The Doctrine of Humanitarian Intervention: A Double Standard?*

1. A Right of Humanitarian Intervention?

The most central role of modern international law has been the prevention of war and the use of force between States. After the devastation of two world wars in the twentieth-century, the nations of the world focused upon the promotion and protection of international peace and security when the United Nations Charter was signed in 1945. The Charter contains a system of collective security in order to maintain international peace and to prevent the "scourge of war"[1]. Within this system, the Security Council has the primary responsibility of maintaining the peace, and "enjoys a legal monopoly over the use of force"[2] (except in the case of self-defence from armed attack in Article 51). Article 2(4) prohibits the use of or threat of force between states, while Chapter VII of the Charter contains "an elaborate system of economic, political and military enforcement measures against aggression"[3].

To implement the Chapter VII procedure, the Security Council must first determine that there has been a "threat to the peace, breach of the peace or act of aggression" under Article 39[4]. The Security Council may then authorize the use of force (Article 42) or apply sanctions (non-military enforcement actions) through Article 41, in order to remedy the situation. Although it is generally agreed that the prohibition on the use of force is "not only treaty and customary law but is also *ius cogens*, there is no comparable agreement on the exact scope of the prohibition"[5].

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[1] Charter of the United Nations, http://www.unhchr.ch/html/menu3/b/ch-pream.htm , 1945; Preamble.

[2] Steiner, Henry J., and Alston, Philip; "*International Human rights in Context: Law, Politics, Morals*", (Oxford, Oxford University Press, 2nd edition, 2000) p.649.

[3] Malanczuk, Peter; "*Akehurst's Modern introduction to International Law*", (London, Routledge, 7th edition, 1997) p.387.

[4] Chesterman, Simon; "*Just War or Just Peace? Humanitarian Intervention and International law*", (Oxford, Oxford University Press, 2001) p.124.

[5] Gray, Christine, " *International Law and the Use of Force*", (Oxford, Oxford University Press, 2000) p. 24.

Many commentators have argued that there exists an exception to the prohibition on force in Article 2(4), that is, the doctrine of humanitarian intervention. This doctrine dictates that the use of force is justified if a State intervenes in another in order to save lives or protect the basic human rights of a population. This use of force seems to fall outside the Charter since the 'invaded' State will not have consented to the intervention and the action does not have the authorization of the Security Council (it is a unilateral action which is supposedly taken when the collective security system of the United Nations fails to deal with the relevant situation). However, proponents of humanitarian intervention justify the doctrine on the basis that there seems to be an inherent tension in the Charter between the prohibition of the use of force and protection of States' sovereignty on the one hand, and the protection and promotion of human rights on the other (governed by Articles 1(3)[6], 55 and 56[7] of the Charter).

This tension became especially relevant in the 1990s as a result of two incidents which were perceived as demonstrating the failure of the United Nations system. Firstly, the genocide in Rwanda in 1994 was completely ignored by the international community; the world stood by as people were systematically massacred[8]. Secondly, when UN troops stood by as civilians were slaughtered in the town of Srebrenica in Bosnia in 1995, a so-called UN "safe-haven", there was public outcry at the shameful inaction of the United Nations in the face of such flagrant abuse of human rights[9]. The shortcomings of the United Nations' system became painfully obvious in the light of these tragic incidents which shocked the conscience of the world.

While the reasons for acceptance of a doctrine of humanitarian intervention become compelling in such circumstances, it is not without its difficulties. The UN Charter, as well as decisions of the General Assembly and the International Court of

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[6] Article 1(3): "The Purposes of the United Nations are (…) [t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination as to race, sex, language, or religion".

[7] Articles 55 and 56: All members pledge to take joint and separate action in cooperation with UN to achieve creation of conditions of stability and well-being necessary for peaceful and friendly relations among nations, by promoting [*inter alia*] universal respect for, and observance of, human rights and fundamental freedoms for all.

[8] Human Rights Watch; " *World Report 2000* ", Human Rights Watch, New York, 1999; p. xiv.
Ibid. p. xv.

[9] *Ibid.*

Justice (ICJ), indicates that no such right exists; it is unequivocally illegal. However, in recent times, many have argued that it is legitimate despite being illegal[10]. NATO's recent intervention in Kosovo in 1999 was seen by many as a truly just war; a paradigm of humanitarian intervention. In the face of human rights abuses committed by Serbian forces in Kosovo against ethnic Kosovar-Albanians, NATO decided to act without the authorization of the UN Security Council. While this demonstrates a new willingness amongst certain States to intervene in a situation of humanitarian disaster (an initiative welcomed to a certain extent by the UN Secretary General)[11], it also perhaps heralds the demise or undermining of the United Nations security system. In this instance a regional organization decided to act in breach of the UN Charter's prohibition on the use of force; NATO did not seek Security Council authorization for their intervention since they knew that China or Russia would veto such an action. By circumventing the Security Council, NATO could set a dangerous precedent where the powerful countries can deviate from accepted international law and systems if they wish and if it suits their interests. This is a stark indication of the double standards inherent in the doctrine of humanitarian intervention.

The fact is that most cases of humanitarian intervention have been carried out by Western countries against poorer or Third World countries. While some cases involving non-Western States have been cited by some commentators as examples of humanitarian intervention, these "have not been unequivocally characterized as humanitarian intervention by their non-Western protagonists (India in 1971, Vietnam in 1979 and Tanzania in 1979)"[12]. Christine M. Chinkin argues that "[t]he alleged doctrine seems to exemplify international lawmaking by the West for its own application, in the name of its "civilizing" mission…The West assumes that its wealth, power and assurance bestow a normative authority that discounts alternative views. Accordingly, it is hard to envisage that other States would be able to undertake such a campaign, either unilaterally or together, against the wishes of permanent members of the Security Council and without

[10] Independent International Commission on Kosovo; " *The Kosovo Report*", http://www.kosovocommission.org/reports/index.html , October 23rd 2000.
[11] UN Press Release; " Secretary-General Presents his Annual Report to General Assembly", SG/SM/7136, GA/9596, September 20th 1999.
[12] Chinkin, Christine M.; "Kosovo: A "Good" or "Bad" War?", in: " Editorial Comments: NATO's Kosovo Intervention", AJIL 93(1999) 4, p.841, at p. 846

being challenged by them."[13]. It is also argued that intervention has been highly selective, representing the individual interests of the powerful (thus Kosovo was of interest to NATO as regards stability in Europe). Intervention is seen by many as a blunt weapon of Western hegemony, which serves the interests of powerful Western States. Its application has involved serious double standards, which cause understandable doubt and suspicion as to the true motives and intentions of those powerful States that have used this doctrine to legitimize military intervention in other States.

The circumventing of the UN by NATO and its implicit snub to the primacy of the Security Council in the maintenance of peace and security is also an example of the double standards inherent in humanitarian intervention. While NATO countries intervene in States which they claim are breaching international law and human rights law, at the same time the intervening States openly breach the very international law they hold out to be so essential. It seems there is a double standard in the application of international law to individual States. Some Western States act with impunity towards the law while simultaneously punishing others for doing likewise. Noam Chomsky points out that while Turkey participated in the NATO bombing of Kosovo; Turkey itself has committed many atrocities against its Kurdish population, with US weaponry.[14] In relation to the bombing of Kosovo itself, it is contended that NATO was itself in breach of humanitarian law as a result of the way in which the intervention was carried out.[15] Many civilians were needlessly killed, and during the 78-day campaign, NATO deliberately bombed civilian targets such as bridges, hospitals, TV stations, and oil refineries, and also hit the Chinese Embassy in Belgrade.[16] This was in direct contravention of the principles of humanitarian law, yet it seems that no NATO official will be held accountable for such atrocities.

2. Instruments of Hegemony: The Double Standard

[13] *Ibid.*
[14] Chomsky, Noam; " *The New Military Humanism : Lessons From Kosovo* ", (Pluto Press, London, 1999) p.13.
[15] Amnesty International; " Collateral Damage or Unlawful Killings?: Violations of the Laws of War by NATO During Operation Allied Force ", Amnesty International, http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/EUR700182000ENGLISH/$File/EUR7001800.pdf, 2000.
[16] *Ibid.*

Post-Cold War colonialism through economic and military intervention

While it is clear that a 'humanitarian intervention' may, in rare circumstances, remedy a crisis situation, the instances of intervention carried out by Western states in the 1990s have served to illustrate the problematic and highly controversial nature of such action. Krisch notes that the "defenders of a right to intervene on humanitarian grounds have consistently laid claim to a higher morality than their opponents. Yet the history of humanitarian interventions is one of abuse, and the loss of blood incurred in its course draws into doubt this moral high ground."[17]. In fact, many Western states and regional organizations (such as NATO) have attempted to contort international laws to suit their interests. In the Kosovo crisis for example, NATO avoided seeking Security Council approval for intervention, as they feared a veto by Russia and China[18].

Another method used by powerful nations against rogue states is economic intervention, or sanctions. The Security Council of the United Nations has used economic sanctions as a mechanism to force a state to comply with international law when that state is seen to be a threat to international peace and security. The use of economic sanctions has in recent times become an extremely controversial issue due to their hugely deleterious effects on a state's civilian population. Referred to as a "blunt instrument"[19], economic sanctions tend to hit the entire population rather than the targeted political regime. Unfortunately such sanctions have been enforced by the Security Council without proper regard for humanitarian and human rights issues, resulting in needless human suffering and degradation.

Not only has the use of sanctions by the UN Security Council increased dramatically in the last decade, but regional bodies and individual states acting unilaterally have also resorted more frequently to this coercive tool. These regionally

[17]Krisch, Nico; "Review Essay: Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo", EJIL (2002), Vol. 13 No. 1, 323-335; p.324.

[18] Chinkin states; "[t]his disregard at the behest of a regional defence organization dominated by the sole remaining superpower reveals the "new world order" as a Western hegemon. The Security Council is resorted to, or not, according to the likelihood of conformity within it and the "reinvention" of NATO in the post-Cold War era is at the expense of the agreed normative order": Chinkin, Christine M.; "Kosovo: A "Good" or "Bad" War?" AJIL, 93 (1999) 4 p. 841, at pp. 843-844

imposed sanctions are permissible, even without the express permission of the Security Council, provided they are "consistent with the Purposes and Principles of the United Nations" (Article 52 of the Charter). Sanctions have been especially popular as a foreign policy tool of individual powerful states as they represent a "middle ground"[20] or "third choice"[21] between doing nothing on the one hand, and the full military use of force on the other. Sanctions are sometimes seen as a cheaper method of action and enforcement (rather than expensive military interventions), which are, in addition, "politically tempting instruments for governments to satisfy domestic constituencies by demonstrating an ability for action, that the government can do something."[22]

While it is evident that the recourse to sanctions in recent years has escalated enormously, it is also notable that many of the states targeted by UN sanctions are either "Third World" countries (and thus already economically weak), or Muslim states. As a result, these sanctions are often seen by many as reaffirming and compounding the global economic and political divide between the "Western" powers and the rest of the world. Sanctions are therefore regarded by some as a perpetuation of "Western" hegemony[23]; coercive and oppressive implements which are applied unevenly and unfairly to protect rich Western states' economic interests. Since the majority of the "permanent five" members of the Security Council who must vote in favour of sanctions are rich Western states (US, UK and France; the other two permanent members are Russia and China), many people living in states under UN sanctions suspect that sanctions are weapons wielded by the rich states to further their own interests.

Denis Halliday, the former United Nations Humanitarian coordinator in Iraq (who resigned from his position in 1998 in protest at the continuing suffering inflicted on the Iraqi civilian population by UN sanctions), has stated that "….member states, particularly

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[19] Paul, James A., and Alchtar, Senwan; "Sanctions: An Analysis", http://www.globalpolicy.org/security/sanction/analysis2.htm , Global Policy Forum, August 1998; p. 1.
[20] Bossuyt, Marc; "The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights", http://www.globalpolicy.org/security/sanction/unreports/bossuyt.htm, Working paper prepared for the Sub-Commission on the Promotion and Protection of Human Rights, Fifty-second session (E/CN.4/Sub.2/2000/33), June 2000; par. 9.
[21] The House of Commons Select Committee on International Development; "*Second Report*", http://www.publications.parliament.uk/pa/cm199900/cmselect/cmintdev/67/6702.htm , January 2000; par.14.
[22] *Ibid.*
[23] Arnove, Anthony (ed.); "*Iraq Under Siege: The Deadly Impact of Sanctions and War*", (London, Pluto Press, 2001) p. 13.

of the Security Council, manipulate the organization for their own national interests"[24]. He has also branded economic sanctions as "a totally bankrupt concept"[25] which decimates vulnerable sections of the population and fails to achieve its objectives of bringing a change in the political regime of the target state. Indeed, an inequality inherent in economic sanctions is that they are essentially mechanisms that can only be used effectively by rich and powerful states against weaker and poorer states, and are thus open to abuse.[26]

The 'humanitarian' nature of economic and military interventions have therefore often been questioned, as they are carried out by the powerful states who will usually be suspected of twisting or manipulating the law for their own benefit and interests. In practice, there are very few 'humanitarian interventions' despite the fact that there are many humanitarian crises in the world. This element of selectivity also calls into question the true 'humanitarian' nature of such actions. For example, why intervene in Kosovo and yet do nothing when mass genocide takes place in Rwanda in 1994?

It certainly seems that powerful states may be reluctant to intervene if they have no obvious or pressing interest in the country concerned (as in the case of Rwanda). Such reluctance is especially evident if the source of concern is the actions of a powerful state that would strongly oppose any external intervention in what it claims is its territory (e.g. Tibet from 1950 onwards, and Chechnya from 1994 onwards)[27]. This is further evidence of the double standards inherent in the practice (or manipulation) of international law by the powerful.

Do intervening forces themselves respect the law?

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[24] *Ibid*. p. 38.
[25] BBC News; "Middle East UN Official Blasts Iraq Sanctions" , http://news.bbc.co.uk/hi/english/world/middle%5Feast/newsid%5F183000/183499.stm , September 1998.
[26] Gordon, Joy; "A Peaceful, Silent, Deadly Remedy; The Ethics of Economic Sanctions", 13 Ethics and International Affairs 123 (1999); in: Steiner, Henry J., and Alston, Philip; "*International Human rights in Context: Law, Politics, Morals*", (Oxford, Oxford University Press, 2nd edition, 2000) p. 669: "sanctions are not a device realistically available to small or poor nations that can be used with any significant impact against large or economically dominant nations, even if the latter were to, say, engage in aggression or human rights violations, or otherwise offend the international community."
[27] Roberts, Adam, "Intervention: Suggestions for Moving the Debate Forward", Round Table Consultation, London, 3 February 2001, Discussion Paper of the International Commission on Intervention and State Sovereignty.

There certainly is general agreement that an intervention must be 'humanitarian' in its implementation in that it must conform to essential norms, such as the law of armed conflict. However the observance of such norms by intervening forces has been problematic.

Roberts states that it is vital that the actions of intervening troops or forces are open to investigation to ensure that they have conformed to the necessary humanitarian laws. While the prosecution and punishment of such crimes are normally carried out by the national courts of intervening states, "the question of supranational jurisdiction has arisen in connection with the International Criminal Tribunal for the former Yugoslavia (ICTY), and the planned International Criminal Court (ICC). In respect of both, there has been particularly strong opposition in the USA to any suggestion that US forces acting abroad should be subject to investigation by an independent prosecutor. Since the USA has taken the lead role in several military operations with humanitarian objectives, its objections to international tribunals are worrying, and confirm that the concept of humanitarian intervention is far more complex in reality than it is in theory"[28]. This again demonstrates the apparent double standards in the application of international law by the powerful states.

There is a noticeable hypocrisy in those who use humanitarian intervention as grounds for intervening in another state. Rather than a brave new world, it is perhaps a new world order in which powerful western nations do as they wish in order to further their own interests, even if that means breaching well established international law. Aside from the question of violations of humanitarian law which may occur during a military intervention, the 'great powers' (especially the US) have shown their unwillingness to be bound by or accede to internationally agreed standards of human rights protection, environmental standards, etc. (thus the US refusal to sign many important human rights treaties, its rejection of the Kyoto Convention, and its refusal to sign the Statute of the International Criminal Court unless its citizens would be exempt from prosecution).

Marginalisation of the UN?

[28] *Ibid.*

Whitman notes with concern that the NATO intervention in Kosovo has been interpreted by many as setting a precedent for a more flexible interpretation of Article 2(4) of the UN Charter. Whitman argues that 'hard cases make bad law' and to amend such a fundamental international rule on the basis of NATO's essentially illegal actions in the complex Kosovo conflict would be folly[29]. As Oscar Schachter has stated, "to adopt [such] a principle (…) would open a wide gap in the barrier against unilateral use of force (…) [and] could provide a pretext for abusive intervention"[30]. Whitman also expresses concern at the paucity of legal debate in relation to such important issues of international law, stating that "one of the most striking features of the post-Kosovo international climate is the extent to which legal debate appears to have been supplanted by political assertion – not least by NATO itself"[31].

Indeed speeches by the US Secretary of State Strobe Talbot and the US Ambassador to the United Nations Richard Holbrooke suggest that NATO, and more specifically the US, are not willing to be strictly bound at all times by the restrictions of the United Nations or of international law. There is now, therefore, a very worrying sidelining of longstanding and widely respected rules of international law by NATO and the US. In an international environment where the powerful states do as they wish regardless of the wider opinion of the majority of states, the authority and legitimacy of, and consequently future respect for, the rules of international law are severely undermined.

3. Dangers of the New Interventionism

This final section analyses the inherent prejudices involved in adopting the doctrine of humanitarian intervention and addresses the possible changes developing in international law as a result of the terrorist attacks of September 11th. Finally it examines the calls for

[29] Whitman, Jim; "After Kosovo: The Risks and Deficiencies of Unsanctioned Humanitarian Intervention", Journal of Humanitarian Assistance, 28 September 2000; http://www.jha.ac/articles/a062.htm.
[30] Quoted in Henkin, Louis; "Kosovo and the Law of Humanitarian Intervention", in: " Editorial Comments: NATO's Kosovo Intervention", AJIL 93(1999)4.
[31] *Supra* no.29.

reform of the UN Security Council and how this might pave the way for a principled doctrine of humanitarian intervention with less potential for abuse.

Crises and Moral Dilemmas

The Crisis Model

Charlesworth has expressed concern at using 'crisis' models for developing and understanding international law; "A focus on crises produces an impoverished set of substantive principles in international law"[32]. Thus, for example, focusing on NATO's intervention in Kosovo ('the Kosovo crisis') as a model for collective security in international law is questionable for a number of reasons. For example, crisis models assume that the facts of the situation are given, clear and indisputable[33]. However, Charlesworth notes that the facts in relation to the Kosovo crisis are in fact the subject of much dispute (thus the credibility of NATO negotiations with the FRY at Rambouillet are in doubt etc.), and so we are merely accepting a selective or biased account of a situation, upon which we then attempt to base legal principles[34]. Thus, "[m]uch international intervention is justified by presenting an image of the international community as acting in the interests of humanity and democracy, while ignoring the violence and injustice effected in the name of internationalism through military and monetary intervention."[35]

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[32] Charlesworth, Hilary; "International Law: A Discipline of Crisis", MLR, Vol.65, May 2002, pp.377-392; p.390.
[33] *Ibid.* p.382.
[34] For example, the traditional account for the origins of the conflict in Kosovo is deep-rooted historic ethnic tensions and primitive hatred, which flared up at the beginning of the 1990s. However, this narrative fails to identify the responsibility of the international community itself for the conflict: Ibid.; "[C]ommentators have begun to suggest that the programme of economic liberalization and restructuring of the state implemented by the international financial institutions of the World Bank and the IMF during the 1970s, 1980s, and indeed the 1990s contributed to the conditions that inflamed such hatreds". The international monetary organizations' policies fostered a sense that the federal Yugoslav government lacked legitimacy, and this contributed to the rise of nationalism, which ultimately led to bloody ethnic conflict: Orford, Anne; "Locating the International: Military and Monetary Interventions after the Cold War", 38 Harv. Int'l L.J. 443; at p.452 [LEXIS]
[35] Orford, Anne; "Muscular Humanitarianism: Reading the Narratives of the New Interventionism", EJIL, 1999. Vol. 10 (679) No. 4 [LEXIS].

As Koskenniemi points out, defining an event as an international crisis is itself highly selective, and often the political bias and influences in making such a definition are obscured in this process[36]. Focusing all attention on how the law should fit and adapt to such 'moral' crises (like Kosovo) tends to obscure the real causes of conflict (which often involves the international community itself or draconian foreign policies of the intervening states), and indeed, masks the real crises in the world at present. "Our obsessive talk about Kosovo makes invisible the extreme injustice of the system of global distribution of wealth, reducing it to the sphere of the private, the unpolitical, the natural, the historically determined"[37].

The use of force merely deals with the symptom of such 'crises'. By calling such military interventions 'humanitarian', the justification for the resort to military force is deemed self-evident, thus implicitly rejecting any need for an inquiry into the true motives for such an intervention. The intervening forces are seen as the humanitarian 'heroes', whereas the 'enemy' is immediately dehumanised and regarded as morally inferior or 'evil'. Such terminology is unhelpful as it implicitly and dogmatically refutes any other possible interpretation of the situation, and provides the intervening forces with an impregnable cloak of legitimacy. Crises cannot properly be resolved if treated in this way, as the true causes of conflict are suppressed for the benefit of the powerful states that intervene. Koskenniemi notes that by focusing on crises such as Kosovo, we can conveniently forget the other shocking crises in the modern world; i.e. the deep inequalities and exploitation that have sustained the wealth of Western economies[38].

Moral Dilemmas

[36] Koskenniemi, Martti; "The Lady Doth Protest Too Much': Kosovo, and the Turn to Ethics in International Law", MLR, Vol.65, March 2002, pp.159-175; p.160: "(…) the obsession to extend the law to (…) crises, while understandable in historical perspective, enlists political energies to support causes dictated by the hegemonic powers and is unresponsive to the violence and injustice that sustain the global everyday."

[37] *Ibid*. p. 172: "But what about the violence of a global system in which, according to the UNDP report of 2000, more than 30, 000 children die every day of malnutrition, and the combined wealth of the 200 richest families in the world was eight times as much as the combined wealth of the 582 million people in all the least developed countries".

[38] *Ibid.* pp. 172-173, "If international law is centrally about the informal management of security crises by diplomatic and military experts, then of course it is not about global redistribution: it is about upholding the status quo and about directing moral sensibility and political engagement to waging *that* battle. Kosovo and

The use of the argument of the 'moral dilemma' is particularly evident in the way that Western leaders often justify their interventionist policies by presenting a certain situation as a 'moral dilemma'. In such a simplistic presentation of facts, we are left with a stark choice; we either act or we do nothing. This moralistic type of argument completely obscures other possible alternative solutions (such as meaningful dialogue, mediation, and other non-violent solutions) which may in fact bring about a fuller and fairer resolution of a conflict by properly addressing all the different causes of the situation. Instead, the self-legitimating rhetoric of "muscular humanitarianism"[39] is propounded as the only 'moral' option available thus precluding any reasoned dissenting argument that might suggest an alternative solution. Thus Tony Blair represented the situation in Kosovo as a moral dilemma, saying that it was a case where the world had to do something or do nothing. Chesterman notes that this misrepresented the situation as it was not the world, but NATO, that was acting, and the simplicity of the moral argument obscured the fact that NATO's 'humanitarian' action would be by bombing from 15, 000 feet. In fact, this 'military humanism' "dismissed the possibility of any diplomacy other than that which followed guns and bombs."[40] Such 'moral dilemma' arguments have been frequently used by the US in promoting its recent 'War on Terror'.

Use of Force after September 11th

The terrible events of September 11th are a very recent example of a major crisis situation that has led to potentially far-reaching and draconian changes in domestic and international laws. Somewhat hasty reactions to the terrorist attacks on the US have included massive changes in anti-terrorist laws throughout the world that have had the disturbing effect of significantly curbing civil liberties. The US has also refused to treat

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its civilian deaths spell anxiety, a recognition of the insufficiency of existing rules and principles, a call for moral sensibility. Hunger and poverty do not."

[39] *Supra* n. 35.

[40] Chesterman, Simon; "Just War or Just Peace? Humanitarian Intervention and International Law", Chapter 6: "*Just War or Just Peace? Humanitarian Intervention, Inhumanitarian Non-intervention, and Other Peace Strategies*", (Oxford University Press, Oxford, 2001) p.221.

certain captives from its war in Afghanistan as prisoners of war within the meaning of the Geneva Convention. Interestingly, many governments with a history of human rights abuses have also used the 'War on Terror' as an excuse to justify further human rights violations against minority groups.

By using the language of 'war', the US has labelled the enemy as terrorist "other" who is evil and aggressive. By contrast, the US is then portrayed as good. Bush has set up a rhetoric of 'good v. evil', the 'Allies v. the Axis of Evil'. By identifying the enemy as evil, one can again posit a moral dilemma: in the face of evil, does one act or remain passive and become implicit in that evil? This presentation of the situation precludes a more nuanced approach, and instead forces the conclusion that the only answer is military power and violence. Indeed, the use of the term " 'war' merely serves to delude us into believing that the problem can be 'defeated' rather than solved. (…) serious political debate is marginalized as an appendix to the war effort – a ratification chamber rather than any remotely illuminating prism."[41]. Many of the facts and much of the background is concealed by this militaristic rhetoric. Thus, as Cassese points out[42], problems such as "poverty, economic, social and cultural underdevelopment, ignorance, lack of political pluralism and democracy, and so on" are rampant in a world where inequality is sustained by the aggressive economic exploitation of Third World States by Western States. "It stands to reason that all these phenomena lie at the root of terrorism and contribute to fuel hatred and bigotry."[43] Such social inequalities must be overcome in order to build a lasting peace for the future, yet these factors are not even considered when one adopts the rhetoric of war against an evil enemy[44]. The West must recognise its own responsibility for creating these terrorists; i.e. the gross inequalities evident in the modern world.

Mégret notes that the US has also perhaps tried to avoid the constraints of international law by using the language of 'war': "The use of the term "war" (…) is

[41] Mégret, Frédéric; " 'War'? Legal Semantics and the Move to Violence. ", EJIL 2002. Vol. 13(361)No. 2; p.387.
[42] Cassese, Antonio; "Terrorism Is Also Disrupting Some Crucial Legal Categories Of International Law", EJIL 2001. Vol. 12 (993) No 5. [LEXIS].
[43] *Ibid.*
[44] *Supra* n. 4, p.390, "By constructing an enemy akin to 'fascism, Nazism and totalitarianism' that must be defeated or eradicated physically, and by focusing obsessively on Al-Qaida rather than Al-Qaida's

indistinguishable from a broader strategy of violence legitimisation that permeates many psychological and collective responses to the 11 September attacks."[45]. There seems to be a dangerous open-ended quality to the use of force by the US in its 'war against Terror'. Byers suggests that this was a deliberate strategy by the US in order to make use of international goodwill to the US in the aftermath of the terrorist attacks and to secure support for a right of self-defence against States which harbour or sponsor terrorists which have attacked the aggrieved State[46]. Thus, if the US had requested Security Council authorization to use force, the use of force could have been strictly limited in time and scope. Similarly, if the US had pleaded humanitarian intervention (due to the humanitarian crisis the civilians in Afghanistan were facing under the Taliban-ruled State), its use of force would have been limited by the humanitarian nature of the intervention[47]. Therefore, Byers suggests that the choice of justification was "a strategic decision directed at loosening the legal constraints on the use of force to the *ongoing* advantage of the US"[48].

It seems that the definition of self-defence within the UN Charter may also have been widened considerably in the wake of the US attacks on Afghanistan in response to the attacks of September 11th. The implications of Bush's 'War on Terror' will be far-reaching for issues relating to the use of force. While the UN Security Council recognised "the inherent right of individual or collective self-defence in accordance with the Charter" (Security Council Resolution 1368 September 12th 2001, and reaffirmed in Security Council Resolution 1373 September 28th 2001), the US has declared that it is ready to carry its war to other areas of the world in order to suppress and destroy terrorism wherever it may be. Bush stated that: "our war on terror (…) will not end until every terrorist group of global reach has been found, stopped, and defeated."[49]. This 'war' could be potentially infinite (indeed the US military response to the terrorist attacks was first named Operation Infinite Justice, again suggesting that the US would continue

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immense breeding ground, the rhetoric prevents one from paying serious attention to the political circumstances that have led to terrorism."

[45] *Ibid*. p.365.

[46] Byers, Michael; "Terrorism, the Use of Force and International Law after 11th September", Vol. 51 ICLQ No. 4, April 2002, p401 at pp.408-410.

[47] *Ibid*. p.405.

[48] *Ibid*. p.410.

[49] *Supra* n. 41, p.380.

to use force indefinitely and at its own discretion). Here the UN Charter risks being turned upside-down, since the US may be effectively justifying a permanent recourse to force.

Thus Mégret notes that the use of the term 'war' by the US while justifying its actions legally by self-defence brings about an imperceptible shift from a self-defence used against terrorism to a self-defence against all States suspected of sympathizing with terrorists[50]. This widening of the right to self defence is worrying, and seems to stretch the relevant Security Council Resolutions beyond what they were intended to authorise (although resolutions 1368 and 1373 are admittedly ambiguous). More recently, the US has sought to attack Iraq and possibly aim at removing Saddam Hussein from power as part of its wider war on terror, claiming that the authoritarian Iraqi regime is engaged in amassing weapons of mass destruction with the possible intent to attack Western states or supply such weapons to terrorists to use against US interests. While the US seemed to show its will to act unilaterally and attack Iraq regardless of the views of the international community, it has more recently admitted the authority of the UN Security Council on such matters, by seeking a resolution which would force Iraq to unconditionally accept weapons inspectors or face military intervention (by the US). This is, at least, a small reassurance that the important institutions of the UN will not be sidestepped as part of a US aggressive unilateral strategy in the wider war on terror[51]. However, it seems that the dangers of a far-reaching erosion of the principles of Article 2(4) may be realised in the wake of the events of this last year. "The events of 11 September have set in motion a significant loosening of the legal constraints on the use of force, and this in turn will lead to changes across the international legal system. Only time will tell whether these changes to international law are themselves a necessary and proportionate response to the shifting threats of an all too dangerous world."[52]

Security Council Reform

[50] *Ibid*. p. 379.
[51] "The United States response to the terrorist attacks of 11 September 2001 was encouraging for those who worry about a tendency towards unilateralism on the part of the single superpower. The US deliberately engaged a number of international organizations and built an extensive coalition of supporting States before engaging in military action." *supra* no.46 p.401.
[52] *Ibid*. p. 414.

There has been much debate in recent times as to the desirability of the reform of the UN Security Council. Playing such a central role in the maintenance of international peace and security, it is vital that the Council is reformed in order to make it a more effective entity in modern times. A Security Council with a reformed veto process, or perhaps even the eradication of the veto altogether (except, for example, if it directly affects the immediate interests of one of the Permanent Members) may be the way forward. This may lead to more effective responses from the Security Council in time of crisis, and may avoid the possibility of ineffectiveness in the face of grave humanitarian situations in the future, such as happened in the case of Rwanda. A more geographically representative Security Council may also deal more effectively with the severe economic inequalities which are such a primary cause of conflict in modern times.

However, it must be remembered that the organization that preceded the United Nations, the League of Nations, failed in its goals of preventing wars amongst nations due principally to the fact that the world's largest superpower, the US, refused to take part in the organization. The League of Nations lacked the powers to credibly back up its decisions and recommendations, and thus those who were determined to aggressively use force to conquer territories in the 1930s went unpunished, and World War could not be averted. While the community of states of the 21st century represents a very different reality to that which faced the ill-fated League of Nations eighty years ago, it should be borne in mind that the preservation of international peace and security can only be credibly maintained by a United Nations Organization that includes the great military power of the US. It is only through credible central institutions, which represent all aspects of the global community, that international threats to security may be properly resolved. Thus, it is also extremely important that the Security Council is reformed at least to a certain degree, for example, to make it more geographically representative. The world has changed much since 1945, and many of the 'great powers', which hold a permanent seat and a veto on the Security Council, are no longer the global power they once were. A debate has been raging within the United Nations over the last decade or so as to how to reform UN institutions in order to make them more effective and appropriate in our modern globalized world. It is important that some reforms are achieved, thus

making the Council more accountable, democratic, transparent, and ultimately more credible as the 'protector' of international peace and security.

Conclusion

The developments in enforcement actions seen over the last decade, and especially the unilateralism exhibited by the US in its 'War on Terror', seem to show a growing policy of intervention at the expense of absolute state sovereignty. While the dangers of a hegemonic power flagrantly abusing such interventionism, in the form of a kind of 'civilising colonialism', are clear, such a development would not be without its benefits. It is clear that the international community of states now takes more seriously than ever the protection of human rights and the security of the person, and regards flagrant violations of such rights as a threat to international peace and security. While the total erosion of Article 2(4) would be disastrous, it must be acknowledged that if states were allowed to violate fundamental human rights with impunity, faith in the effectiveness of the rule of law would be much diminished. While the use of military force would normally not be the preferred method of safeguarding violations of human rights, in very rare cases it may be the only effective means of preventing the mass slaughter of civilians.[53]

However, such future humanitarian interventions should not be simply restricted to regions of European or American national interest.[54] If the Security Council is seen to be a fair and transparent institution safeguarding the common interests of all the peoples of the United Nations, rather than the geopolitical interests of a powerful few, the institutions of the UN, so vital to the maintenance of international peace and security, will be strengthened and viewed with more respect by the people of the world. It is also imperative that the Council, and the Member States of the United Nations endeavour to

[53] As the UN Secretary General stated in his annual report to the UN General Assembly in 1999, referring to the genocide which took place in Rwanda in 1994; "If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?", Annual Report of the Secretary General to the General Assembly 20 September 1999.

[54] . "If the new commitment to intervention in the face of extreme suffering is to retain the support of the world's peoples, it must be – and must be seen to be – fairly and consistently applied, irrespective of region or nation. Humanity, after all, is indivisible". *Ibid.*

uphold and effectively protect fundamental human rights at all times. "If the collective conscience of humanity – a conscience which abhors cruelty, renounces injustice and seeks peace for all peoples – cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice."[55] Thus, principled reform (including a possible General Assembly Declaration on Humanitarian Intervention) is vital to eradicating much of the double standards that are seen to undermine the legitimacy of the central institutions of the United Nations. This is an important task, as the effective maintenance of global peace may hinge upon it.

[55] *Ibid.*