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## The Dangers of Unregulated Humanitarian Intervention

### Introduction

Operation Allied Force was a key juncture for the normative thesis and NATO's intervention has been used as a springboard for broader international advocacy and a basis for the normative critique of existing international law. While the invasion of Iraq generated more international debate and public interest, the intervention in Kosovo arguably constituted a more important juncture in post-Cold War international relations. As David Armstrong and Theo Farrell note,

The Kosovo case illustrated, perhaps even more starkly than the Iraq case, the tension between law and legitimacy in the use of force. It also clearly demonstrated the tensions within international law – in the case between, on the one hand, the non-intervention and non-use of force norms and on the other, norms of human rights. Arguably, Kosovo also revealed the crusading militancy of liberalism.<sup>1</sup>

This tension between law and legitimacy has been a major catalyst for the normative thesis. Expressions of outrage and anger at the existing legal codes and structure of the UN system are common among supporters of humanitarian intervention. The existing system 'rewards tyrants',<sup>2</sup> respect for sovereign inviolability constitutes 'complicity in war crimes'<sup>3</sup> and Western democratic states are urged to 'develop the kind of moral sensitivity that will enable them to recognise what is the right thing to do in such appalling circumstances, and the strength of character to act upon this recognition'.<sup>4</sup> This 'strength of character' was ostensibly evident when NATO launched Operation Allied Force.

The great outpouring of support for NATO's intervention among Western states was echoed by human rights campaigners and sympathetic academics who rejoiced at the subversion of the old system. Bernard Kouchner, writing after NATO's intervention, heralded 'an irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents'.<sup>5</sup> Advocates of intervention identified the principles of sovereign inviolability and sovereign equality as particularly anathematic; Fernando Teson wrote, 'Non-intervention is a doctrine of the past. It feeds on illiberal intellectual traditions (relativism, communitarianism, nationalism and statism) that are objectionable for various reasons and that, where implemented, have caused grievous harm to persons.'<sup>6</sup> The progressive aspects of the UN Charter's codification of sovereignty, as identified in Chapter 2, were ignored.

International events since 1999, as detailed in Chapter 4, evidence a clear contrast between the theoretical evolution of international politics as predicted by the normative thesis and actual state practice. Chapter 5 explained the record of the normative thesis' prescriptions since Operation Allied Force by identifying those flaws inherent in the normative thesis which have militated against the achievement of the normative vision. This Chapter examines the negative consequences, both real and potential, of the normative thesis' prescriptions. The basic goal of the normative thesis – that of making the international system better able to halt and prevent suffering – is certainly worthy. It is the contention of this chapter, however, that the prescriptions advanced by the normative thesis are regressive and threaten international peace and stability.

### **The challenge to international law**

Chapter 2 highlighted the extent to which NATO's intervention in Kosovo constituted a breach of international law. The illegality of Operation Allied Force was, however, readily acknowledged by many of its supporters who argued that positive law regarding sovereignty is anachronistic and cannot be allowed to obstruct the alleviation of suffering.<sup>7</sup> While certain NATO officials did offer legal justifications for their actions this constituted a minor aspect of the overall rationale and was, to a large extent, tokenistic.<sup>8</sup> The major justification offered was thus undoubtedly the 'moral imperative'.<sup>9</sup>

Operation Allied Force constituted, according to Walter J. Rockler, a prosecutor at the Nuremberg War Crimes Trials, 'flagrant military

aggression [and] a war crime'.<sup>10</sup> Those who highlighted the illegality of the intervention, such as Rockler, were accused, however, of having 'indulged in a form of procedural fetishism by which a discredited veto system was considered more important than the prevention of crimes against humanity'. Arguments decrying the legality of NATO's actions ostensibly 'relied on a static interpretation of international law that ignored its tendency to evolve in accordance with custom and practice'.<sup>11</sup> NATO's breach of international law was portrayed as a petty, procedural issue compared with the magnitude of the moral benefits derived from the intervention. NATO's intervention was considered an instance when 'respect for the rule of law [was] sacrificed on the altar of human compassion'.<sup>12</sup>

The UN's authority and centrality in international relations was fundamentally undermined by NATO's actions. By the time of Operation Allied Force the UN had endured years of criticism for its structure, overly bureaucratic style and adherence to the ostensibly outdated and illiberal tenets of international law. A key aspect of the pro-intervention perspective was, and remains, the need to periodically bypass the organization. Tim Dunne and Nicholas Wheeler heralded the Blair government for its willingness to subvert the Security Council. Supporters of interventionism therefore advocated shifting the locus of power from the UN, and particularly the much-maligned Security Council, to certain states – those cognizant of human rights and altruistic in outlook – identified as 'norm entrepreneurs'.<sup>13</sup>

This retreat from the UN necessarily led to the emergence of a conception of the international system as comprising a core and periphery where the core states, due to their democratic and liberal composition, should be afforded special rights and privileges so as to enable them to both protect themselves and come to the aid of those suffering in the periphery. The existing provisions of international law explicitly outlaw such privileges and this aspect of the normative thesis thus constitutes a fundamental rejection of a key element of the UN system.<sup>14</sup>

This core–periphery dichotomy has become integral to the foreign policy outlook of many Western states, with the US and UK particularly supportive of the idea. As Michael Glennon observes, 'The West's new rules of thumb on intervention accord less deference to the old idea of sovereign equality ... The new posture recognises the hollowness of this concept, accepting that all states are not in fact the same in their power, wealth, or commitment to human rights.'<sup>15</sup> In particular, this latter 'commitment to human right' has come to be considered a key determinant

of a state's rights. Richard Haas, a foreign policy adviser in the Bush administration, succinctly captured the essence of this perspective:

Sovereignty entails obligations... If a government fails to meet these obligations, then it forfeits some of the normal advantages of sovereignty, including the right to be left alone inside your own territory. Other governments, including the United States, gain the right to intervene.<sup>16</sup>

This perspective clearly challenges existing international law and the authority of the UN. This is not, however, necessarily a negative development. The character of the international system has changed markedly since 1989 and attendant change in international law and the structures designed to administer it is thus conceivably warranted.<sup>17</sup> International law is also capable of evolution and historically has changed in tandem with great geopolitical shifts.<sup>18</sup> The issue is, therefore, whether the changes proposed, and in certain respects manifest, constitute a progressive development. The following sections outline the adverse consequences such developments have had, and may continue to have, for international peace and stability.

### **The end of the UN?**

The UN is neither dynamic nor fluid and its record on facilitating international peace and stability is decidedly mixed. It has regularly been criticized for failing to prevent and halt humanitarian crises, in particular the genocides in Rwanda in 1994 and more recently in Darfur. The UN's record on human rights promotion is also controversial; the United Nations Commission on Human Rights (UNCHD), which operated from 1946 until 2006, often provoked ridicule when states such as Libya and Saudi Arabia were elected as members. In 2004, in the midst of the crisis in Darfur, Sudan was elected onto the UNCHD, to general dismay. The UN's pronouncements and resolutions are routinely flouted or simply ignored. The composition of the Security Council is decidedly unrepresentative and while the General Assembly *is* representative, the powers vested in this institution are minimal. Scandals, such as those surrounding the Oil-for-Food-Programme and allegations surrounding sex abuse by UN peacekeepers, have further eroded the organization's reputation.

Those sympathetic to the UN can point to the organization's record in dealing with health hazards such as smallpox, the SARS virus and AIDS. Additionally, the UN has performed numerous global oversight functions, such as monitoring crime and narcotics statistics and policing nuclear

proliferation.<sup>19</sup> The UN High Commission for Refugees also constitutes a UN organ of wide repute. These positives, however, are pale in comparison to those more evident, high-profile failings such as the Rwandan genocide, the crisis in Darfur and the invasion of Iraq when the UN has appeared highly ineffectual.

A momentum in favour of ignoring or even disbanding the UN has thus gained currency in recent years. It is certainly clear that many neo-conservatives within the US wish to see the UN – ‘an abject failure’ – disbanded.<sup>20</sup> Though these arguments are not notable for their subtlety their critique is certainly consistent. The dominant perspective avowed by the normative thesis, however, lacks this consistency and coherence. According to David Clark, during Operation Allied Force, ‘the interventionists were at one in maintaining that the values of the UN Charter should be upheld even if it meant bypassing its institutions’.<sup>21</sup> To express support for the UN and then offer prescriptions which transfer vast powers away from the organization to Western states and global civil society is fundamentally contradictory and, as demonstrated by the US invasion of Iraq, untenable. Before examining the consequences of legitimizing the use of force outside of the UN framework, the following section will first examine the nature of the UN’s periodic paralysis in the face of humanitarian crises.

The Rwandan genocide and the crisis in Darfur are routinely cited by critics as instances of abject failure for the UN. It is questionable, however, whether the blame for the lack of action during these two crises can be levelled against the UN. Thomas Frank, for example, argues that the UN’s legal framework proved to be deeply flawed during the Rwandan genocide. He suggests it would have been worth deviating from the law to have enabled a force to enter Rwanda and stop the violence.<sup>22</sup> The lack of intervention was not caused, however, by the restrictions imposed by international law or the UN’s dogged adherence to these restrictions. Rather, the lack of will on the part of the states on the Security Council and the wider international community led to the paralysis. The UN Secretary General’s report issued at the end of May 1994 declared that genocide was taking place and by the end of April Boutros Boutros-Ghali appealed to the Security Council to take ‘forceful action’.<sup>23</sup> As Simon Chesterman notes, had the Security Council acknowledged the obvious – that genocide was occurring – then it would have been more difficult not to act under international law.<sup>24</sup> It was, therefore, precisely the fear that international law would compel intervention, not block it, which led the states on the Security Council, and the US in particular, to contrive ever more imaginative ways to avoid using the ‘G-word’ to describe the massacre of 800,000 people.

Likewise, as detailed in Chapter 4, UN officials repeatedly highlighted the scale of the atrocities in Darfur throughout 2004 and didn't flinch from accusing the Sudanese government of complicity in the slaughter. This information was provided to the Security Council by UN officials but did not translate into forceful action. The blame for this can only reasonably be attributed to the members of the Security Council rather than the UN. In many key respects the UN is dependent on the will of those states controlling the Security Council and therefore 'UN inertia' actually derives from the policies of states, not the UN itself. The UN has no independent military capacity and cannot deploy troops abroad without the assent of the Security Council. The view, therefore, that the UN somehow neglected to employ the tools at its disposal does not equate with the facts.

Despite this, the idea that the UN has failed when confronted by humanitarian crises persists. There is no doubt, of course, that the veto powers of the permanent members of the Security Council have been the cause of much of the expressed frustration. China and Russia are regularly cited as obstructionists wedded to conservative notions of sovereignty, and there is some evidence to support these claims. The logic of ignoring or bypassing the UN because its central political organ is often unresponsive and highly politicized has a certain merit if one believes, as neo-conservatives do, that the centrality of the Security Council and its many flaws renders the entire UN defunct. To argue, however, that it is permissible, under certain circumstances, to subvert the power of the Security Council and simultaneously respect the UN's authority is not a feasible proposition, yet this is what the normative thesis attempts.

David Held has argued that the need to address the suffering of people around the world, especially those persecuted by their own states, requires 'the formation of an authoritative assembly of all democratic states and agencies'. Such an assembly would, by virtue of its democratic composition and inherently humanitarian disposition, act decisively to halt humanitarian crises wherever they occurred. The UN, Held argues,

cannot, almost by definition, be an effective institutional framework to represent the peoples and movements of the world...The establishment of an independent assembly of democratic peoples, directly elected by them and accountable to them, is an unavoidable institutional requirement.<sup>25</sup>

Yet, despite this prescription, Held suggests such an organization could serve as 'a compliment to the UN' before possibly subsuming it.<sup>26</sup>

The ICISS articulated a similar argument; their report notes, 'the Commission is in absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes' and states that their aim is 'not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has'.<sup>27</sup> It is clear, however, that the respect afforded to the Security Council is highly contingent. Rather than being the only source of legitimate authority the Security Council is in fact 'the first port of call' and 'alternative means of discharging the responsibility to protect [cannot] be entirely discounted'.<sup>28</sup> The Report suggests that states or groups of states can legitimately act without a UN mandate, provided they adhere to a set of criteria drawn up by the ICISS. The UN's status as the actor with sole authority to permit the use of force is therefore explicitly challenged. This clearly does not sit comfortably with the ICISS's commitments to respect the competency of the UN, and specifically the Security Council.

The suggestion, made by the ICISS and others, that creating the means by which legitimate action can take place without UN authorization would somehow strengthen the organization, and certainly not undermine it, has proved incorrect. The conclusion reached by the Independent International Commission on Kosovo regarding Operation Allied Force – that it was illegal but legitimate – certainly provided additional support for those eager to identify alternative sources of legitimization other than the UN. While this principal was widely endorsed at the time of Operation Allied Force, and following the publication of *The Responsibility to Protect*, the invasion of Iraq highlighted the scope for abusing the new principle. Before the invasion President Bush stated that the UN was not the only source of legitimacy, noting, 'We don't really need the United Nation's approval to act'.<sup>29</sup> Thus for some the invasion of Iraq was an 'inevitable consequence of the rise and evolution of the new interventionism', rather than an aberration from it.<sup>30</sup> The invasion certainly complements the post-Cold War era trend, particularly evident during Operation Allied Force, whereby self-appointed guardians of the peace have come to reject both international law and specifically the UN. As White notes,

In many ways the Iraq crisis of 2003 was the culmination of a decade of pressure by the US and UK directed at changing the legal framework governing the use of force contained in the UN Charter, in a concerted effort to widen both exceptions to the ban on the threat or use of force.<sup>31</sup>

The extent to which the rhetoric advanced by the US and the UK prior to the invasion of Iraq echoed that articulated before, during and after Operation Allied Force led many supporters of NATO's intervention to lament the appropriation of their arguments.<sup>32</sup> Richard Falk, a supporter of Operation Allied Force, observed after the invasion of Iraq that the UN had been relegated to the role of 'a debating society, where if the state seeking to engage in controversial behaviour cannot make its case persuasively, it will proceed to act in any event'.<sup>33</sup>

The potential for abusing the 'illegal but legitimate' route and ignoring the UN was certainly acknowledged by certain supporters of Operation Allied Force. The solution to this potential problem, as noted in Chapter 3, was presented as being the articulation of criteria, derived from the Just War tradition, which could be used, by global civil society, to assess the legitimacy of any illegal use of force portrayed as humanitarian. Evans described Operation Iraqi Freedom 'as a laboratory in which the [Just War] theory may be put to the most exacting tests'.<sup>34</sup> Global civil society and the Just War tradition clearly failed, however, to act as robust alternatives to the UN during the invasion of Iraq. While the invasion has ultimately proved unpopular, the massive public opposition to the war failed to stop the invasion. Additionally, when the primary rationale for the invasion – Iraq's arsenal of WMD – proved entirely flawed, public support was initially maintained when the previously secondary rationale – the humanitarian imperative – was more vociferously advanced.<sup>35</sup> Few argue that the US-led coalition acted in accordance with the Just War criteria but, ultimately, the governments of both states, and Blair and Bush in particular, would argue that they did. In the absence of any authoritative judge the question of adherence to non-binding criteria becomes so subjective as to be irresolvable.

It seems clear therefore that the process of lessening the power of the UN and increasing the role of global civil society has weakened the restraints on the use of force and significantly undermined the standing of the UN. The diminution of the UN's status as sole authority constitutes a clear aim of the normative thesis but, as argued in Chapter 5, this is a perspective predicated on an unrealistic view of global civil society's capacity as an alternative. The UN and positive international law more generally *do*, however, have the capacity to influence the behaviour of powerful states. The principle of sovereign equality, according to Simon Chesterman and Michael Byers, 'operates in a multitude of ways to constrain the law-making influence of the powerful'.<sup>36</sup> The tenets of international law have evolved in ways largely designed to constrain the capacity



of powerful states to exclusively shape international norms and rules governing the use of force.<sup>37</sup> As Andrew Hurrell argues,

The degree to which the legal order has grown more complex and harder for even powerful states to control is one of the reasons why US frustration with international law has grown sharper, shifting the balance between law's power-cementing and legitimacy creating advantages and its constraining and ensnaring costs.<sup>38</sup>

Indeed, Vittoria Emmanuel Parsi suggests that the US views the UN as 'a hindrance',<sup>39</sup> and it could be argued that the world's most powerful state *should* feel frustrated and hindered by the UN. Clearly the US is, like many other states, willing to act without authorization from the organization, but there is evidently a clear desire for UN legitimization when undertaking military action. The erosion of the UN's status as the authoritative source of legitimacy, as advocated by the normative thesis, can thus be said to have lessened existing restraints on aggression, increased the scope for the misuse of humanitarian rhetoric and fundamentally undermined the status of the UN.

### **The return of the crusaders**

As noted in Chapter 2, international law has developed a set of rules and norms, described as the 'equalitarian regime', that rest on the principles of sovereign equality, sovereign inviolability and the circumscription of the use of force in international affairs.<sup>40</sup> Since the emergence of this regime in 1945, with the signing of the UN Charter, there has been a fourfold increase in the number of states, but also a decline in the number of interstate wars.<sup>41</sup> The effect of the codification of sovereign equality in the UN Charter and subsequent international legislation, in particular the 1960 General Assembly *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1514), was that 'it no longer made sense to speak of a hierarchical society of states in which rights of membership and participation were granted in proportion to a society's development and capability'.<sup>42</sup>

This 'equalitarian regime' and the tenets of sovereignty in particular are the targets of the normative thesis and the proponents of global civil society. As noted in Chapter 3, the normative thesis advocates the diminution of sovereign inviolability and the creation of a system where there is a correlation between a state's human rights record and the legal rights it

enjoys. Gerry Simpson describes the ideology behind this view as 'liberal anti-pluralism', characterizing it as 'endowed with a sort of moralistic fervour, a conviction and, at times, an intolerance of the illiberal'.<sup>43</sup> This 'formal rehierarchisation of international society' has important implications for the evolution of the international system and the conduct of international relations.<sup>44</sup>

Determining the circumstances under which states may legitimately use force in international affairs is of paramount importance. It is questionable whether constructing a hierarchy of states with differing competencies and rights will be beneficial to international peace and stability. International relations in the nineteenth century were characterized by such a hierarchy based on so-called 'standards of civilisation'.<sup>45</sup> This hierarchical system did not lead to peace and stability but rather 'fractured the international system for the best part of a century and the effects can still be felt today'.<sup>46</sup>

In terms of the discourse of intervention it is evident that a perceived schism between civilized and uncivilized states is being proliferated both consciously and unconsciously. Kaldor writes that in the post-Cold War world 'zones of civility and zones of incivility exist side by side'<sup>47</sup> and she has advocated a strategy of intervention whereby external actors identify 'islands of civility' within the zones of incivility with whom alliances can be made.<sup>48</sup> Similarly, Glennon advocates greater rights for 'enlightened states' while Robert Cooper asserts that the West's 'post-modern' consciousness means, 'Imperialism is dead, at least among Western powers' and thus Western intervention in the contemporary era is clearly different to that which took place during the period of colonialism.<sup>49</sup> The methods which must be employed, however, remain remarkably similar; Post-modern states, Cooper argues,

need to get used to the idea of double standards ... when dealing with more old fashioned kinds of states outside the post-modern limits, Europeans need to revert to the rougher methods of an earlier era – force, pre-emptive attack, deception, whatever is necessary for those who still live in the 19th century world of every state for itself. In the jungle, one must use the laws of the jungle.<sup>50</sup>

The need for intervention is articulated in particularly stark terms by Tom Farer who asserts, 'peoples in a state of ecstatic mutual fear ... [are likely] to go on clawing at each other unless external actors can either club them into submission, break the stalemate ... and/or guarantee the safety of those willing to assume a defensive posture'.<sup>51</sup> The imagery of

peoples 'clawing at each other' and external actors clubbing them into submission for their own good obviously resonates with the rationale advanced by those who advocated the 'civilising missions' to Africa in the 18th and 19th centuries. The advocates of the new hierarchical system thus 'ignore a history in which imperial powers announced and celebrated their superiority in similar language, with tragic consequences'.<sup>52</sup> This history is not confined to European colonialism; following the annexation of half the territory of Mexico in 1848 US President Polk stated, '[Had these territories remained part of Mexico they would have been] little value to her or any nation, while as part of our Union they will be productive of vast benefits to the United States, to the commercial world, and the general interests of mankind.' Fifty years later following the invasion of the Philippines US President McKinley stated, 'We intervene not for conquest. We intervene for humanity's sake [and to] earn the praises of every lover of freedom the world over.'<sup>53</sup>

The present discourse, which parallels that of earlier eras, essentially entails, according to Simpson, 'the idea of separating the globe into zones – the democratic-liberal or descent society of states operating in a sphere of cosmopolitan law and the failed state/outlaw state subsisting in the state of nature'.<sup>54</sup> This division of the world, as exemplified by Cooper's advice above, manifests in the creation of parallel legal systems which apply only to certain states. Certain legal codes, such as sovereign inviolability, apply only to the core group of states, while the laws governing the use of force by core states against those in the periphery are significantly relaxed. As Falk notes,

the extreme version of this kind of politicised approach is to claim an exemption from legal constraint for itself while acting as an enforcer of the very same constraints with respect to those other states seen as challenging the established order of world politics. Such a posture has been adopted by the Bush administration.<sup>55</sup>

While this division is legitimized as a progressive development designed to lessen incidents of humanitarian crises and ultimately portrayed as a precursor to a more peaceful international system, evidence suggests that the incidence of warfare is likely to increase when such a perspective is dominant. Writing in the late seventeenth century Pufendorf argued,

We are not to imagine that every man, even they who live in the liberty of nature, has a right to correct and punish with war any person

who has done another an injury ... [for it is] ... contrary to the natural equality of mankind for a man to force himself upon the world for a judge and decider of controversies ... Any man might make war upon any man upon such a pleasure.<sup>56</sup>

The point made by Pufendorf is that when states believe themselves to be guardians of morality and the welfare of others they legitimize moral crusading and, given that moral codes differ and morality is inherently malleable, 'any man may make war upon any man' under such a system. As Bellamy notes, history shows that the rejection of positive law in favour of morality and the more nebulous natural law increases instability and incidences of war for this very reason.<sup>57</sup>

Positive law developed precisely because reliance on moral or natural law had created a situation where sovereigns were the sole judge of their actions and could therefore undertake myriad 'just interventions'. As Tucker observes, 'historically, states interpreted the principles of justice in war in such an elastic way that they have caused them to seem compatible with any act of war'.<sup>58</sup> Indeed, the ICISS found that in the ten cases of intervention they analysed 'the rhetoric of humanitarianism had been used most stridently in cases where the humanitarian motive was weakest'.<sup>59</sup> The danger is, therefore, that as the rights states enjoy become increasingly linked to their adherence to moral norms or human rights, as judged by a core group of self-appointed moral authorities, it is more likely that states will articulate moral justifications for their actions and military interventions. These justifications are inherently less objective and more malleable than legal codes, therefore this significantly increases the scope for self-interested intervention.

The belief in the need for both a proactive humanitarianism and the diminution of sovereign equality is predicated, as Michael Pugh observes, on the belief in the notion of 'soldiers of freedom' being 'dispatched from zones of peace into zones of unruliness and dysfunctional criminality to win conflicts against "rogue" governments'.<sup>60</sup> This perspective, indicative of what Oliver Richmond describes as 'a liberal and cosmopolitan faith on the part of the interveners in the infallibility of their approach', can be seen to have clear parallels with earlier more violent eras when just such rhetoric was used.

Christian Reus-Smit notes that the argument in support of benevolent interventionism is based on two dubious assumptions. First, that because non-democracies do not embody their citizen's will, 'the governments of democracies have a right to interpret that will and to act accordingly. And, second, that it would be the will of such peoples to see democratic

states gain special international rights while the rights of their own states were compromised'.<sup>61</sup> Scepticism as to the benefits to be derived from realigning the international system in such a way has been voiced by non-Western state leaders; Hugo Chavez, unsurprisingly a critic of the new agenda, described *The Responsibility to Protect* as part of a movement whereby 'a few countries try to reinterpret the principles of international law in order to impose new doctrines' and he asked rhetorically, 'Who is going to protect us? Are they going to protect us?'.<sup>62</sup> This view echoes the negative response of developing states to NATO's intervention in Kosovo; in April 2000 the 133 states in the G-77 issued a declaration stating: 'We reject the so-called "right" of humanitarian intervention, which has no legal basis in the United Nations Charter or in general principles of international law.'<sup>63</sup> Given these countries' direct experiences of the consequences of an international system based on a presumed moral hierarchy this view is understandable.

### **Optimistic miscalculation**

The proposals proffered by the normative thesis could potentially contribute to the escalation of intra-state conflicts and instances of violent state repression. Many intra-state wars in the post-Cold War era have comprised a conflict between a secessionist group and their host state's central government. In the face of their host state's implacability secessionist groups have often resorted to violence convinced that this strategy constitutes the most viable means of achieving their goals. This decision to resort to armed force will, assuming the rationality of those involved, constitute a calculation based on a cost-benefit analysis of the consequences of using force. If external 'humanitarian intervention' is a possibility then groups may conclude that they can provoke their host state into a retaliatory attack so severe that it will compel external forces to launch a humanitarian intervention on their behalf. Therefore, escalating the severity of their community's repression could be seen as beneficial in the long run. This scenario is worsened by the fact that, according to the normative thesis, the decision to intervene can be made by individual Western states without the approval of the UN which increases the secessionist's incentive to contrive a sufficiently large humanitarian crisis to garner Western media attention.

Studies suggest that in the majority of cases acts of genocide are retributive.<sup>64</sup> Alan Kuperman thus concludes that in most incidents 'rebels provoke their own group's demise by violently challenging the state's authority'.<sup>65</sup> Potential rebels, Kuperman argues, will only violently challenge

the state if they believe that the consequences of doing so will ultimately be beneficial. Therefore, aside from instances where there is a misreading of the state's intentions or capabilities, rebels will use force only if they conclude that they have superior military strength, or if they believe the possibility exists that following their attack their host state will launch reprisals so severe that external actors will feel compelled to intervene. An escalation imperative is thus created, predicated on the logic 'the greater the tragedy the more likely the response'. The problem is thus twofold; while the possibility of intervention exists rebel groups that ordinarily would not have used military force may do so. Second, having attacked the state and provoked a retaliatory attack there is no guarantee that intervention will take place, therefore rebels may create and then endure a humanitarian crisis. According to Kuperman,

[The norm of humanitarian intervention] encourages disgruntled sub-state groups to rebel because they expect intervention to protect them from genocidal retaliation by the state. Actual intervention, however, is often too late or feeble to prevent such retaliation. Thus, the norm causes some genocidal violence that otherwise would not occur.<sup>66</sup>

The possibility of external intervention, therefore, compromises the balance between the state and the secessionists. The state will tend towards the preservation of order and stability and will be reluctant to jeopardize this by launching a major military operation against passive, albeit disgruntled, secessionists. The secessionists, meanwhile, though dissatisfied, will have a similar interest in stability for fear of provoking harsh state retaliation. When the state's retaliation becomes perceived as a step towards external intervention this uneasy stability is jeopardized and violence can erupt.

The evolution of the conflict in Kosovo in the 1990s and the strategy of the Kosovo Liberation Army (KLA) is a compelling example of this theory in practice. While the Kosovo Albanians rejected Belgrade's authority and despised Milosevic's regime, especially after 1989, the violent tactics of the KLA were initially unpopular among the Kosovar Albanians who overwhelmingly supported the pacifism of Ibrahim Rugova and his party, the Democratic League of Kosovo. The rise in support for the KLA, especially after 1995, derived from the growth in frustration within the broader ethnic Albanian population at the lack of tangible results from Rugova's tactics. Despite winning international praise for extolling pacifism while violence raged in other parts of the Balkans, Rugova's strategy

had paradoxically led external observers to conclude that the situation in Kosovo was a low priority. This was exemplified by the fact that Kosovo was ignored during the 1991 Carrington process despite Rugova's repeated efforts to achieve some recognition for his community's cause.<sup>67</sup> Similarly, the Dayton Accords, signed in 1995 – heralded as the final solution to Yugoslavia's violent collapse – made no mention of Kosovo. Article 1 of the Accords in fact recognized the territorial integrity of all parties to the agreement, thereby recognizing Yugoslavia's authority over Kosovo. This marked a key turning point for the Kosovo Albanians; according to Tim Judah, '[Dayton] confirmed to them in the most dramatic and humiliating way that Rugova's policy of passive resistance had failed. And not only that, but that his idea that they would be rewarded for their good behaviour by Western countries had been just plain wrong'.<sup>68</sup>

In certain key respects, such as the constitutional arrangements for Bosnia and the recognition afforded to Republic Srpska, the Dayton Accords legitimized ethnic identity as a political force and recognized ethnic territories. Additionally the consolidation of Bosnia's independence and Croatia's authority in Eastern Slavonia suggested that external intervention was a viable means of achieving territorial and political gain. External support in these cases was a consequence, however, of conflicts sufficiently violent to attract international media attention. Passive political struggle lost its appeal in the light of these lessons from Dayton. As Hodge notes, 'In effect Dayton told autonomists in Kosovo that the metal in Kosovo was not hot enough to bring about political change. The KLA decided to make it glow'.<sup>69</sup> Thereafter, according to James Gow, the KLA adopted a strategy of 'armed engagement designed to provoke atrocities'<sup>70</sup> which would generate international attention. Dugi Gorami, a Kosovo Albanian negotiator at the Rambouillet talks in 1999 outlined the logic behind the KLA's strategy: 'there was this foreign diplomat who once told me "Look unless you pass the quota of five thousand deaths you'll never have anybody permanently present in Kosovo from the foreign diplomacy"'.<sup>71</sup> International attention was contingent on mass tragedy and the KLA, not illogically, decided to create one.

Ultimately the KLA's gamble worked and NATO intervened. However, this strategy was clearly responsible for the deaths of many civilians who, it is reasonable to conclude, would not have died had the KLA not wished to provoke a humanitarian intervention. Hashim Thaci, leader of the KLA, admitted: 'We knew full well that any armed action we undertook would trigger a ruthless retaliation by Serbs against our people... We knew we were endangering civilian lives, too, a great number of civilian lives'.<sup>72</sup> Indeed, the initiation of the intervention by NATO caused a counter-action

by the Yugoslav military against the KLA and contributed to the refugee flows which became the emotive image of NATO's campaign.

There is no guarantee, however, that external actors will always feel compelled to act. This leads to what Blainey describes as 'optimistic miscalculation'.<sup>73</sup> Kuperman's analysis of this phenomenon finds,

in the post-Cold War era, a main source of such optimistic miscalculation has been the expectation by subordinate groups that the 'international community' will intervene to protect them on humanitarian grounds if their challenge to authority provokes retaliatory violence.<sup>74</sup>

The fate of the Kurds who rebelled against Saddam Hussein in 1991 is a sad illustration of what can happen when the rebel group's faith in external actors proves mistaken. More recently, the rebellion launched by in Darfur in 2003 would appear to have been an instance where similar logic catalysed a humanitarian crisis.

The problems highlighted above derive from the possibility of humanitarian intervention regardless of the identity of the interveners. If the UN had independent military capacity then similar difficulties could possibly still arise as the principle of escalating a conflict to compel external intervention would still apply.<sup>75</sup> This problem is exasperated, however, by the normative prescriptions which imbue Western states with the authority to determine when an intervention should take place. The logic behind this derives from the power supposedly wielded by global civil society. Domestic publics in Western states are more likely to see and hear about humanitarian crises due to their greater access to media and, through the democratic channels inherent in Western states, outraged citizens can pressurize their leaders to launch interventions to halt the suffering. The role of the domestic population is thus central to this normative cycle but so is that of the media.

Domestic populations are made aware of international issues predominantly through domestic and international media and therefore media coverage is the catalyst for public outrage and ultimately state action. The international media is not, however, an objective, dispassionate source of information. Even leaving aside the potential for individual or collective bias in media reportage it is axiomatic that the vast majority of media groups are profit-orientated. In this sense they cover stories they believe will interest the general public who are consumers in this equation. It is highly likely, therefore, that conflicts with the highest death toll or involving barbaric acts of violence will be reported most. Additionally, it is more likely that a crisis which resonates with the Western public's



imagination will receive more coverage than that which involves groups with whom empathy is less developed. As Christine Chinkin notes, 'It is better to be a refugee in Europe (where "they look like us") than in Africa.'<sup>76</sup> Additionally, due to financial considerations and political barriers media groups are restricted in their capacity. A crisis in Eastern Europe is thus more likely to be covered than the situation in Chechnya or Tibet. Between 1998 and 2003 some four million people were killed in the Democratic Republic of the Congo (DRC), yet this conflict received scant international attention. This point was noted by Nelson Mandela who highlighted the disparity between the attention Kosovo received and the many arguably worse humanitarian crises occurring in Africa at the time.<sup>77</sup>

The problem is not with the media's reportage as such, however; media groups are entitled to pursue profitable stories. The problem lies with the fact that these profit-orientated organizations are central to the normative evolution of humanitarian intervention. Citizens in Western democracies can, of course, receive information on international crises from NGO's, the UN and other sources, but interest in these reports obviously pales in comparison to popular media outlets. Subordinate groups involved in a dispute with their host state could reasonably conclude, as the KLA did, that they must provoke greater levels of violence and killing to attract the media's attention. If intervention by Western states is championed as the solution to humanitarian crises, and if the normative perspective on the evolution of Western action involves a progression from media reportage to public outrage to political action, then there are clear incentives on the part of subordinate groups to escalate the scale of the violence within their respective area. Media coverage, however, will be inconsistent and will not necessarily reflect those cases of greatest need. Finally, as demonstrated in Chapter 5, it is not at all clear that domestic pressure to intervene will necessarily result in military intervention and therefore conflicts will be worsened in the expectation of external intervention which fails to materialize.

## **Conclusion**

On 19 March 2003, the day the invasion of Iraq began, UN Secretary General Kofi Annan stated, 'we must all feel that this is a sad day for the UN and the International community.'<sup>78</sup> The UN had, in many respects, performed its functions to the best of its ability in the pre-invasion diplomacy, yet the invasion was a clear blow to its status and credibility. Prior to the invasion the UN had acted as a forum for debate between the various interested parties and states and regularly updated the Security

Council, the General Assembly and the wider international community on the situation in Iraq, especially through the work of Hans Blix and the Atomic Energy Committee. In the end the UN's efforts were unsuccessful as both its power and perspective were ignored. It seems clear that the great effort made by the US and the UK to gain UN assent for the invasion was born from a perspective which viewed the UN as no more than a welcome, but ultimately unnecessary, stamp of approval.

Many of Operation Iraqi Freedom's most vociferous opponents were supporters of Operation Allied Force four years earlier. The logic of NATO's actions in 1999, however, evidenced a similar attitude to the UN. Clearly, it would be an exaggeration to suggest that Operation Iraqi Freedom was a consequence of Operation Allied Force. The continuities between the two operations are, however, quite clear. It is indisputable that advocates of the invasion of Iraq often pointed out that the intervention in Kosovo had also been illegal but legitimate. The perspective widely avowed in March 1999 would thus seem to have contributed to the erosion of the status of the UN and international law which were characteristic of the later invasion of Iraq. As Orford notes, 'Legal literature discussing the legitimacy of the actions undertaken by NATO appears to indicate a loss of faith in international law as a repository of the values that should underpin the actions of international organisations.'<sup>79</sup> This loss of faith in international law and the attendant acceptance that the UN was not the world's only legitimate authority was a central aspect of the pro-invasion perspective in 2003. The normative thesis' position on the UN and the attempts to find 'legitimate' alternatives to the organization would appear, therefore, to have contributed to the UN's contemporary predicament.

The rhetoric supportive of the normative thesis is often didactic and paternalistic premised on an emphatic vision of a sharply bifurcated world characterized by extreme moral contrasts. The West, undoubtedly the most powerful group of states in the world, is characterized as the repository of the most enlightened system and imbued with the most benevolent outlook. Western states are thus implored by the normative thesis to transcend international law and reach out to support the oppressed around the world languishing in the so-called 'zones of incivility'.<sup>80</sup> Edward Said noted that central to imperialism was the conviction that 'certain territories and peoples require and beseech domination'.<sup>81</sup> This logic of benevolent hegemony is readily evident in the prescriptions advanced by the normative thesis and evident in the discourse supportive of both intervention and state-building.<sup>82</sup> Aside from the questionable morality of such a view, history suggests that a world organized by powerful states on the basis of a perceived equation between ethics and rights is more

unstable and violent than one built on the notion of sovereign equality. Replacing contemporary international law and the 'equalitarian regime' conceived at San Francisco in 1945 with a hierarchical system based on moral rather than positive law thus poses significant risks for international peace and stability. Reus-Smit argues that such a development would

only exacerbate already widespread feelings about inequities of the present international order, reduce the sense of investment of many states in the institutional architecture and rules of international society, and, as a consequence, heighten rather than diminish conflict and discord.<sup>83</sup>

According to Hayden the realist inspired world of sovereign states is marked by 'the instability of power struggles [and] the casual resort to armed conflict'.<sup>84</sup> Yet, the vision of a world without sovereign equality ordered according to moral rather than positive law would seem to have the potential to increase these negatives.

Finally, the normative perspective on the means by which humanitarian crises will be addressed risks escalating intra-state conflicts. States are ostensibly compelled to act by their outraged citizenry and these citizens become mobilized by emotive images or descriptions of slaughter they are exposed to through the media. It is clear, therefore, that conflicts which generate extreme violence will be addressed first, provided, of course, that the media deems these conflicts worthy of coverage. As the war in the DRC demonstrates certain conflicts are evidently deemed too costly or of insufficient public interest to cover. Additionally, the centrality of the mass media and its need to broadcast and publish shocking (and hence interesting) news creates an escalation imperative. Subordinate groups may conclude, as the KLA did, that they require external support to achieve their aims and that this support can only be achieved by generating external revulsion at mass murder and extreme violence. Conflicts may thus be deliberately escalated by subordinate groups to provoke state repression and external intervention. While this will definitely result in more lives being lost it need not necessarily compel external actors to intervene, leading to the phenomenon of 'optimistic miscalculation'.

The power of global civil society and its representative nature convinced some that it should be seen as the primary source of authority and legitimacy to which the UN, in fact, must be made accountable.<sup>85</sup> This expressed desire for the diminution of the UN's importance does not derive, however, from a desire to destroy either it or international law. As Vaclav Havel stated regarding Operation Allied Force, 'although it has

no direct mandate from the UN, it did not happen as an act of aggression or out of disrespect for international law'.<sup>86</sup> It is also very clear that adherents to the normative perspective do not wish to compromise international peace and security or cause the escalation of intra-state crises. This Chapter has sought to demonstrate that the normative thesis, despite the intentions of its advocates, has in fact articulated proposals and ideas which have contributed to the rapid decline in the UN's status and the deterioration of international peace and stability. This irony – the adverse consequence of good intentions – was highlighted by Hedley Bull, who warned,

Particular states or groups of states that set themselves up as the authoritative judges of the world common good, in disregard of the views of others, are in fact a menace to international order, and thus to effective action in that field.

Chapter 4 demonstrated the extent to which the normative prescriptions and predictions have not equated with international relations since 1999, and this Chapter has highlighted the adverse effects of the normative position. The following Chapter advances a means by which the goals advanced by the normative thesis, and many others, regarding the alleviation of human suffering could be achieved while maintaining the integrity of the UN and international law.