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Crimes against humanity: who has the right to intervene?

Humanitarian intervention involves a violation of one of the most fundamental foundations of international order. The principle of non-intervention, a principle which is invoked by the United Nations, has a profound moral basis and, as such, has never been accepted in any general international legal instrument. But surely there are breaches of human rights, notably genocide, which provide compelling moral reasons for overriding the principle of non-intervention, even if the general category of the abuses does not? When considering who has the right to intervene in humanitarian crises, a case must already be accepted for *someone's* intervention. But this is itself open to question.

The growth of rules since 1945, restricting states' use of force, has coincided with the development of a body of laws on human rights, which forbid states to ill treat citizens, a combination which has stimulated debate over whether the new rules provide added justification for retaining the right of humanitarian intervention, or whether laws prohibiting the use of force also prohibit that intervention. The concept of humanitarian intervention has rarely been invoked since 1945, but even on these occasions it has been condemned by other states. Humanitarian intervention is in conflict with Article 2(1) of the UN Charter, which states that "The organisation is based on the principle of the sovereign equality of all its members".

The promotion of human rights is one of the objectives specified in Article 1 of the UN Charter, but so is, for example, "international cooperation in solving international problems of an economic, social, (and) cultural...character", thus it could be argued that states are entitled to use force against another state which adopted an uncooperative attitude concerning economic, social and cultural questions, a result that is hardly acceptable. Arguably, the Security Council of the UN is a structurally unsound body in the area of humanitarian intervention, because it cannot authorise military action solely on the grounds of human rights violations. In the cases of Rwanda, Haiti, Somalia and the former Yugoslavia, in order to act under Chapter VII, the Security Council's actions were premised on the existence of a threat to international peace.

However, the legal limitations of the UN may have a significant moral base that implies respect for different societies with varying religions, cultures, economic systems and political systems, a principle, and indeed a right, that is integral to peace. The principle of non-intervention acts as a restraint on the territorial ambitions of states, providing clear guidelines for limiting the use of armed force and reducing the risk of war.

The countering argument, also with a strong moral base, asserts that the principle of sovereignty should not hinder the protection of basic human rights which all governments are obliged to protect multilaterally. According to this view, humanitarian intervention is the greater moral obligation, and as long as it cannot be proved that it costs more lives than it saves, it is incumbent on states and international bodies to do all that they can to protect life. This poses the question of whether sovereignty (which engenders "non-intervention") necessarily clashes head-on with limitations on what a state may or may not do to its people? Or more specifically, can there be a case for humanitarian intervention which also preserves the main elements and rationale of non-intervention?

The possibility that a collection of states, acting through global or regional bodies such as the UN or NATO, might authorise acts of intervention supports a case for humanitarian intervention. The predominant motivation for the non-intervention rule has been the potential for states to act unilaterally, whereas if an intervention is supported by an international, multilateral organisation and has explicit purposes, this dilemma becomes less relevant.

Unfortunately, humanitarian policies implemented by an international organisation often lead to deeper involvement of that body in the crisis. Even if there is a compulsion to take action against humanitarian crimes, there are questions about whether such action worsens or prolongs conflicts, and whether NGOs risk losing their impartiality by their embroilment. It is inherently contradictory for powers or organisations to proclaim humanitarian principles in relation to a conflict and then do nothing to protect the victims or punish the aggressors. Moreover, it is difficult to speak of humanitarianism in one crisis and then not do so in the next. "Kosovo" has to become "Chechnya", or the credibility and potential for future peacekeeping by international institutions is undermined. Admittedly, there are different political constraints operating in different situations, thus the multilateral institutions need to try to transcend these obstacles if

there is to be a consistency in intervention.

It seems that there has to be a case made for intervention where such egregious crimes against humanity as genocide are committed, even if only for the sake of the Western conscience. Where the line is to be drawn between intervention and abstention is not only a legal issue, but a highly controversial and politicised matter. States have a collective responsibility to uphold fundamental rights by whatever means necessary, and in trying to find a compromise between the right to state sovereignty and the right not to be ill treated, this concept of collectivity may prove to be all important. The UN is reluctant to breach those rights of self determination and independence of states that are so important for a peaceful international order, but given the even graver problems associated with unilateral intervention, it seems that a reconciliation of this "rightful" conflict requires an international level solution that can restrain states "bent" on exploiting conflicts, while providing protection for all citizens of the world from violation of some of their most fundamental human rights.