
INTERNATIONAL LAW AND NON-INTERVENTION:

WHEN DO HUMANITARIAN CONCERNS SUPERSEDE SOVEREIGNTY?

NANCY D. ARNISON

Recent events in countries around the world including Iraq, the former Yugoslavia, and Somalia, illustrate the growing need for humanitarian intervention when armed conflict, massive human rights violations or starvation put countless lives at risk. Nancy Arnison explores the legal implications for humanitarian intervention and makes policy recommendations to enable the international community to reach the populations trapped inside repressive and strife-ridden states.

State sovereignty — a cornerstone of the international legal system — poses a formidable obstacle to humanitarian intervention. Codified in the Charter of the United Nations, sovereignty protects states from outside interference. The Charter prohibits intervention in a state's domestic affairs,¹ forbids the use of force by one state against another,² and allows U.N.-sanctioned force only in instances where the Security Council determines there is a threat to international peace and security.³

Repressive governments have used the mantle of sovereignty to prevent life-saving assistance from reaching their citizens. The international community finds it difficult to aid and protect individuals inside the territory of a government that denies access to relief efforts. The internally displaced, victims of human rights abuses, and victims of conflict remain trapped inside sovereign borders, vulnerable to the very regimes that violated their human rights.

The citadel of sovereignty, however, is beginning to crack. The increased codification of human rights norms has begun to make governments account-

1. "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdictions 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." UN Charter Article 2, paragraph 7.

2. "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." *Ibid.*, Article 2, paragraph 4.

3. *Ibid.*, Articles 39, 41, and 42.

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able to citizens and has made the rights of individuals a legitimate subject of international attention. Relief organizations have developed innovative strategies to provide assistance in countries with hostile governments, and the United Nations has acknowledged the need for humanitarian intervention when armed conflict, massive human rights abuses, or starvation place countless lives at risk.

As sovereignty erodes, the international community is increasingly able to impose humanitarian assistance despite governmental resistance; however, the interventions to date have been *ad hoc* and inconsistent as evidenced in Somalia, Bosnia-Herzegovina, Sudan, and Iraqi Kurdistan. The international community must develop a coherent system of protection and assistance for the internally displaced and victims of repression. While the end of the Cold War has intensified the need for such a system by unleashing previously repressed ethnic conflicts, it also presents fresh opportunities for a humane, collective response. The international legal order should recognize the collective right of nations to undertake humanitarian intervention; establish criteria and guidelines for the use of forcible and non-forcible intervention; develop an automatic collective decisionmaking process to assess needs; and determine strategies for appropriate interventions.

Preliminary Observations

The world community is often paralyzed when confronted with grave human suffering inside states that block humanitarian aid from the outside world. National sovereignty has been revered as an almost sacred principle. Regrettably, it has been used to bar the international community from intervening to protect and assist internally displaced persons and other human rights victims. Some abusive governments still use the cloak of "state sovereignty" to repress, brutalize, or starve their citizens, decrying outside intervention as interference in domestic affairs. The international community has failed to develop consistent policies and mechanisms for challenging the sovereignty of recalcitrant governments in order to provide aid across national boundaries. The reluctance to intervene and the uneven response to such crises reflect important political, moral, logistical, financial, and legal concerns. This article examines one of these hurdles — the legal barrier of sovereignty — and asks whether humanitarian needs should supersede sovereignty and if so, when.

Humanitarian intervention includes both non-forcible and forcible actions to assist and protect persons within the territory of a government that does not consent to the aid or protection. Non-forcible intervention includes such measures as diplomacy, U.N. resolutions, and cross-border food delivery by relief organizations without host government authority. Traditional discussion of humanitarian intervention has focused on the legality of forcible unilateral action that one state undertakes to protect nationals of another country who suffer from large-scale atrocities. Unilateral action carries enormous potential for abuse by states espousing humanitarian intentions as a pretext for political

or territorial designs. Unilateral forcible intervention is widely discredited today.

The demise of the Cold War has reinvigorated discussion of humanitarian intervention, but now in the context of collective action. While collective humanitarian intervention across unfriendly borders is preferable to unilateral action, it is not without the potential for abuse and mixed motives on the part of intervenors. For example, the collective use of military troops to improve security within a repressive state so that the population can remain safely in its homeland may, in effect, forcibly contain a mass movement of suffering people who truly need asylum. The articulation of a humanitarian motive for the intervention may mask the unwillingness of intervening countries to grant asylum on their own shores as they confront economic difficulties, xenophobia, and the evaporation of Cold War incentives to welcome dissidents. Intervention in such instances may undermine the principles of asylum and resettlement, which in some cases serve as the only safe options to victims of large-scale atrocities.

Nor will collective action eliminate the misuse of humanitarian intervention as a pretext for meddling in the political affairs of states. Developing states fear that larger powers will use collective humanitarian intervention as a veiled excuse to maintain influence over them. Additional dangers arise in situations of armed conflict where even a neutral infusion of humanitarian aid may strengthen one side over another. Indeed, the mere presence of intervenors can suppress or escalate conflict and indirectly affect political outcomes.

Today, the tension between sovereignty and humanitarian intervention has special relevance for internally displaced refugees as well as those who cross national borders. An estimated 20 to 40 million "internal refugees" are displaced within their own countries due to political repression, civil war, internal strife, and deliberate starvation. The end of the Cold War has increased internal displacement by unleashing long-suppressed ethnic and religious conflicts. Because internally displaced individuals do not cross international borders, they are not technically "refugees"⁴ and thus fall outside the protective mandate of the U.N. High Commissioner for Refugees.⁵ Without a system of international protection, they are at the mercy of the very governments responsible for causing their displacement and denying relief.

Sovereignty has important implications for external refugees as well. There is growing need for humanitarian intervention in refugees' countries of origin

4. Refugees are defined as individuals outside their countries of origin who, due to persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion, are unable or unwilling to return home. *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS No. 2545 at 137; UN Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS No. 8791 at 267.

5. The Office of the U.N. High Commissioner for Refugees (UNHCR) provides external refugees with food, shelter, medicine, training, and protection from danger. The UNHCR also facilitates resettlement to third countries or safe voluntary repatriation to countries of origin. Statute of the Office of the UN High Commissioner for Refugees. General Assembly Resolution 428(V), 14 December 1950.

both to facilitate repatriation and to prevent further refugee flows by addressing the root causes. The traditional solutions for refugees who have fled across borders are increasingly inadequate, particularly in cases of mass exodus. Cold War geo-political considerations and the difficulty of changing the behavior of repressive governments fostered the classic approach of resettling refugees outside their countries of origin. Dramatic changes in the international scene, the growing reluctance of states to accept new refugees, and the preference of refugees to live safely in their own homelands have contributed to an emerging focus on improving conditions in countries of origin. Resettlement and asylum remain crucial options when other solutions are unavailable; however the refugee system now emphasizes assistance and protection to individuals inside repressive states to prevent massive future displacement and to foster the safe voluntary return of individuals through protection of human rights, conflict resolution, democratic structures, and economic development.

Sovereignty as a Barrier to Humanitarian Intervention

State sovereignty is an important foundation of international law. It traditionally has allowed a government wide latitude in the treatment of citizens and it continues to pose a formidable obstacle to humanitarian intervention. The U.N. Charter prohibits the United Nations from intervening in matters that are "essentially within the domestic jurisdiction of any state...."⁶ forbids states from using force against one another,⁷ and allows the United Nations to authorize force only when the Security Council determines there is a threat to international peace and security.⁸ Thus, when a state denies access to international relief efforts, the legal options for humanitarian intervention are limited.

The Charter, however, also contains competing principles. It affirms human rights⁹ and self-determination,¹⁰ but provides limited authority for enforcing these fundamental rights against a sovereign nation. The principles of non-interference in internal affairs and non-use of force by states serve as possible barriers to implementing human rights.¹¹ The Charter also prohibits the use of

6. UN Charter, Article 2, paragraph 7.

7. *Ibid.*, Article 2, paragraph 4.

8. "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." *Ibid.*, Article 39.

9. "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . . (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." *Ibid.*, Article 55; see also *Ibid.*, Preamble, Article 1, paragraph 3, and Article 56.

10. *Ibid.*, Article 1, paragraph 2 and Article 55. Principles of self-determination also influence the debate about humanitarian intervention by emphasizing the importance of a nation governing itself without outside interference.

11. *Ibid.*, Article 2, paragraph 7 and paragraph 4.

U.N.-authorized force to protect human rights unless the human rights violations present a threat to the peace.¹² Absent a threat to international peace and security, there is no Charter authority for forcible humanitarian intervention.

Traditionally, the international community has accepted a relatively strict construction of sovereignty and has failed to override governments that deny consent for humanitarian assistance. For example, between 1986 and 1988, the Sudanese government blocked international humanitarian access to areas under insurgent control, contributing to a civilian death toll of approximately 500,000.¹³

Erosion of Absolute Sovereignty

A number of developments are chipping away at sovereignty. National borders have become increasingly porous as trade, mass communications, and environmental degradation hasten global interdependence. The growth of international human rights law during the last four decades has made important inroads into sovereignty. The Universal Declaration of Human Rights¹⁴ and subsequent human rights treaties¹⁵ have given form to the human rights principles enunciated in the Charter. Individuals are now recognized to possess certain rights as against their governments, and governments are subject to international scrutiny on their human rights practices — an area previously considered within a state's domestic jurisdiction. Human rights implementation measures through the United Nations and regional organizations, while slow to evolve, are gradually becoming more pro-active and now include such non-forcible measures as special rapporteurs assigned to monitor specific countries or practices, individual complaint mechanisms, and observer missions such as the recent U.N. Observer Mission in El Salvador (ONUSAL) charged with monitoring human rights abuses in the context of the peace accords. The Genocide Convention is also cited as a possible source for a limited right of forcible humanitarian intervention to prevent or suppress acts of genocide.¹⁶

In the area of humanitarian assistance, international organizations have made significant contributions to the erosion of state sovereignty by prevailing over governments that attempt to block relief efforts. Private relief groups have undertaken cross border operations without governmental cooperation to feed starving people. Innovative negotiations have stretched the limits of sover-

12. *Ibid.*, Chapter VII.

13. For further examples of non-intervention, see, for example, David J. Scheffer, "Toward a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review* 23 (Winter 1992): 254-8.

14. *Universal Declaration of Human Rights*. General Assembly Resolution 217A(III), UN Document A/810 at 71 (1948).

15. See, for example, *International Covenant on Civil and Political Rights and its Optional Protocol*, 16 December 1966. 999 UNTS 171; *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948. 78 UNTS 277 [hereinafter cited as *Genocide Convention*].

16. "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide." *Genocide Convention Article VIII*; see also Scheffer, 289.

eignty by establishing "corridors of tranquility," "zones of peace" and "humanitarian cease-fires" allowing relief convoys and aid workers to reach endangered civilians in the Sudan, Angola, Ethiopia, Iraq, Liberia, El Salvador, and Lebanon.¹⁷ Such non-forcible measures have proven effective in providing humanitarian assistance in areas where governments or warring parties sought to prevent aid.

On 17 December 1991 the U.N. General Assembly approved a resolution enhancing the ability of the United Nations to respond to humanitarian emergencies where a government denies access. While the resolution affirms sovereignty and states that consent of the target country "should" be obtained before providing humanitarian assistance, the carefully worded language avoids requiring the government's consent, thus opening the door to non-consensual humanitarian interventions.¹⁸ While the intensely negotiated resolution stops short of explicitly recognizing a collective right to intervene for humanitarian purposes, it leaves room for the United Nations to decide in particular cases that massive suffering requires humanitarian assistance despite a government's refusal to consent to such aid.

Previously, in April 1991, the Security Council had gone further when it overrode Iraq's declarations of sovereignty and insisted that the Iraqi government allow relief organizations access to all those in need of assistance. Although Resolution 688 did not authorize the use of force,¹⁹ U.S., British, and French troops set up safety zones inside Iraq to protect the Kurds from repression by Iraqi forces. The resolution broke new ground by specifically finding that the repression and its consequences (massive displacement of Iraqi citizens) threatened international peace and security. Linking human rights abuses with threats to international peace suggested an opening for forcible humanitarian intervention in accordance with U.N. Charter principles that forbid the use of force except in response to threats to the peace.²⁰ By acknowledging that human rights violations and refugee flows threaten peace and security, the resolution highlighted a potential rationale for authorizing interventions under the Charter. The United States invoked Resolution 688 as underlying authority to set up the safety zones in northern Iraq in April 1991 and to impose forcibly a "no-fly zone" over southern Iraq in August 1992 (arguably to protect the Shiite population from attack by Iraqi aircraft).

On 13 August 1992 the Security Council authorized forcible humanitarian intervention in Bosnia-Herzegovina. Resolution 770 states that "humanitarian assistance in Bosnia-Herzegovina is an important element in the [Security] Council's effort to restore international peace and security in the area" and calls

17. See, for example, Larry Minear, "Humanitarian Intervention in a New World Order," *Policy Focus*, 1992, Num. 1 (Overseas Development Council).

18. "Sovereignty, territorial integrity and national unity of states must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country." General Assembly A/Res/46-182. 17 December 1991.

19. UN Security Council, Resolution 688, 5 April 1991.

20. UN Charter, Chapter VII.

upon states to facilitate relief by "all necessary measures" — a phrase understood to include military action.²¹ The Resolution did not indicate which countries or regional entities would undertake such intervention. On the same day, the Security Council demanded access to detention camps for the International Committee of the Red Cross and called upon states to compile information on alleged war crimes in former Yugoslavia.²² To date, however, U.N. action has been largely ineffectual; no military intervention has occurred, and Serbia has defied most U.N. demands.

On 3 December 1992 the Security Council specifically authorized military intervention in Somalia to establish a secure environment for humanitarian relief efforts. While this move marks a dramatic step in the history of humanitarian intervention, it occurred in the context of a country whose sovereignty was already in question due to the lack of a viable government.²³

Ad Hoc Nature of Recent Interventions

As concepts of sovereignty and interpretations of threats to the peace evolve, there is increasing opportunity to respond to suffering without surrendering to sovereignty. Despite this opportunity, however, the response of the international community to recent human tragedies has been disappointing. Desperately needed protection and assistance in Iraqi Kurdistan, Bosnia-Herzegovina, and Somalia has been *ad hoc* and inconsistent. No coherent rationale has guided the international response. No international mechanism currently offers a framework for consistent analysis, decisionmaking, and action.

Humanitarian intervention in Iraq was prompted by public outcry and a sense of responsibility for the displaced Kurdish people whose plight was closely related to the war fought by allied forces. In addition, threats to international peace were apparent as the Kurdish flight from repression created massive internal and external refugee flows and exacerbated tensions with neighboring states. This unique combination of circumstances made it unlikely that the dramatic and large scale humanitarian intervention for the Kurds would be a widely followed precedent.

Indeed, there was little hope of assistance and protection for the victims of ethnic cleansing in Bosnia until television tore at heartstrings with pictures of orphans killed on buses and adults starving in detention camps during the summer of 1992. Although the massive human suffering had been apparent for months, it took public outrage and the accompanying pressures of U.S. electoral

21. UN Security Council Resolution 770. S/Res/770. 13 August 1992. Similar language was used to authorize the Persian Gulf War. UN Security Council Resolution 678. S/Res/678. 29 November 1990.

22. UN Security Council Resolution 771. S/Res/771. 13 August 1992.

23. The requirements for statehood as stipulated in Article 1 of the Montevideo Convention are a viable government, a permanent population, a defined territory, and the capacity to enter relations with the other states. Convention on the Rights and Duties of States. UNTS Num. 881. 26 December 1933.

politics to bring any momentum to the search for ways to assist. The protection and assistance to date, however, has been desperately inadequate, and the Serbs continue to defy U.N. demands.

In Somalia, facts about the devastating civil war and its aftermath were long available but virtually ignored until August 1992 when U.N. Secretary-General Boutros Boutros-Ghali shamed the international community into contrasting its newfound compassion for the rich man's war in Bosnia-Herzegovina with its neglect of the poor man's plight in Somalia. The Security Council approved plans to send 3,500 troops to guard food shipments, but not until 3 December 1992 did the Security Council authorize a U.S.-led military intervention to enforce humanitarian relief efforts.²⁴ By then, 300,000 people had died.

Public outrage seems to be the only unifying theme bringing attention, albeit late, to these crises. Gone is the Cold War road map dictating concern and assistance based on ideological markers and geo-political superpower advantage. Having lost its traditional guideposts, the international community drifts anxiously from one public outcry to another. Instead, it should seize this historical moment to look freshly at humanitarian intervention and develop a reasoned, consistent, and humane system to protect internally displaced persons and other human rights victims who are outside the reach of life-sustaining aid.

Policy Recommendations

Sovereignty must yield to human suffering. The international community must increase its capacity and political will to reach the desperate, vulnerable populations trapped inside repressive and strife-ridden states. To reduce the risk of *ad hoc* and inconsistent actions, a system of genuine humanitarian intervention will require firm legal underpinnings, consistent criteria, collective decisionmaking, and adequate institutional and financial resources.

International law should not permit state sovereignty to block aid to internal refugees or other victims of massive human rights violations. States must not be allowed to hide behind a veil of sovereignty while denying life-sustaining assistance and protection to their citizens. Many factors (including logistics and resources) will raise legitimate impediments to proposed humanitarian interventions, but state sovereignty alone must not be allowed to render it illegal. Financial, practical, and strategic factors should be addressed outside the context of arguments about sovereignty.

Several legal perspectives have been articulated in support of non-forcible and forcible humanitarian intervention. While there is adequate theoretical

24. UN Security Council Resolution 794. S/Res/794. 3 December 1992. The U.S. was the primary advocate of the Resolution, offering 28,000 American troops for Operation Restore Hope if it could command the operation. The Resolution noted the "unique character" of the situation in Somalia and stated that the "magnitude of the human tragedy" constituted a "threat to international peace and security." For the first time, the Security Council specifically authorized military intervention in support of relief efforts.

justification currently to support humanitarian intervention in the face of a government's abuse of its sovereignty, the international community must develop more fully this jurisprudence so that a consistent policy and practice will emerge.

Duties of Sovereign States

In general, non-forcible humanitarian intervention is justified by the erosion of sovereignty which occurs when a state commits massive human rights violations against its citizens. This approach maintains that sovereignty carries humanitarian duties and responsibilities that, when breached, eviscerate sovereignty and open the state to intervention on humanitarian grounds. Non-forcible humanitarian interference is permitted because grave human rights abuses, which violate international law, are not within a state's exclusive domestic jurisdiction. Some scholars have articulated a specific right of individuals against their own governments to receive available outside aid, while others propose a right of individuals to demand and obtain assistance directly from the international community and in turn, a corresponding duty of the international community to provide aid.²⁵

Threats to International Peace

Forcible humanitarian intervention may be authorized under the collective security provisions of the U.N. Charter when the Security Council decides that a humanitarian crisis constitutes a threat to international peace and security.²⁶ One need only look to Bosnia-Herzegovina and other republics of former Yugoslavia to recognize that the international community cannot overemphasize the threat that massive displacement and human rights violations pose to international peace. The collective security approach currently provides the only legal vehicle for overcoming sovereignty in order to authorize collective forcible humanitarian intervention under the Charter. Sole reliance on this approach, however, raises practical and ethical concerns. Inherent in tying forcible humanitarian interventions to threats to the peace is the practical concern that such threats are more likely to be acknowledged when the target country is geo-politically significant. Displaced persons from these countries or oil-rich states may gain attention, while those from poorer nations languish because their loss is not perceived as a threat to international peace.

A mandatory link between forcible humanitarian intervention and threats to the peace raises intellectual and ethical dilemmas as well. Shall we ignore massive human suffering due to internal displacement or grave human rights abuses if it does not threaten international security? Situations will undoubtedly

25. For discussion of the various theories, see, for example, Menno T. Kamminga, *Inter-State Accountability for Violations of Human Rights* (Philadelphia: University of Pennsylvania Press, 1992); Jarat Chopra and Thomas G. Weiss, "Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention," *Ethics & International Affairs* 6 (1992): 95; Fernando R. Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality* (Ardshley-on-Hudson, NY: Transnational Publishers, 1988); and Scheffer, 263.

26. UN Charter, Chapter VII.

arise where the suffering alone is severe enough to warrant humanitarian intervention even though international peace is not apparently at risk. Is it morally defensible to allow the use of force to preserve peace and security, but not to alleviate massive human suffering? Or, are the dangers of war so profound that the use of force in support of relief simply poses too great a risk to the peace?

Despite its weaknesses, the "threats to international peace" justification for forcible humanitarian intervention is a necessary and valid tool for overriding sovereignty and should be further developed. Most cases of massive displacement and grave human rights violations will pose obvious threats to international peace and will thus fit squarely within Charter principles. The legality of forcible relief, however, should not be denied solely because a particular human tragedy fails to put other countries at risk. International law should recognize massive human suffering, in its own right, as a legitimate challenge to sovereignty for purposes of both forcible and non-forcible humanitarian intervention. At a minimum, the international legal system should recognize that large-scale atrocities and extensive human displacement constitute inherent threats to the peace, even where such threats are not yet apparent.²⁷ This acknowledgment would simply involve an interpretation of Charter language that is consistent with evolving notions of peace and security. At a January 1992 special meeting attended by heads of state, the U.N. Security Council specifically acknowledged that "non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security."²⁸

Another approach would be to carve out an entirely separate exception to sovereignty based solely on "massive human suffering" where a state causes the tragedy or denies access to relief. Such an exception would allow the Security Council to authorize non-forcible or forcible humanitarian intervention regardless whether the situation posed a threat to international peace. Appropriate circumstances for intervention would need to be identified and could include natural and human-made disasters, genocide, other large-scale human rights atrocities, and internal aggression placing large numbers of people in life-threatening danger. Clearly a more drastic step, this "pure" human suffering approach to humanitarian intervention offers greater intellectual integrity by allowing issues of suffering to be discussed on their own terms instead of being folded into the package of peace and security. Any move to adopt formally a separate "human suffering" justification for forcible intervention would likely require amendment of the U.N. Charter. Such an effort would be unlikely to succeed in the near future, and the attempt itself might risk weakening the gains already made in challenging sovereignty for humanitarian purposes. Many states continue to oppose any diminution of absolute sovereign power.

Significant steps have been taken toward eroding sovereignty to accommodate non-consensual relief efforts. Today, there is a legal framework that can support non-forcible intervention to protect and assist populations that are

27. Scheffer, 287.

28. UN Security Council. Summit Declaration. UN Document S/3046. New York, 31 January 1992.

severely abused and displaced within the borders of hostile governments, and to provide forcible relief where the humanitarian crisis threatens international peace and security. The legal system must be pushed to achieve the appropriate balance between states' rights and international human rights. Only then will there be opportunity for a consistent and humane response from the international community to tragedies within sovereign borders.

The Process

A humanitarian intervention that is legal will not necessarily be prudent. While there may be a right under international law to override assertions of sovereignty in a given instance, the risks may be too grave. Given an adequate legal framework, what should be the process for making decisions about and implementing forcible and non-forcible interventions? The central principle of any process must be collective decisionmaking. In the post-Cold War era there is new opportunity for collective action within the United Nations. Collective action will decrease the ability of individual states to use humanitarian intervention as a pretext for interfering in another state's affairs. The Security Council is currently an appropriate body to handle such decisions since it already rules on the use of collective action under Chapter VII of the Charter. The question arises however as to whether the Security Council will show the same commitment to human rights as it does to the states that constitute its membership.

While collective decision-making may ferret out biased national interest from truly humanitarian motives, it raises other problems. Governments can hide under the cloak of the United Nations as an excuse for not taking action. Or, the Security Council may simply provide a cover for the United States and its allies to do as they wish. Developing countries fear reliance on a Security Council in which they lack adequate representation. To alleviate some of these concerns, the United Nations should work closely with regional organizations such as the Conference on Security and Cooperation in Europe (CSCE), the Council of Europe, the Organization of the American States (OAS), and the Organization of African Unity (OAU), recognizing that they are the first line of international response to such crises.

The Security Council should automatically review all severe humanitarian crises where governments block access to aid. An automatic review based on objective factors would reduce the *ad hoc* nature of decisionmaking and ensure that suffering individuals, no matter where they are, receive full consideration of their need for relief. Victims from geo-politically "insignificant" countries must receive the same timely attention as their resource-rich counterparts throughout the world. Objective factors that have been proposed to trigger Security Council review include: the number of persons affected; the immediacy and severity of the threat to life; substantial flows of refugees or displaced persons; a pattern of significant human rights abuses; and the inability or unwillingness of the government to cope with the crisis.²⁹ A separate monitoring

29. Larry Minear, Thomas G. Weiss, and Kurt M. Campbell, "Humanitarianism and War: Learning the Lessons from Recent Armed Conflicts," *Occasional Paper*, 1991, no.8 (Thomas J. Watson, Jr.

body could initially screen for these factors by examining all situations of natural and human-made disasters, displacement of populations, and internal aggression that place large numbers of people at risk.

Once the Security Council determines that assistance is in order, it should attempt to obtain cooperation of the recalcitrant host country. Absent such cooperation, the Security Council should follow clear sequential steps of escalating interference, as necessary, to assist and protect the endangered population. The government should be made aware that if it does not comply and allow relief, it may expect with certainty that further measures will be taken.³⁰

Every effort must be made to use only non-forcible intervention including diplomatic measures, General Assembly and Security Council resolutions, cross-border operations by nongovernmental organizations, negotiation of relief corridors and cease-fire zones, reports to U.N. and regional human rights bodies, prosecution of crimes against humanity, arms embargoes, air drops of food and supplies, and carefully devised trade embargoes.³¹

Forcible intervention should be used only as a last resort. When other measures fail and when massive loss of life is imminent, the Security Council may authorize force in support of relief efforts under current law should it decide a threat to international peace exists. While there should be no unilateral decisions to use force, there may be rare occasions when the military forces of only one state are available or best suited to implement a collective decision to provide forcible relief.

The intervention must be necessary, proportionate and strictly limited to its humanitarian purposes. It must not be used, for example, to overthrow a government or to gain territory. This approach preserves the true humanitarian nature of the intervention and discourages the use of force as a pretext for political interference. Nonetheless, such limitations raise important questions about "helping the besieged without ending the siege," keeping victims alive only to be struck by the next bullet or to take up arms themselves.

It is not enough to challenge abuses of sovereignty and develop effective processes. The international community must strengthen the capacity of international institutions to respond to emergencies. Much has been written about the need for institutional changes including refining U.N. emergency procedures, improving coordination, and employing development expertise throughout the aid system.³² In addition, it is time for the states to consider placing standing military forces with the United Nations as set forth in Article 43 of the Charter.³³ Such forces would add weight, capacity, and credibility to U.N. demands placed on abusive governments.

Institute for International Studies): 42-43; Chopra and Weiss, 113.

30. See, for example, James H. Anderson, "New World Order and State Sovereignty: Implications for UN-Sponsored Intervention," *Fletcher Forum of World Affairs* Vol. 16, num 2 (Summer 1992): 137.

31. See, for example, Scheffer, 266-70.

32. See, for example, Minear, 17-9, 42-8. Steps taken to date include establishment in 1992 of the new position of Under-Secretary General for Humanitarian Affairs.

33. "All Members of the United Nations, in order to contribute to the maintenance of international

Improved crisis management, however, should not blur the need for early warning mechanisms, diplomatic measures, peaceful approaches to conflict resolution, political initiatives, and long-term development to provide meaningful solutions and prevent further tragedies.

As we struggle to respond effectively to the crises that emerge out of every corner of the globe, we should reflect on gains made in this century to protect individuals through international law. New balances between sovereignty and suffering bring an opportunity to assist and protect victims against the express wishes of abusive governments. The international community must push law and practice one step further to establish consistent ethical grounds and processes to bring humanitarian aid to massive human suffering within sovereign borders. It is time now to recognize that individuals displaced and in grave danger within their own countries are as much a matter of international concern as those able to flee across borders. Failure to attend now to these issues will ensure that more children die in the next catastrophe while the international community fumbles for a response.

peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities....”
UN Charter, Article 43.



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