

HUMANITARIAN INTERVENTION: DEFINITIONS AND CRITERIA

Humanitarian intervention, particularly after NATO action in Kosovo, has become a new justification for military action. Political leaders, scholars, and commentators are now regularly enunciating this concept. Humanitarian justifications for military action are nothing new but there is a perception that the post-cold war environment is more conducive to successful interventions. Also, most states have now agreed to obligations on the protection of human rights that involve duties to observe them. Defining humanitarian intervention is problematic and implementation is contentious. There is an emerging debate as to how applying certain criteria for humanitarian intervention might help to increase the chances of success and secure support for such interventions.

A humanitarian intervention is an armed intervention in another state, without the agreement of that state, to address (the threat of) a humanitarian disaster, in particular caused by grave and large-scale violations of fundamental human rights. This definition was adopted by a NATO seminar in Scheveningen on the topic in November 1999. The key aspects of this definition are related to sovereignty and human rights. Firstly, for an action to be intervention, sovereignty of the state being intervened in must be breached. Under this definition, INTERFET action in East Timor, while motivated by humanitarian concerns, was not an intervention as the action was undertaken with the consent of the Indonesian government (questions of the power of that government to enforce the decision aside). Secondly, for an intervention to be humanitarian, the desire to address violations of human rights should be the driving force in the intervention decision.

The UN Charter gives the Security Council the power under Article 24(1) and Chapter VII to take any measures necessary to “restore international peace and security”. These provisions allow the Security Council to authorise action based on subsequent agreements, such as the Universal Declaration of Human Rights. If consensus can be reached in the Council that a humanitarian disaster is a threat to international peace and security then the UN can take action. The ‘Kosovo model’ suggests, however, that a state or coalition of states may intervene without explicit Security Council approval.

Under the UN Charter the Security Council determines the existence of threats to peace. Article 2(4) of the UN Charter prohibits the use of force by states (except in self-defence), and Article 24(1) gives the Security Council the primary responsibility for the maintenance of international peace and security. These provisions were enacted following World War II in an attempt to establish a collective security mechanism that would regulate aggression between states and prevent anarchy. While the Security Council has primary responsibility to authorise the use of force, some states feel that certain members of the Council might prevent humanitarian interventions from taking place. The question for international law is whether primary responsibility equals exclusive authority. The legal and moral authority of the Security Council cannot be overturned lightly, but adherence to this authority might prevent a necessary intervention from taking place. Opinions differ among states over the primacy of the Security Council: many want to uphold its role while others point to its inherent flaws and the way it is dominated by the veto-holding Permanent Five (the US, Russia, Britain, France and China).

The sovereignty of states is a fundamental principle in international relations and is enshrined in the UN Charter by Article 2(7). Sovereignty gives states the legal right to manage their internal affairs free from outside interference and prevents powerful states intervening in weaker states. Without sovereignty as a fundamental principle, only international norms, balances-of-power, or domestic constraints would limit intervention in other states. Preservation of sovereignty has been held up as an important component of a rules-based framework for international relations.

However, the UN Charter was designed to prevent aggression between states and sits uneasily with concern over what takes place within state borders. The principle of sovereignty might inhibit the realisation of universal human rights. The Charter’s meaning is being interpreted away from an exclusive focus on sovereignty towards an emphasis on balancing sovereignty with human rights, such as articulated by Article 55. States have accepted other obligations under international law to protect human rights and violators may hide behind

the protection of sovereignty. It is controversial, however, as to whether the Charter itself should now be interpreted differently as a consequence.

Some states are supporting the establishment of formal criteria that have to be met before intervention can take place, although questions remain over who would set out the criteria and who would oversee their implementation. Presumably the UN would have a major role in this process, but not all its members share the same views. Some of the emerging criteria are outlined in Table 1. These criteria seek to establish a set of rules that advance the goal of building formal processes to overcome the sovereignty/human rights disconnect.

**Table 1:
Criteria for Humanitarian Intervention**

1. The threat or occurrence of grave and large-scale violations of human rights.
2. Clear and objective evidence of such a threat or occurrence.
3. The government of the state is unwilling or unable to take remedial action.
4. There is clear urgency.
5. The use of force should be the last resort.
6. The purpose is clearly explained to publics and the international community.
7. The purpose is limited to stopping the human rights abuses.
8. The action is supported by those for whom it is intended.
9. There is support of regional states.
10. There should be a high probability of success.
11. There should be a mapped-out transition to post-conflict peace building.
12. The use of force should be proportionate to achieving these goals.
13. International law on the conduct of war should be followed during the action.

An important debate is whether a group of states could undertake an intervention without UN authorisation. If UN authority were not required for humanitarian intervention then this would be an alteration to the present restrictions on the use of force and a major dilution of UN power. However, if these criteria were simply adopted by the UN then this might be seen as a refinement of Chapter VII and reinforce the notion that a humanitarian disaster is a threat to international peace and security.

Some states are wary over relinquishing the protection that the UN affords them. They envisage the retention of a UN structure that preserves the primacy of the state in providing security for the population of a state. Others suggest that if a state is not providing security for all its population, then protection of human rights should be the prime consideration.

Finally, critics suggest that establishing formal criteria for humanitarian intervention would generate expectations that if those criteria can be met, intervention will take place. Positive intervention, from anyone, despite the possibility that the above criteria could be met, has not been forthcoming in numerous cases of human rights abuses. Also, a low level of conflict might produce only a handful of abuses at one point in time, but might culminate into something quite disastrous. Defining when abuses are 'grave' or when there is a 'disaster' is highly subjective and the nature of the decision, whether it is made by the UN Security Council or a coalition of concerned states, would inevitably be highly politicised.

In the debate over humanitarian intervention, a certain truism remains. Decision making in states is driven by a variety of factors, with humanitarian concern being only one. Decisions by states, whether in the Security Council or with allies, cover a variety of considerations including political, military and economic interests. Criteria for intervention might usefully be formulated to guide conduct in an intervention (proportional use of force, high probability of success, clear and articulated goals, post-conflict plans, following laws of war, etc.), but are unlikely to form the only basis of a decision to intervene. This does not mean that the exercise of formalising criteria is necessarily useless. Some see it as desirable to establish criteria as a guide and as an ideal. Others suggest, however, that given the nature of international relations, it should not be expected that rules for humanitarian intervention would regulate conduct absolutely.

The notion of humanitarian intervention envisages a regime that overcomes limitations of existing international law and establishes a framework for preventing large-scale abuses of human rights, the ideal of justice backed by power. Once this regime is in place, international law might be amended. As one analyst has written: "If power is used to do justice, law will follow." But, if power is used to do injustice, what follows then?