. With that change, constitutions may become increasingly complex" (p. 157). For a critical examination of the governance of Bosnia and Herzegovina by international organizations, see David Chandler, *Bosnia: Faking Democracy After Dayton*, 2d ed. (London: Pluto Press, 2000).

<sup>2</sup> Labeling a conflict "ethnic" is sometimes questionable. In *Kosovo: A Short History* (New York: Macmillan, 1998), the historian Noel Malcolm points out that depicting the Kosovo tragedy as an ethnic conflict "ignored the primary role of politicians ... in creating conflict at a political level ... between low-level prejudices on the one hand and a military conflict, concentration camps, and mass murder on the other, there lies a very long road: it was the political leaders who propelled the people down that road, and not vice-versa" (p. 25).

<sup>3</sup> Such interests must not be understood in black and white terms, for it is possible to construe the prevention or lessening of gross human rights violations, including ethnic cleansing and genocide, as well as lesser human rights violations, as part of a national or collective interest, though such an approach is too cosmopolitan and forward-thinking for some to take seriously. However, this view becomes more plausible once it is made clear how extreme human rights abuses are threats against peace and stability.

unfold set the stage for what is possible or even necessary in discussions of intervention? If a state acts as a Good Samaritan by invoking the humanitarian argument in one instance, is it required to continue to be a Good Samaritan by way of the same argument until pronouncements are made to the contrary?

The discussion in this essay proceeds in three steps. First, I present a sketch of the link between the principle of nonintervention and state sovereignty, and how intervention can become justified, albeit with some difficulty. Second, I provide a decision-making procedure for establishing which, if any, form of humanitarian intervention is morally justified. Finally, I contend that there is a very important difference between the strategic argument and the humanitarian argument, a difference that may have profound implications for the future use of the humanitarian argument by our political leaders.

## I

The “killing fields” that have become a regular media event in the West, thanks in large part to the coverage given by CNN and other news groups, seem not only to have produced sufficient moral outrage in the hearts of citizens and their leaders, but also a certain degree of empathy and compassion. This mix of emotions has led to an increased willingness to intervene, as in the case of Kosovo, so that crimes against humanity do not happen again with such ease and magnitude. Yet the reality is that there may be other Srebrenica’s or Racak’s in the coming years, as well as other “lesser” violations of human rights; this willingness to intervene should be tempered by reaffirming the importance of the notion of sovereignty as it is based on a foundation of individual rights and the principle of self-determination.<sup>4</sup>

<sup>4</sup> The fall of Srebrenica during the war in Bosnia in July 1995 is one of the worst atrocities in the last half of the twentieth century. 7000 Muslim men and boys were executed by the Bosnian Serb army and 23,000 elderly men, women, and children were forcibly transferred. See Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime* (New York: Penguin Books, 1996) and Laura Silber and Allan Little, *The Death of Yugoslavia*, rev. ed. (London: Penguin Books, 1996), pp. 265-75. The massacre at Racak, Kosovo by Serb forces in January 1999 was a deciding factor in NATO’s willingness to resort to military force in Yugoslavia. See Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, and Lessons Learned* (New York: Oxford University Press, 2000) and Tim Judah, *Kosovo: War and Revenge* (New Haven: Yale University Press, 2000). For a discussion of the massacre at Gornje Obrinje, see Human Rights Watch, *A Week of Terror in Drenica: Humanitarian Law Violations in Kosovo* (New York: Human Rights Watch, 1999).

Of the various meanings of “sovereignty,” it is the formal sense of the term that is most important for the discussion here.<sup>5</sup> The formal meaning declares state authority to be supreme. In other words, “what happens within the legitimate borders of a nation . . . is to be decided by the people of that nation or the government of that nation and no one else.”<sup>6</sup> It is this sense of the term “sovereignty” that is the foundation for the principle of nonintervention.

Sovereignty should be taken seriously, as suggested by the American political theorist Michael Walzer. For Walzer, intervention is bound up with the notions of sovereignty and aggression. He contends that political sovereignty and territorial integrity are rights of states, yet they follow ultimately from the rights of men and women to the “political association they have made” or to the “independent community they have made.”<sup>7</sup> More to the point, political association becomes legitimate when persons give their consent (i.e., a tacit consent).<sup>8</sup> So “states’ rights to political sovereignty and territorial integrity are based on the freedom of political association and so on the consent of members of the community.”<sup>9</sup> When men and women are forced to jeopardize their lives for the sake of their rights, Walzer contends, there is aggression, which is a crime prohibited by Article 2(4) of the Charter of the United Nations. Walzer’s focus is on the use of force, because coercive or forcible intervention is the most intrusive and destructive of the forms of intervention. Searching for justifications for such intervention, Walzer argues that the use of force is allowed in four cases, one of which is humanitarian intervention (non-reform intervention), i.e., in response to massacre, enslavement, and large-scale expulsion of peoples.<sup>10</sup>

Walzer’s discussion of sovereignty, rights, and tacit consent appears to give the advantage to the principle of nonintervention because, as Pierre Laberge notes,

<sup>5</sup> Øyvind Østerud, “Sovereign Statehood and National Self-Determination: A World Order Dilemma,” in *Subduing Sovereignty: Sovereignty and the Right to Intervene*, ed. Marianne Heiberg (London: Pinter, 1994), pp. 19-20.

<sup>6</sup> William L. Blizek and Rory J. Conces, “Ethics and Sovereignty,” *International Third World Studies Journal and Review* 8 (1996): 1.

<sup>7</sup> Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1997), p. 51.

<sup>8</sup> *Ibid.*, p. 54. See also Pierre Laberge, “Humanitarian Intervention: Three Ethical Positions,” *Ethics & International Affairs* 9 (1995): 28.

<sup>9</sup> Laberge, “Humanitarian Intervention: Three Ethical Positions,” p. 28.

<sup>10</sup> Walzer, *Just and Unjust Wars*, pp. 90, 93, 101, and “The Moral Standing of States: A Response to Four Critics,” in *International Ethics*, ed. Charles R. Beitz, Marshall Cohen, and A. John Simmons (Princeton: Princeton University Press, 1985), p. 226.

it is very difficult — not to mention presumptuous — to try to judge from outside the legitimacy of institutions based on such a contract. That is why the other states must presume that a government has legitimacy in the eyes of its own citizens, until this is proved otherwise ....<sup>11</sup>

What makes such a presumption untenable is the fact that massacres, enslavement, or large-scale expulsion of peoples are taking place. In a slightly different way, Michael J. Smith, on addressing the moral standing of a society as resting not only on a consent to the rules and institutions, but also on the society's "ability to respect and to protect the rights of its members," makes the case that when the group, the nation or the state "define their rights and duties in a way that tramples the basic rights of individuals they forfeit their legitimacy."<sup>12</sup> This moves away from presuming the legitimacy of state sovereignty, for state sovereignty becomes justified only when protection is provided. As a consequence, "a state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty."<sup>13</sup> This would allow a window of opportunity for just intervention. Even Walzer could agree with the use of intervention in the case of "gross human rights violations" and all within his framework of linking individuals' rights and states' rights, since such intervention is a form of protection, thereby making it more akin to non-intervention than intervention.<sup>14</sup>

Of course, the objection could be made that Walzer excludes far too many situations (i.e., much of everything other than massacre, enslavement, and large-scale expulsion of peoples) that would justify the use of humanitarian intervention. This becomes clear once it is acknowledged that there are many instances where governments perpetrate human rights violations against their own people but to a far lesser extent and degree. Curtailing freedom of speech and association in Singapore and Taiwan, the prolonged detention of several hundred people by authorities in Israel or Saudi Arabia, or religious persecution in China would count as lesser violations. Yet, even if we agree on the lesser extent and degree of some abuses, there is the question of what is "tolerable" abuse versus "intolerable" abuse. How is the distinction to be drawn? Built into such a distinction would be a presumption of legitimacy, which would protect governments that are only engaged

<sup>11</sup> Laberge, "Humanitarian Intervention: Three Ethical Positions," p. 28.

<sup>12</sup> Michael J. Smith, "Humanitarian Intervention: An Overview of the Ethical Issues," *Ethics & International Affairs* 12 (1998): 76.

<sup>13</sup> *Ibid.*

<sup>14</sup> Walzer, "The Moral Standing of States," p. 226 and Laberge, "Humanitarian Intervention: Three Ethical Positions," p. 26. Walzer believes the 1971 intervention of India in East Pakistan was not aggressive, but rather humanitarian.

in tolerable abuses. However, the question remains, "How do we judge one human rights violation against another?" Indeed, as David R. Mapel notes, "it is [not] clear that massacre is intrinsically more shocking to the moral conscience of mankind than the torture of a few individuals."<sup>15</sup> The consequence of not being able to distinguish between tolerable abuses from intolerable abuses could mean that Walzer would be forced to accept reform intervention.<sup>16</sup> It is at this point that Jerome Slater and Terry Nardin point to a further issue: "In short, once Walzer opens the door to humanitarian intervention in some cases, he can provide no plausible argument for drawing the line as restrictively as he does."<sup>17</sup> However, I think this is less of a problem because just war criteria can be exercised to provide a sufficient number of hurdles before intervention is allowed. The problem is not so much curbing the number of instances in which intervention is justified, but in being able to adequately satisfy all the criteria in order to justify some humanitarian interventions. Once we acknowledge human rights violations, we must have the framework that will allow the appropriate parties to make the case for intervention and to act accordingly.

## II

Simply because there is an argument for humanitarian intervention and a window of opportunity to act on behalf of others to protect their human rights does not mean that such intervention is morally justified. How do our leaders (as well as we who are apt to critique their policies) go about making such a determination? The barest of criteria to decide when specific forms of humanitarian intervention are justified can be presented as a series of questions, the answers to which propel us to a moral judgement.

The classic definition of humanitarian intervention is "forcible self-help by states to protect human rights," though there has been a growing effort to expand this definition to include coercive or forcible military intervention by regional and international organizations like NATO and the UN, respectively (e.g., air strikes on strategic targets and the interdiction of military units), non-military coercive intervention (e.g., economic boycotts and the withholding of development loans),

<sup>15</sup> David R. Mapel, "Military Intervention and Rights," *Millennium* 20 (1991): 44. See also Jerome Slater and Terry Nardin, "Nonintervention and Human Rights," *Journal of Politics* 48 (1986): 90-91.

<sup>16</sup> Laberge, "Humanitarian Intervention: Three Ethical Positions," p. 29.

<sup>17</sup> Slater and Nardin, "Military Intervention and Human Rights," p. 91.



and non-coercive intervention (e.g., secret financial support of friendly political groups and education through mass media).<sup>18</sup> Although coercive (military and non-military) humanitarian intervention is the most controversial, since it is this form of intervention that is most intrusive — a clear case of violating a nation's sovereignty, as well as most destructive of the forms of intervention — the form of non-coercive intervention must not be forgotten because it is widely used by nations and collective security organizations. Much of the literature on humanitarian intervention focuses on military intervention without giving much thought to lesser forms of intervention that are usually considered and often implemented prior to the use of coercive military measures.

In order to decide what form of humanitarian intervention is justified, it would be helpful to ask what kind of practice is causing the moral outrage? One way to categorize practices that involve human rights violations is to look at their proximate cause. Either their proximate cause is a government law and/or policy, in which case we categorize it as a state-directed practice, or the proximate cause is tradition or custom, in which case we categorize it as a culture-based practice.<sup>19</sup> Those that are state-directed are practices that would come to an end in a relatively short period of time if the government responsible for them took appropriate steps to change the relevant laws and/or policies. China's one-child policy is a clear case

<sup>18</sup> The classic definition of humanitarian intervention is given by Wil Verwey, "Legality of Humanitarian Intervention After the Cold War," in *The Challenge to Intervene: A New Role for the United Nations?* ed. E. Ferris (Uppsala, Sweden: Life and Peace Institute, 1992), pp. 113-22. New variants of this definition have been presented, including those by I. Brownlie, "Humanitarian Intervention," in *Law and Civil War in the Modern World*, ed. J. Moore (Baltimore: John Hopkins University Press, 1974), pp. 217-52; Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law* (New York: Oxford University Press, 2001); J. Donnelly, "Human Rights, Humanitarian Intervention and American Foreign Policy: Law, Morality and Politics," *Journal of International Affairs* 37 (Winter 1984): 311-28; Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War," *Mershon International Studies Review* 42 (November 1998): 283-312; John Harriss, ed., *The Politics of Humanitarian Intervention* (London: Pinter, 1995); Oliver Rambotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge, England: Polity Press, 1996); Smith, "Humanitarian Intervention: An Overview of the Ethical Issues"; Thomas G. Weiss, *Military-Civilian Interactions: Intervening in Humanitarian Crises* (New York: Rowman & Littlefield, 1999); and Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2000). For a list of actions that the international community has at its disposal to use in the event of human rights violations, see Harff, "Bosnia and Somalia: Strategic, Legal, and Moral Dimensions of Humanitarian Intervention," pp. 574-75.

<sup>19</sup> Blizsek and Conces, "Ethics and Sovereignty," p. 7.

of a state-directed practice.<sup>20</sup> It is an official state policy that would cease to be if the leaders in Beijing took steps to rewrite China's population policy. On the other hand, culture-based practices are not directed by the state, though they may be permitted by the state, i.e., they are neither promoted nor discouraged, but are allowed to flourish by the government. They are practices that, over a long period of time, have become a way of life for certain segments of the population of a country. Ritualistic female circumcision is an example of a culture-based practice that is tolerated by some governments in sub-Saharan Africa and elsewhere.<sup>21</sup>

The importance of this distinction should not be underestimated because it illuminates the degree of reasonableness of coercive and non-coercive interventions in dealing with violations of human rights. Whether coercive military intervention is reasonable depends in large measure on the source of inhumanity that is at work in a country. If the source is well-defined, singular in nature, and set apart from the victims, then it is reasonable to think that military intervention might be appropriate. Although culture-based practices tend not to exhibit these characteristics, state-directed practices do to a high degree, and it is because of this that state-directed practices are those practices that warrant further consideration in deciding whether military intervention is an appropriate means in dealing with them. An example of such a source would be a ruler, such as former-Serbian President Slobodan Milošević, who was in control of (or had sufficient leverage over) the armed forces and militias which were perpetrating human rights violations against his own constituents as well as citizens of other recognized countries. Of course, targeting a particular individual in the hope that such action will lead to the cessation of

<sup>20</sup> See Qu Geping and Li Jinchang, *Population and the Environment in China*, trans. Jiang Baozhong and Gu Ran (Boulder, Co.: Lynne Rienner, 1994); Celilia Nathanson, *Accepting Population Control: Urban Chinese Women and the One-Child Family Policy* (Richmond, Surrey, England: Curzon, 1997); Dorothy Stein, *People Who Count: Population and Politics, Women and Children* (London: Earthscan, 1995); and H. Yuan Tien, *China's Strategic Demographic Initiative* (New York: Praeger, 1991).

<sup>21</sup> See Ragiya H.D. Abdalla, *Sisters in Affliction: Circumcision and Inflation of Women in Africa* (London: Zed Press, 1982); Ellen Gruenbaum, *The Female Circumcision Controversy: An Anthropological Perspective* (Philadelphia: University of Pennsylvania Press, 2001); Hanny Lightfoot Klein, *Prisoners of Rituals. An Odyssey into Female Genital Mutilation in Africa* (New York: Haworth Press, 1989); Anika Rahman and Nahid Toubia, eds., *Female Genital Mutilation: A Guide to Laws and Policies Worldwide* (New York: Zed Books, 2000); Ahmed Abuel-Futuh Shandall, "Circumcision and Inflation of Females," *Sudanese Medical Journal* 5 (1967); Alison T. Slack, "Female Circumcision: A Critical Appraisal," *Human Rights Quarterly* 10 (November 1988): 437-86; and Nahid Toubia, *Female Genital Mutilation, A Call for Global Action* (New York: Women Ink, 1993).

human rights abuses is full of uncertainties. Although the result may be achieved, capturing or killing a particular individual may trigger events that are even less satisfactory and less manageable.<sup>22</sup>

As the source of inhumanity becomes less well-defined, plural, and less separated from the victim, it becomes less and less plausible to believe that a military solution will be successful in curbing the tide of human rights abuses.<sup>23</sup> An example of this would be the 1994 Rwandan genocide, which involved the mass killing of hundreds of thousands of Tutsis by the Hutu population.<sup>24</sup> In this case, the source of inhumanity was dispersed and sometimes the victim became the victimizer. In such a situation, it becomes more difficult to conduct certain kinds of military operations with the goal of stopping human rights abuses. What this means is that as the source of inhumanity becomes more diffuse, humanitarian intervention becomes more constrained, resulting in a shift from non-military coercive and non-coercive interventions to non-coercive intervention. In other words, there is a direct correlation between the source of inhumanity and appropriate forms of intervention.

In the case of cultural-based practices, the source of inhumanity is dispersed in custom or tradition, thus making it difficult to understand how a practice that is imbedded in culture could be a reasonable target for coercive military action. How could the practice of female circumcision, for example, be brought to an end through the use of air strikes, naval blockades, and the interdiction of troop movements? Even if such intervention forced the government of a country to outlaw this practice, the change in tradition would have to be assimilated by its people over a long period of time. Thus, the options that are available for culture-based practices are reduced from non-military coercive and non-coercive interventions to simply non-coercive intervention depending on the degree of diffusion of the source of inhumanity.<sup>25</sup>

<sup>22</sup> This is somewhat reminiscent of Kant, who thought that our inability to predict the future was good reason to remain faithful to the Categorical Imperative.

<sup>23</sup> Implicit in this reference to successfulness in curbing human rights violations is the just war criterion of reasonable hope, which raises the issue of whether there are reasonable grounds for believing that human rights will be protected.

<sup>24</sup> For a discussion of the Rwandan genocide of 1994, see Amnesty International, *Rwanda: Ending the Silence* (New York: Amnesty International, 1997); Alain Destexhe, *Rwanda and Genocide in the Twentieth Century*, trans. Alison Marschner (New York: New York University Press, 1996); Fergal Keane, *Season of Blood: A Rwandan Journey* (New York: Viking, 1995); Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (New York: Columbia University Press, 1995); and Christopher C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994* (New York: Berg, 1999).

<sup>25</sup> See Blizek and Conces, "Ethics and Sovereignty," p. 8, for a discussion of education as the best possible form of intervention for female circumcision.

Once the practice has been categorized as state-directed or culture-based and the source of inhumanity has been determined, the next question that needs to be addressed is, What is the sense of need and urgency reflected in the particular human rights violations under investigation? Although there is no clear agreement about the meaning of the term 'gross human rights violations' as well as the sorts of acts considered to be such violations, the UN considers the following to be examples of gross human rights violations: "genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on race or gender."<sup>26</sup> Although this list is quite specific as to what counts as gross violations, nevertheless it leaves certain questions unanswered. First, there is the issue of a qualitative distinction between the kinds of violations themselves. Should acts of systematic racial discrimination be given the same weight as acts of genocide? Hence, should the former be handled with the same degree of need and urgency as the latter? I suggest that we should not be too quick to answer in the affirmative. One way to gauge whether there should be a heightened sense of need and urgency is whether lives will be lost in a relatively short period of time and whether that situation cannot be easily changed through means of dialogue and subsequent change in policy. In these cases, time becomes a critical factor. As in the case of the genocide in Rwanda, each day meant another estimated 8,000 people died. Although systematic racial discrimination is a serious human rights violation, it is possible to adequately deal with it through dialogue and the implementation of appropriate policies and laws. Second, there is the issue of how many peoples' rights must be violated for a practice to be a "gross human rights violation." In the case of genocide, the numbers are somewhat clearer than in the other cases, for genocide involves the intent to eradicate the people of a certain national, ethnical, racial, or religious group. It is a plan to eliminate the group.<sup>27</sup> However, should the forcible transfer of ten members of a particular ethnic

<sup>26</sup> UN doc. E/CN.4/Sub.2/1993/8, 2 July 1988, p. 7.

<sup>27</sup> According to the 1948 Convention for the Prevention and the Punishment of the Crime of Genocide, "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: a. killing members of the group; b. causing serious bodily or mental harm to members of the group; c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d. imposing measures intended to prevent births within the group; e. forcibly transferring children to another group." Unfortunately, even a relatively clear definition such as this is sometimes not enough for justice to be served. In this

group totaling well over one million be considered a case of gross human rights violation? If so, should it be given the same sense of need and urgency as the forcible transfer of a half million people? Third, if built into a gross human rights violation is a plan or policy by a government, then it is only possible for state-directed practices to be gross human rights violations, leaving all culture-based practices to be something less than "gross." Following this line of reasoning, systematic racial discrimination that is simply part of a people's custom, without any state sponsorship, would not be a gross violation. However, this poses no problem given that military coercive intervention is ruled out for all culture-based practices, so not calling a violation gross does not in itself constrain the kind of intervention that is permissible.

When numbers of victims become important is a difficult issue, but it is one, along with the qualitative distinction, that must be examined before leaders and policy makers respond with military coercion. If a sense of need and urgency is linked to the quality of violation as well as the numbers of its victims, then perhaps genocide is a gross violation that permits military coercive, non-military coercive, and non-coercive measures, and the other kinds of gross human rights violations gradually dispense with a military response and that such violations themselves eventually fade into what could be called "non-gross human rights violations," which serve as occasions for only non-coercive humanitarian intervention.

So far, what has been discussed is a way to decide whether a morally objectionable practice is a candidate for certain forms of humanitarian intervention. Yet even if practice *x* is a state-directed practice, whose source of inhumanity meets the specificity requirement as well as the demand for need and urgency, thereby allowing for the full range of humanitarian intervention, it does mean that the principle of sovereignty will automatically be trumped by the principle of intervention in the most intrusive and destructive of ways. Again, national sovereignty and territorial integrity should be respected and that their violation through military action should only occur in the most extreme of circumstances.<sup>28</sup> What sorts of additional hurdles

case, governments and international organizations have been intent on demanding the documentation of a large number of victims before the deaths are attributed to genocide. Perhaps requiring so many victims is too high a threshold and plays into the hands of the perpetrators of the crime, whose intent is to kill as many people of a target group as possible. A case can be made for this having taken place in Rwanda in 1994. See Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000).

<sup>28</sup> Again, national sovereignty has never been thought of as absolute. For a discussion of the notion of sovereignty see Monique C. Castermans-Holleman, "State Sovereignty and the Internation-

should be overcome before such intervention is thought to be morally justified? The just-warist perspective on the moral justification of going to war — the *jus ad bellum* — provides us with five important principles: (1) just cause; (2) right intention; (3) last resort; (4) proportionality; and (5) reasonable hope.<sup>29</sup>

Although the principle of just cause as a condition for the use of military force has been historically associated with such things as self-defense, the defense of the innocent, and the convictions of a people to act according to their right of self-determination, the set of just causes has been expanded to include genocide, the gravest and the greatest of the crimes against humanity because of its implied intention to exterminate a group of people who have a particular national, ethnic, racial, or religious identity.<sup>30</sup> It is the intention of a government to exterminate a group of people, for example, that underscores the need and urgency of the situation, thus increasing the justification for the use of military force in the protection of a peoples' human rights.<sup>31</sup> Furthermore, given that genocide is the most serious of crimes against humanity, and given that individuals as well as groups (including governments) should expand their "spheres of moral responsibility" to ever increasingly wider areas of moral space in order to manifest the spiritual and moral concerns

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al Protection of Human Rights," in Moorhead Wright, ed., *Morality and International Relations: Concepts and Issues* (Aldershot, England: Avebury, 1996), pp. 113-30; Jarat Chopra and Thomas G. Weiss, "Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention," *Ethics & International Affairs* 6 (1992): 95-117; and Eli Lauterpacht, "Sovereignty — Myth or Reality?" *International Affairs* 73 (January 1997): 137-50.

<sup>29</sup> In a slightly different light, Richard N. Haass, in *Intervention: The Use of American Military Force in the Post-Cold War* (Washington, DC: Carnegie Endowment for International Peace, 1994), states that "the overall effect of this body of thought [just war theory] is to make it more difficult to go to war and more difficult militarily to fight one" (p. 4).

<sup>30</sup> Fixdal and Smith, "Humanitarian Intervention and Just War," pp. 295-97.

<sup>31</sup> In "The Third Genocide," *Foreign Policy* 97 (1994-95): 3-17, Alain Destexhe argues that the UN should have intervened to stop the genocide in Rwanda. For similar arguments for a responsibility and/or duty on the part of the international community to intervene in Bosnia in the early 1990s, see Richard K. Betts, "The Delusion of Impartial Intervention," *Foreign Affairs* 73 (1994): 20-33; Harff, "Bosnia and Somalia: Strategic, Legal, and Moral Dimensions of Humanitarian Intervention"; Sohail H. Hashmi, "Is There an Islamic Ethic of Humanitarian Intervention?" *Ethics & International Affairs* 7 (1993): 55-73; Amir Pasic and Thomas G. Weiss, "The Politics of Rescue: Yugoslavia's Wars and the Humanitarian Inputs," *Ethics & International Affairs* 11 (1997): 105-131; David Rieff, "Accomplice to Genocide," *War Report* 28 (1994): 35-40 and *Slaughterhouse: Bosnia and the Failure of the West* (New York: Simon and Schuster, 1995); and Jane M.O. Sharp, "Appeasement, Intervention, and the Future of Europe," in *Military Intervention in European Conflicts*, ed. Lawrence Freedman (Oxford: Blackwell, 1994), pp. 34-55. For a critical assessment of NATO intervention in Kosovo, see Noam Chomsky, *The New Military Humanism: Lessons from Kosovo* (Monroe, Me.: Common Courage Press, 1999).



for the well-being of the Other, genocide gives agents the "opportunity" to acknowledge morally responsibility for the victims of this crime against humanity.<sup>32</sup> Moreover, the "opportunity" must be responded to through the use of strong action because that is the only kind of action that will safeguard the human rights of members of the targeted group. Of course, some theorists are reluctant to extend the right to intervene to a duty to intervene.<sup>33</sup> Yet whether we side with those who argue for a moral duty or agree with those who simply claim that there is a right to intervene, the point of deciding whether military coercive intervention is justified must ultimately be addressed by both. If there is ever a moral responsibility to use military force in order to protect people's human rights, it is surely in response to the crime of genocide.

If we decide that the condition of just cause is satisfied in the case of genocide, the other four conditions are hurdles that must be overcome before the use of force is sanctioned or justified. The second principle, that of right intention, refers to the motives of the agents. Traditionally, just war theory has followed St. Augustine in his claim that the motive should be the creation of a just peace, rather than political and economic power and profit.<sup>34</sup> The use of military force in the case of genocide would be a paradigm case of just peace as long as the protection of human rights was the sole concern. Of course, it might be unrealistic to demand that there be one and only one motive behind an intervention, with that motive being the protection of human rights. Even if such protection is the primary motive for the intervention, there are often other motives that have little, if anything, to do with human rights, but that have much to do with national interest, power, and stability.<sup>35</sup> Perhaps it is too high of a standard to require that leaders act with only one motive, for it may all but eliminate military coercive intervention from being implemented. Although the spirit of just war theory is to respect the principle of nonintervention, it should

<sup>32</sup> See Richard Rorty, "Ethics Without Principles," in *Philosophy and Social Hope* (London: Penguin Books, 1999), pp. 82-83 for the pragmatist's idea of greater inclusivity. See also The Dalai Lama, *Ethics for the New Millennium* (New York: Riverhead Books, 1999), pp. 162-63.

<sup>33</sup> See Stanley Hoffman, "The Politics and Ethics of Military Intervention," *Survival* 37 (1995-96): 29-51 and Tony Smith, "In Defense of Intervention," *Foreign Affairs* 73 (1994): 34-46.

<sup>34</sup> Saint Augustine of Hippo, *The City of God*, trans. Henry Bettenson (London: Penguin, 1984), XIX, 12.

<sup>35</sup> True, though difficult for Bosniacs to accept, Stephen John Stedman, in "The New Interventionists," *Foreign Affairs* 72 (1992-93): 14, observes that "if humanitarian concerns — measured by deaths and genocidal campaigns — were the justifications for military interventions, Bosnia would rank below Sudan, Liberia, and East Timor."

not be construed such that the most intrusive and destructive form of intervention becomes at best an improbability.

A problem with motivation analysis, at least from the perspective of outsiders looking in, however, is that trying to determine what the actual motive is for an intervention must take place after the intervention, which raises the issue of inconsistency and selectivity of interventions over a period of time.<sup>36</sup> This issue will be further discussed in the next section concerning the difference between humanitarian and strategic arguments. Regardless of other motives, the primary motive is a just peace that strives to respect national sovereignty and territorial integrity as fully as possible.

The third condition is the principle of last resort. This is an important condition insofar as it is closely related to the demand of need and urgency. It is also deceiving in its simplicity. The principle requires that all avenues to protect peoples' human rights or to rectify the injustices must be exhausted prior to any military action. In other words, non-military coercive intervention (e.g., an embargo of military hardware and energy supplies, and the withdrawal of development loans) and non-coercive intervention (e.g., withdraw of diplomatic recognition and education through mass media) must be exhausted before military force is used. This may seem both prudent and morally praiseworthy, but in reality, it may be neither. As was noted earlier, a single day during the Rwandan genocide claimed an estimated 8,000 lives, so time can be an extremely important factor in deciding which form of intervention is justified. Not only can lives be saved, but the intervention is likely to be less of a financial burden for those countries and organizations that participate, not to mention the costs that will be incurred in rebuilding the physical infrastructure of the country, as well as its civil society.<sup>37</sup> Bosnia and Herzegovina is a case in point.<sup>38</sup> Furthermore, the principle's simplicity is deceiving because it is not

<sup>36</sup> The literature is full of case studies examining the motives of governments that intervene militarily. For a discussion of Vietnam's intervention in Kampuchea and whether the motive for the incursion was to end the Khmer Rouge massacres or to prevent cross-border incursions on the part of the Khmer Rouge, see Michael Leifer, "Vietnam's Intervention in Kampuchea: The Rights of State versus the Rights of People," in *Political Theory, International Relations, and the Ethics of Intervention*, ed. Ian Forbes and Mark Hoffman (Basingstoke, England: St. Martin's Press, 1993), pp. 145-56. See also Stephen J. Morris, *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War* (Stanford: Stanford University Press, 1999).

<sup>37</sup> See Alain Destexhe, "The Third Genocide," p. 16; Michael Lund, *Preventing Violent Conflicts: A Strategy for Preventive Diplomacy* (Washington, DC: United States Institute of Peace, 1996); and Jane M.O. Sharp, "Appeasement, Intervention, and the Future of Europe," pp. 34-55.

<sup>38</sup> Having written this essay while I lived in post-war Sarajevo as a Fulbright Scholar has led me to this conclusion. See also Chandler, *Bosnia: Faking Democracy After Democracy*.

clear whether the principle of last resort calls for *every possible means* to be implemented and to have failed or every means that has a *reasonable chance* of being successful to be implemented and to have failed before military intervention is justified. The latter would seem to remain faithful to the spirit of the principle of nonintervention, allow for the possibility of military coercive intervention, and meet the demand for need and urgency.<sup>39</sup>

The final two conditions, the principles of proportionality and reasonable hope, are no less important than the rest. The former principle requires that the intervention must do more good than harm. In slightly different and more concrete terms, "the amount of harm to persons as well as destruction of property ... for all involved may not outweigh the good that is [expected to be] achieved by the use of military force in protecting human rights."<sup>40</sup> This principle is clearly a matter of weighing the consequences of the various military options that are available.<sup>41</sup> The latter principle calls for the military action to have reasonable hope of success in achieving its goal, which in the case of genocide, is to put a halt to the genocide. This principle amounts to nothing less than a feasibility assessment. The problem that decision-makers face in using these two principles is the difficulty of measuring consequences, particularly when the complexities of the situation and the unavailability of sufficient information turn the process into one more like speculation than calculation.<sup>42</sup> Yet these two principles provide something that the others do not, i.e., they help us to understand the concrete aspects of military intervention and to recognize, perhaps, that "[t]o be right is not enough."<sup>43</sup>

Having briefly noted five conditions of just war theory, the original claim of the difficulties faced by those wanting to intervene militarily should be clear. Although some may believe that no case of gross human rights violation could meet these conditions, and thus become justified, it is reasonable to think that the kinds of gross human rights violations that are high on the scale of need and urgency would be more likely to pass the tests than lesser sorts of violations. Again, the

<sup>39</sup> See James F. Childress, "Just War Criteria," in *War in the Twentieth Century: Sources in Theological Ethics*, ed. Richard B. Miller (Louisville, Ky.: Westminster/John Knox Press, 1992), pp. 358-59.

<sup>40</sup> Blizsek and Conces, "Ethics and Sovereignty," p. 8.

<sup>41</sup> Fixdal and Smith, "Humanitarian Intervention and Just War," p. 303.

<sup>42</sup> *Ibid.*, p. 305.

<sup>43</sup> *Ibid.* This point is also made by Adam Roberts, in "The Crises in UN Peacekeeping," *Survival* 3 (1994): 109, when he says that "there is sometimes a case for deciding not to tackle a problem, even if it is serious."

point of these tests is not to guarantee that there will be a multitude of cases of justified military intervention, but that there will be fewer in number. What makes it likely that force will be used to protect people's human rights is not these five conditions, but the moral outrage that many of us experience and that prompts some of us to think and act in ways out of concern for the well-being of our fellow human being.

### III

It has been argued that we live in a world whose political leaders sometimes use different kinds of arguments to justify intervention in the affairs of nations other than their own. Depending upon the circumstances, they resort to using a strategic argument, a humanitarian argument, or both. Although the strategic argument can be controversial, it is the humanitarian argument that causes the most discussion because it involves violating the national sovereignty of a nation and, on occasion, using military action, all in the name of protecting human rights. However, the controversial nature of the humanitarian argument is understated. The two kinds of argument differ not only in terms of the objective served by each, but they also differ in terms of their "internal logic." It is this difference that may have profound implications for the continued use of the humanitarian argument by our political leaders.

With a strategic argument, the intent of those who use it is to serve strategic or national interest (or, in the case of regional or international organizations, regional or international interest). It may involve specific and concrete interests that are economic or political in nature, or the interests may be of a broader nature, such as preventing or lessening threats to peace, breaches of the peace, or acts of aggression (i.e., national security). It is because of such interests that strategic arguments are said to be specific to the conditions of the countries in question at some specific time. As a consequence, decision-makers must take into account a number of variables concerning the countries involved. These variables may pertain to such things as political volatility, economic indicators, the maintenance and credibility of alliances between nations, and regional stability. Take, for instance, the following strategic argument for intervention in Kosovo that was reconstructed from a newspaper editorial during the onset of that crisis in the Federal Republic of Yugoslavia in 1999.<sup>44</sup>

<sup>44</sup> "Clearer Goals Support Action," *Omaha World-Herald*, 25 March 1999.



### A Strategic Argument for Intervention in Kosovo (S-Arg)

- P1: The existence of a stable Europe is in the best interests of its member nations, as well as the United States.
- P2: European nations, as well as the United States, should strive to bring about that which is in their national (and collective) interest, including a stable Europe.
- P3: A civil war in Kosovo (Yugoslavia) could spread to Macedonia, which could destabilize the extreme Western portion of Europe made up of NATO members Greece and Turkey.
- P4: NATO is a stabilizing force in Europe.
- P5: NATO's ability to stabilize Europe could be threatened if some of its member nations become involved in an armed conflict with one another or if some of its member nations decided to opt out of military operations.
- P6: If the destabilization of Europe is likely to occur because of a civil war in Kosovo, then European nations and the United States should take measures, including military intervention, to restore order in Kosovo.
- P7: The taking of such measures, particularly military intervention, should be conducted by a unified NATO.
- P8: Only a credible NATO and United States could take measures that are needed to restore order in Kosovo.
- P9: In order for NATO and the United States to retain their credibility so as to play a stabilizing role in Europe, NATO should take measures, including military intervention, to restore order in Kosovo.

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Therefore, NATO should take measures, including military intervention, to restore order in Kosovo.

In constructing (or in analyzing) this argument, conditions within as well as between particular countries must be taken into account. National interests, the destabilization of various countries, and the credibility of NATO and the U.S. are a few factors that must be examined. Granted, such a complicated argument would not be presented by a leader to his/her people, but a simplified version could well be offered to the media for distribution to the citizenry. Moreover, once this argument was made "to the people" in an official announcement, it would give notice of that government's intention in regard to *Kosovo at that time*. The argument could

be used neither to justify intervening in another country, even a neighboring country nor be used to intervene in Kosovo at a later date, say three or four years later. In either case, another strategic argument, specific for that country or for Kosovo as it exists in Europe at a later point in time, would have to be constructed and made official. All countries are not alike and times change: there is no residual affect from one case to the next. Moreover, it is relatively difficult to make a case for inconsistency and selectivity with regard to strategic arguments. Such charges deal with the motives that the leadership of countries has towards intervening or not intervening. If all the important variables remained constant from situation  $x$  that involved country  $A$  intervening in country  $B$  at time  $t$  to situation  $y$  that involved country  $A$  not intervening in country  $C$  at time  $t + 1$ , then a case could be made for inconsistency and selectivity on the part of country  $A$ . The key to such a charge, however, is that all the important variables must remain constant from one situation to another, and this is not likely to occur. This does not mean that such charges can never be substantiated, but it does mean that it becomes increasingly more difficult to do so as more and more variables are different between the cases under examination.

How does this differ from a humanitarian argument for military intervention? Take, for instance, the following argument:

### A Humanitarian Argument for Intervention in Kosovo (H-Arg)

- P1: If a nation is engaged in acts of ethnic cleansing against its people, then the United States should intervene, militarily if need be, to stop the ethnic cleansing.<sup>45</sup>
- P2: Yugoslav forces in Kosovo are conducting a campaign of ethnic cleansing against the Kosovars.

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Therefore, the United States should intervene, militarily if need be, in Kosovo to stop the ethnic cleansing of the Kosovars.

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<sup>45</sup> Geoffrey Robertson, in *Crimes Against Humanity: The Struggle for Global Justice* (New York: The New Press, 2000), notes that ethnic cleansing *čišćenje terena*, the "cleansing" of the ground) amounted to the "widespread and systematic attack on a civilian population for the purpose of persecuting and forcibly uprooting an ethnic group" (p. 123).

For one thing, humanitarian arguments are general arguments insofar as they deal with human rights (rights that reflect some sort of sacredness, inviolability, dignity, and worth of human beings, and are ascribed to human beings simply because they are human beings), rather than with the complexities of countries and how they relate to one another.<sup>46</sup> Consequently, the humanitarian argument does not require a consideration of factors other than the fact that gross human rights violations are occurring in the country in question. Moreover, unlike the strategic argument, the use of a humanitarian argument as justification to intervene in the affairs of a sovereign nation has a residual affect insofar as once the next situation arises in which the past intervener acknowledges that there is another case of ethnic cleansing, for example, the past intervener is required to use the humanitarian argument unless the intervener is willing to accept the charge of inconsistency and selectivity. This is because what is eliciting the argument is something that the international community takes to be a universal, i.e., human rights. Because something that is said to be universal will be protected, it is an argument that cannot simply be used for Bosniacs, or Timorese, or Kosovars. It is an argument that, once used to protect one group of people, must be used to protect the rights of members of all national, ethnical, racial, and religious groups. In a sense, the internal logic of the argument "locks" the leadership into using a humanitarian argument in similar cases. The only exception, it seems to me, is if the political leadership of a country announced publicly that it would no longer protect people's human rights through humanitarian intervention, at which point the "obligation" would become null and void.<sup>47</sup> Of course, this line of reasoning does not necessitate that the past intervener use coercive military intervention, since the use of such means would require the satisfying of the previously mentioned conditions or principles pertaining to *ius ad bellum*. It only requires the use of the *argument*.

<sup>46</sup> For present purposes I forgo a discussion of arguments for and against the universal and absolute character of human rights. For a treatment of these issues, see Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998) and Rorty, "Ethics Without Principles," pp. 72-90.

<sup>47</sup> Of course, there is the problem of a change in leadership and what that means for the withdrawal of the obligation. Does the new leadership have the opportunity to make a similar obligation? An even more perplexing issue is the historical legacy of intervention that a democratic country has over the time span of several changes in national leadership. Does it make sense to say that the back-and-forth movement from acknowledging the obligation to rejecting the obligation by various leaders gives grounds for a charge of inconsistency and selectivity in a much broader sense?

In regard to the humanitarian argument and the charge of inconsistency and selectivity, it would not take much for the sitting leadership of a country to fall victim to such a charge. If country *A*, which intervened in country *B* at time *t*, did not intervene in country *C* at time *t + 1*, then country *A* would be open to the charge of inconsistency and selectivity. Of course, there is one additional factor: country *A* must acknowledge that what is occurring in country *C* is a case of ethnic cleansing, for example, as it was in the case of country *B*. If not, then country *A*'s inaction cannot be cited as evidence for these charges. However, if there is such an acknowledgment and there is inaction on the part of country *A*, then country *A*'s track record of having used humanitarian intervention in the past should be examined to determine if the charge of inconsistency and selectivity is warranted.<sup>48</sup>

For some, the residual nature of the humanitarian argument, as well as the ease with which leaders can skirt its obligatory nature by disingenuous means, may give us reason to doubt the argument's legitimate persuasiveness. Either leaders will not want to adopt an activist policy of protecting human rights for fear that there will be no end to it or they will simply withhold their acknowledgment that there are any cases of genocide, for example. Of course, there is a third option: they may continue to accept the charge of inconsistency and selectivity. Nonetheless, the lesson that should be learned is that even in the face of the weighty principle of nonintervention that just war theory recognizes, there appears to be a certain logic calling for the use of the humanitarian argument by leaders of governments that have a history of intervening in order to protect human rights. As for those, like Slater and Nardin, who have concerns with robust interventionism, their fears are exaggerated. Although the genie has been let out of the bottle, never to return to its home, we can tell the genie how he is to intervene in the world.

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<sup>48</sup> In the case of the United States, one might interpret the State Department's unwillingness to refer to what was occurring in Rwanda in 1994 as "genocide" as a means to skirt the charge of inconsistency and selectivity.