THE INTERNATIONAL COMMUNITY AND INTERVENTION IN CASES OF GENOCIDE

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Abstract

It is the argument of this paper that genocide is such a grave and widespread violation of human rights that the international community has a moral responsibility to intervene, using force as a last resort. After an examination of the relevant international law it is concluded that there is no norm of humanitarian intervention that allows or obliges states to take military action to prevent or end genocide, except when force has been authorised by the United Nations Security Council on a case-by-case basis. It is argued that the 2005 World Summit Outcome Document codified some positive developments, but it is recognised that a lack of political will is the main obstacle to effective response by the international community in cases of genocide.

Introduction

In the aftermath of the Holocaust, the international community made a pledge to the Jews that genocide would ‘never again’ be tolerated.\(^1\) However, in 1994 an estimated 800 000 Rwandans were systematically slaughtered by extremist militia on a campaign of genocide while the international community did nothing, and in 2004 an estimated 70 000 civilians were killed in Darfur, but again no effective action was taken.\(^2\) The international community has therefore not kept its promise.

This paper will examine whether or not there is an emerging norm that enables the international community to forcibly intervene in sovereign states to protect their populations from genocide. The second chapter of this paper will analyse international law relating to the use of force in cases of genocide, concluding that there is no norm allowing states to take military action to bring a genocidal campaign to an end, unless this is authorised by the United Nations (UN) Security Council on a case-by-case basis. It will then be argued in the

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third chapter that a norm enabling the use of force to protect populations from genocide should be in place, focusing on the solidarist and pluralist arguments of English School theorists. This paper is in agreement with Hedley Bull’s assertion that the ‘guardianship of human rights everywhere’ is a moral responsibility of states and it will be concluded that states have a moral responsibility to take military action as a last resort to stop genocide. The fourth chapter will discuss decision-making mechanisms and UN reforms that could help to operationalise a norm of humanitarian intervention in cases of genocide, although it is acknowledged that in reality military intervention is costly and unless the national interests of the most powerful actors are directly at stake, intervention to stop genocide is unlikely and the above promise will continue to be an empty one.

Humanitarian intervention is the term used for military intervention to end massive violations of human rights and is defined by Holzgrefe as:

…the threat or use of force across state borders by a state (or group of states) aimed at preventing widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.

This paper will focus specifically on genocide, which is arguably the gravest violation of fundamental human rights that a state can inflict on its own citizens, and is defined as ‘acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group’. Therefore the discussion will centre on the legality and legitimacy of military intervention to bring an end to genocide, although it is recognised that forms of intervention short of the resort to force, such as political, economic and judicial coercion should be exhausted first.

The international human rights legislation that has been enacted since 1945 has made it clear that it is no longer condoned for states to inflict widespread and grave violations of human rights on their citizens. Such legislation includes the UN Charter (1945), the UN Convention

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1 Wheeler, 2000, op.cit. p.12
on the Prevention and Punishment of the Crime of Genocide (1948) and the Universal Declaration of Human Rights (1948). There is a legal obligation for the signatories of the 1948 Genocide Convention to ‘undertake to prevent and to punish’ genocide and according to Brownlie, the prohibition of genocide has acquired the status of a principle of customary international law, where ‘the general consent of states creates a rule of general application’. Therefore, genocide is considered to be a legitimate concern of the international community and states have legal obligations to prevent it if they are signatories of the Genocide Convention. However, this obligation does not entail a legal right to use military force.

Conflicting with Article 1 of the Genocide Convention are the principles of sovereignty and non-intervention that have governed international society since the Peace of Westphalia in 1648. The UN Charter enshrines these principles, along with the prohibition of the use of force which is widely believed to have the status of *jus cogens* under international law. According to the 1969 Vienna Convention on the Law of Treaties, if a norm has the status of *jus cogens* this means it is ‘accepted and recognised by the international community of states…as a norm from which no derogation is permitted’.

According to pluralist international society theory the principles of sovereignty, non-intervention and the non-use of force are the ‘cardinal rules’ of the international system and are fundamentally necessary for the maintenance of international peace and security. Humanitarian intervention without Security Council authority violates these principles and therefore jeopardises international stability and the peaceful functioning of the international system. Pluralist theory maintains that it would be far better for the well-being of individuals for a strict rule that prohibits humanitarian intervention than to have a norm of humanitarian intervention without international agreement over the principles that should govern it, as this would weaken the international order. Intervening in the domestic affairs of a genocidal state would arguably weaken the ‘cardinal rules’ of sovereignty, non-intervention and the

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6 Ibid, Article 1  
11 Wheeler, 2000, op. cit. p.11  
12 Ibid, p.29
non-use of force, damaging international stability through the actual use of force and also by
the precedent this may set in the future.

However, it can be argued that genocide is such a grave and widespread violation of human
rights that the international community has a right, or even a moral obligation, to intervene
using force if necessary as a last resort. The solidarist argument put forward by Vincent is
that the principles of sovereignty, non-intervention and the non-use of force are not absolute
rights and that states should be subject to minimum standards of decency before they qualify
for such protection from the international community, being denied protection when they
commit atrocities that ‘shock the conscience of mankind’.13 Farer is in agreement that ‘non-
intervention is not an absolute’, arguing that states can temporarily lose their right to
sovereignty and non-intervention if this will help to avoid a gross violation of human rights
such as genocide.14

This conception of state sovereignty as a responsibility towards citizens rather than a
mechanism of control was a central idea in the report of the International Commission on
Intervention and State Sovereignty (ICISS) in 2001 entitled ‘The Responsibility to Protect’.15
The report put forward the view that in extreme cases of violence against a population that
‘south the conscience of mankind’, states have a responsibility to intervene to end such
atrocities, using military force if this is necessary as a last resort.16 The Commission was set
up by the Canadian government to consider the issues surrounding humanitarian intervention
and find a solution to the problem of ‘when, if ever, it is appropriate for states to take
corcive – and in particular military – action, against another state for the purpose of
protecting people at risk in that other state’.17 It will be discussed how the ICISS report has
impacted on the development of a norm of humanitarian intervention in cases of genocide.

Solidarist international society theory maintains that humanitarian intervention in cases of
genocide is necessary, even if the military action is taken outside legitimate international
mechanisms. However, the right to intervention should not be unconditional and according to

13 Ibid, p.28
15 Focarelli, C. The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working
16 International Commission on Intervention and State Sovereignty. The Responsibility to Protect. Ottawa: International
17 Ibid, p.vii
Wheeler should satisfy certain tests including just cause, force as a last resort, proportionality and a high probability that the use of force will lead to a positive humanitarian outcome.\textsuperscript{18}

Therefore, although this paper recognises the pluralist concern with a norm of humanitarian intervention that lacks internationally agreed principles to govern it, there is a moral abhorrence in upholding the principles of sovereignty, non-intervention and the non-use of force in the face of genocide. However, any relaxing of the prohibition of the use of force is likely to result in abuse of the humanitarian justification and selective application of the principle where the worst cases of human rights abuses, such as genocide, are ignored by the international community while force is used in the pursuit of national self-interest by powerful states. This realist criticism should not be overlooked: it will be argued that the international system does need a legitimate authority to authorise the use of force for humanitarian purposes. Therefore, the fourth chapter will consider possible mechanisms and UN reforms that would enable a practice of humanitarian intervention in the most extreme cases without damaging the international system. However, it will be concluded that a lack of political will is the main obstacle to effective response by the international community in cases of genocide.

**Humanitarian Intervention and International Law**

It is necessary to analyse the international law relating to humanitarian intervention to establish whether a norm has developed that allows the international community to use military force to prevent or stop genocide. According to Glanville there has been much research into the nature and strength of a norm permitting humanitarian intervention by constructivists and English School theorists who share the assumption that norms and rules ‘regulate and constrain’ state behaviour.\textsuperscript{19} Etzioni argues that all states benefit from acting legitimately in accordance with internationally agreed rules, with the more powerful states having more to lose if they do not act legitimately, despite the realist contention that established rules ‘verge on irrelevancy’.\textsuperscript{20}

\textsuperscript{18} Wheeler, 2000, op. cit. pp.33-34
As Bull identifies, both solidarism and pluralism recognise that states are part of an international society and are bound by international rules.21 However, the difference between the two is that while solidarism asserts that there is ‘sufficient solidarity’ within the international community to agree on global principles of justice and human rights, pluralism contends that this is not so and that states can only reach minimal agreement on rules that facilitate international order, such as sovereignty and non-intervention.22 According to a pluralist analysis the international community is unable to show sufficient solidarity for a norm of humanitarian intervention to develop as this would be above and beyond minimal agreement, so would damage international stability. On the other hand, solidarists would argue that international agreement on humanitarian intervention is possible as there are global standards of justice and human rights that necessitate action to protect populations from genocide, using force as a last resort.

It will now be considered whether there is sufficient solidarity between states in the international community for a norm of humanitarian intervention in cases of genocide to develop. Focarelli states that an emerging norm must have support from states as a whole and must ‘credibly be binding upon them’.23 International treaties and customary law are the main sources of international law according to Article 38.1 of the Statute of the International Court of Justice, which is widely regarded as a complete statement of the sources of international law.24

**International Treaties**

The international treaties that need to be considered in relation to humanitarian intervention are the UN Charter, the Genocide Convention and the international human rights framework that protects fundamental human rights. Article 2(4) of the UN Charter (1945) provides that:

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23 Focarelli, loc. cit. p.193
24 Brownlie, op. cit. pp.3-4
All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.25

This general prohibition on the use of force is widely believed to have the status of jus cogens and according to the ICJ in Armed Activities on the Territory of Congo (2005) it is a cornerstone of the UN Charter.26 The only exceptions to this general prohibition in the Charter are Article 51 which provides that force can be used in self-defence and Articles 39 and 42 which allow Security Council authorisation of force under Chapter VII of the Charter if this is necessary to ‘maintain or restore international peace and security’.27 There is no provision for the use of force to protect populations from genocide and therefore according to a restrictionist interpretation of the Charter, humanitarian intervention to stop or prevent genocide is illegal unless authorised by the Security Council.28

The principles of state sovereignty and non-intervention are set out in Article 2(7), which provides that ‘[n]othing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’.29 The UN Charter therefore enshrines the principles of the international system that pluralists see as indispensable: state sovereignty, non-intervention and the non-use of force.

On the other hand, solidarists would point to the provisions in the Charter that protect human rights. One of the primary aims of the UN is to ‘reaffirm faith in fundamental human rights’ and human rights are protected in Articles 1(3), 55 and 56.30 However, there are no mechanisms that allow states to use force to enforce these rights without Security Council authorisation. Rosalyn Higgins, a restrictionist, argues that ‘the Charter could have allowed for sanctions for gross human rights violations but deliberately did not do so’.31

Solidarists may point to other treaty law that reaffirms the protection of fundamental human rights, including the Genocide Convention (1948), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (1966).32

26 Gray, op. cit. p.30
27 United Nations Charter, loc. cit. Articles 39,42 and 51
28 Wheeler, 2000, op. cit. p.41
29 United Nations Charter, loc. cit. Article 2(7)
30 Ibid, Preamble
31 Wheeler, 2000, op. cit. p.44
Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). The Genocide Convention legally obligates signatories to prevent and punish genocide through the UN and has been ratified by 133 states, including the United States.\textsuperscript{32} The prohibition of genocide is thought to be customary international law but some states have avoided any legal obligations by adding reservations to the Convention. The United States’ reservation stated that ‘nothing in the Convention requires or authorises legislation or other action by the United States…prohibited by the Constitution’.\textsuperscript{33} This removes much of the obligation to act to stop genocide.

Although international human rights law does protect populations from genocide in principle, Wheeler argues that the human rights framework is ‘severely limited by the weakness of its enforcement mechanisms’.\textsuperscript{34} While the international community may be committed to protecting human rights under international law there are few mechanisms that enable action to be taken to prevent the worst abuses, such as genocide. Therefore, despite international agreement that genocide is morally reprehensible, international conventions seem to uphold the principles of sovereignty, non-intervention and the non-use of force. For pluralist international society theory these principles are ‘plural conceptions of the good life’ and are necessary to maintain international order which, according to pluralism, is the ‘ultimate protector’ of human values.\textsuperscript{35}

**Customary International Law**

It is also necessary to consider customary international law when considering whether sufficient solidarity exists between states for a norm of humanitarian intervention. Customary international law has two components: state practice and \textit{opinio juris sive necessitatis}, which is the observance of rules by states because they believe such conduct is obligatory as a matter of law.\textsuperscript{36} According to Brownlie, evidence of state practice must prove

\textsuperscript{32} United Nations Genocide Convention, loc. cit. Article 1
\textsuperscript{33} Ibid, Reservations
\textsuperscript{34} Wheeler, 2000, op. cit. p.1
\textsuperscript{35} Wheeler, 1992, loc. cit. p.469
\textsuperscript{36} Brownlie, op. cit. pp.6-8
a consistency and generality of practice, although universality is not required, and evidence of *opinio juris* must prove that states recognise the practice as obligatory.\textsuperscript{37}

Unilateral humanitarian intervention, intervention without Security Council authorisation, was not proposed as a legal justification of the use of force by states until the 1990s.\textsuperscript{38} In the 1970s there were various interventions by states that, according to Wheeler, could have been justified as humanitarian but humanitarian justifications of legality were not offered by the intervening states and nor were they accepted by the international community as legitimate.\textsuperscript{39} Such interventions included the Indian intervention in Bangladesh (1971) which enabled independence from Pakistan and an end to oppression, the Vietnamese intervention in Cambodia (1978) which put an end to Pol Pot’s regime, and the Tanzanian intervention in Uganda (1979) which removed Idi Amin from power.\textsuperscript{40} Vietnam was heavily criticised in the General Assembly despite the fact that this use of force ended genocide in Cambodia.\textsuperscript{41} This demonstrates that there was not a legally binding norm of customary international law during the Cold War for military intervention to stop genocide. This is further evidenced by two General Assembly resolutions that specifically and absolutely outlawed intervention: the Friendly Relations Declaration (1970) and the Definition of Aggression resolution (1974).\textsuperscript{42}

However, it has been argued that an emerging norm of humanitarian intervention has started to develop since the end of the Cold War. During the 1990s the Security Council started to interpret its mandate more broadly, authorising forcible interventions under Chapter VII on multiple occasions for humanitarian reasons. Mayall gives the examples of Somalia (Resolution 814, 1993), Bosnia (Resolution 819, 1993), Rwanda (Resolution 929, 1994), Haiti (Resolution 940, 1994) and Albania (Resolution 1101, 1997).\textsuperscript{43}

It is evident that in the 1990s there was a shift towards humanitarian intervention authorised by the Security Council due to an expansive interpretation of Article 39.\textsuperscript{44} However, the Security Council has not been particularly successful in its attempts to prevent grave...
violations of human rights. According to the report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change in 2004, ‘the Security Council so far has been neither very consistent nor very effective in dealing with these cases, very often acting too late, too hesitantly, or not at all’.45

The utter failure of the Security Council, along with the rest of the international community, to prevent the Rwandan genocide of 1994 illustrates this point. The eventual ‘Operation Turquoise’ by France, authorised by Security Council Resolution 929, arrived months too late to save the estimated 800 000 Tutsi and moderate Hutu who were slaughtered by extremist Hutu militia and radical army personnel.46 It can be concluded that while the Security Council is able to authorise the use of force to prevent or stop genocide and other grave violations of human rights on a case-by-case basis, there does not exist the consistency and generality of practice for this to be a legally binding customary norm.

A legal right to unilateral humanitarian intervention was not claimed until the end of the 1990s, when NATO states undertook ‘Operation Allied Force’, intervening in the Kosovo region of Yugoslavia to stop the Serbian oppression of Kosovar Albanians in 1999. Vaclav Havel argued that this military intervention was ‘probably the first war that has not been waged in the name of “national interests” but rather in the name of principles and values’.47 The intervention was not authorised by the Security Council so is widely regarded as not being legal.48

However, arguments have been proposed that this action and the justifications that were given for it point to a developing norm of unilateral humanitarian intervention to stop the gravest violations of human rights, including genocide. Power argues that ‘it was the first time in history that the United States or its European allies had intervened to head off a potential genocide’.49

48 Cassese, A. Ex injuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community? European Journal of International Law, 1999, 10(1), p.23
States were divided during the subsequent discussion of the legitimacy of the intervention. NATO states and some others argued that unilateral humanitarian intervention can be legal, but China and Russia and numerous other states condemned the action. The UK offered the most extensive legal argument in support of the NATO action:

Every means short of force has been tried. In these circumstances, and as an exceptional measure on the grounds of overwhelming humanitarian necessity, military intervention is legally justifiable.\(^{50}\)

A Security Council resolution condemning the use of force by NATO was drafted by Russia but rejected in the Security Council by twelve votes to three, with only China, Russia and Namibia voting in favour of it.\(^{51}\) This could be evidence that the use of force was acquiesced or approved by many states.

However, the general acquiescence or approval of the NATO intervention is not enough to prove the existence of a norm of customary international law. China argued that NATO had ‘seriously violated the Charter of the UN and norms of international law’ and had undermined the credibility of the Security Council.\(^{52}\) Some of the intervening states, such as the United States and Germany, firmly stated that they did not want the action in Kosovo to be seen as a precedent for the future.\(^{53}\) According to Gray, the persistent opposition of China, Russia and the Non-Aligned Movement to intervention without Security Council authority means that ‘the doctrine is far from firmly established in international law’.\(^{54}\) The international reaction to the NATO intervention could be further evidence in support of the pluralist contention that the international community is not united enough to agree on global principles of justice and human rights.

**The Responsibility to Protect**

There has been a re-evaluation of the law relating to humanitarian intervention since the ICISS published the ‘Responsibility to Protect’ report in 2001. The report stated that while

\(^{50}\) Gray, op. cit. p.42

\(^{51}\) Cassese, loc. cit. pp.28-29

\(^{52}\) Gray, op. cit. p.43

\(^{53}\) Ibid, p.47

\(^{54}\) Ibid, p.51
there was not enough evidence to support the existence of a legal norm allowing military intervention as a last resort to end gross violations of human rights, a number of legal sources supported the existence of ‘an emerging guiding principle’. The report put forward the view that the international community has a responsibility to protect populations from genocide and other mass atrocities, using military intervention if necessary as a last resort.

The concept of the ‘responsibility to protect’ was debated at the UN World Summit in 2005 and a version of the concept was incorporated into the World Summit Outcome Document. The Outcome Document, in paragraphs 138 and 139, recognised that the international community, through the UN, has a responsibility to use peaceful means to protect populations from genocide and other crimes against humanity. It also stated that:

We are prepared to take collective action…through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis…should peaceful means be inadequate and national authorities…fail to protect their populations from genocide…and crimes against humanity.

This incorporation of the concept into the Outcome Document has done little towards the development of a norm of humanitarian intervention in cases of genocide. In order for states to reach a consensus on the ‘responsibility to protect’, the concept had to be significantly altered and the sense of obligation was reduced. The United States insisted that any language implying that the Security Council had a legal obligation to act should be removed. However, some states such as Canada, the UK and Germany welcomed efforts to get international agreement on the concept, which was made easier by the endorsement from the UN Secretary General Kofi Annan and his High-Level Panel on Threats, Challenges and Change.

However, there were a considerable number of states that did not endorse the responsibility to protect, including Russia, China and the Non-Aligned Movement. Therefore, although the

55 International Commission on Intervention and State Sovereignty, loc. cit. pp.15-16
57 Wheeler, N. J. and Egerton, F. The Responsibility to Protect: 'Precious Commitment' or a Promise Unfulfilled? Global Responsibility to Protect, 2008, 1, pp.122-123
59 Ibid, pp.151-152
concept was officially endorsed in the 2005 World Summit Outcome Document, criteria to guide decision-making on humanitarian intervention were not adopted and no authority other than the Security Council was considered. Wheeler has argued that ‘it is becoming less and less conceivable’ that the Security Council would refuse to authorise the use of force to end genocide since the Council expanded its interpretation of what constitutes a threat to international peace and security to include humanitarian emergencies. According to Wheeler this ‘normative transformation’ was codified in the 2005 World Summit Outcome Document. However, the document does not obligate the Security Council to act in cases of genocide and maintains that all decisions should be made on a case-by-case basis.

The situation in Darfur, a western region of Sudan, and the lack of effective response from the international community is evidence that although the responsibility to protect doctrine was endorsed in 2005, it does not ensure action to prevent genocide and other mass atrocities. There was an escalation of violence in the region in February 2003 when the Sudanese government armed Arab militias known as the ‘janjaweed’ to quell African insurgent groups, leading to the violent targeting of black African civilians. Darfur has a population of 6 million and it has been estimated that 200 000 people have died as a result of the conflict and 2 million have been displaced. The United States Congress, Secretary of State and President all identified the conflict as genocide in 2004, which marked the first time a signatory of the Genocide Convention invoked it to call for the Security Council to take action. However, without permission from the Sudanese government the Security Council was unwilling to authorise a military intervention, so instead passed a series of resolutions in 2004 and 2005 (1556, 1564, 1591 and 1593), which expressed grave concern at the situation, imposed an arms embargo and referred the situation to the International Criminal Court. As Gray argues:

This failure to prevent a major humanitarian crisis demonstrates that the universal acceptance in principle of a ‘responsibility to protect’…cannot guarantee action…It may be that the

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60 Wheeler, N. J. Operationalising the Responsibility to Protect: The Continuing Debate over where Authority should be Located for the Use of Force. NUPI Report, 2008, No. 3, p.16
61 Ibid, p.16
63 Gray, op. cit. p.52
64 Straus, loc. cit. pp.123-130
65 Gray, op. cit. pp.54-55
World Summit’s acceptance of the ‘responsibility to protect’ has created expectations which will not be fulfilled in practice.66

Thomas Weiss, the research director of the ICISS, has named the concept that was endorsed at the 2005 World Summit ‘R2P-lite’ because the criteria to guide decision-making were not endorsed and any suggestion of a responsibility or obligation to act was removed to enable consensus.67 Therefore it can be concluded that while genocide is prohibited under international law there is no legally binding norm of humanitarian intervention that requires states to act to stop it. There may be a weak emerging norm that there is an international responsibility to protect, exercisable by the Security Council authorising forcible intervention as a last resort in cases of genocide and other mass atrocities.68 However, Bellamy and Williams argue that the emerging norm of humanitarian intervention ‘remains weak and contested’.69 Brownlie’s conditions for a rule of customary international law of consistency, generality of practice, and proof that states recognise the practice as obligatory70 cannot be met. There have been interventions motivated partly or primarily by humanitarian concerns, such as Kosovo in 1999 and Iraq in 1991 but there is not the required consistency or generality of practice for the establishment of an international norm.

There are a contingent of states in the international community, including China, Russia and the Non-Aligned Movement, that have continued to object to the development of a norm of humanitarian intervention. There is also no consistency in the application of such a practice: it is sporadic and selective. As Glanville argues, ‘for every Kosovo there is a Sierra Leone or a Rwanda, or, today, a Darfur’.71 Therefore, it can be concluded that humanitarian intervention is only legal when authorised by the Security Council on a case-by-case basis, and that there is no legal obligation that compels states or the Security Council to take military action to prevent or stop genocide.

**Humanitarian Intervention and Moral Responsibility**

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66 Ibid, p.55
67 Wheeler and Egerton, loc. cit. pp.123-124
68 United Nations General Assembly, Secretary-General’s High-Level Panel, loc. cit. p.57
69 Williams and Bellamy, loc. cit. p.27
70 Brownlie, op. cit pp.7-8
71 Glanville, loc. cit. p.188
It was concluded in the previous section that there is not a legally binding norm of humanitarian intervention that obligates the international community to use force as a last resort to prevent or stop genocide. It will be discussed in this section whether such a norm would be beneficial for the international community overall, focusing on arguments from solidarism, pluralism and realism.

It will be argued that genocide is such a grave abuse of human rights that states have a moral responsibility to end such abuse, using military intervention as a last resort if this is necessary. This paper is in agreement with Wheeler’s solidarist position that the international community should ‘deepen its commitment to justice’ by embracing developments that have the potential to overcome the ‘perennial tension’ between order and justice, such as the responsibility to protect doctrine. It will be argued that in order to maintain international order in the pursuit of justice, a legitimately established mechanism is required that is accepted by the international community as authoritative. Whether such international consensus is possible in practice will be discussed in the fourth chapter.

The Solidarist Case for a Norm of Humanitarian Intervention

Solidarist international society theory recognises that humanitarian intervention is both a right and a duty of the international community in cases of extreme suffering as long as the benefits arising from the intervention outweigh the costs of undertaking it. It is acknowledged that military intervention can ‘destabilise the order of states’, but the ICISS maintained that there will sometimes be ‘exceptional circumstances’, such as genocide, that ‘shock the conscience of mankind’ and ‘present such a clear and present danger to international security’ that humanitarian intervention is a necessity.

Tesón sets out the moral argument for humanitarian intervention based on the idea from liberal political philosophy that one of the main functions of states and governments is to protect the human rights of all citizens: ‘Subject to important constraints, external intervention is (at least) morally permissible’ to end ‘extreme forms of injustice towards

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72 Wheeler, 2000, op. cit. p.11
74 International Commission on Intervention and State Sovereignty, loc. cit. p.31
people’ such as genocide.\textsuperscript{75} It is argued that states have a moral duty to intervene and should be obligated to act to prevent or stop genocide unless such action threatens their most fundamental national interests. However, there are limits to solidarism as a practicable theory and the objections to a norm of humanitarian intervention from realism and pluralism will be discussed below.

Wheeler argues that humanitarian intervention ‘exposes the conflict between order and justice at its starkest’ as it involves the use of force, which threatens international order, but uses force in an attempt to achieve justice.\textsuperscript{76} According to solidarism, a norm of humanitarian intervention governed by legitimately established mechanisms that are seen as authoritative by the international community could reduce the tension between the two.\textsuperscript{77}

However, the international system at present protects neither order nor justice absolutely, casting doubt on whether there exists sufficient solidarity within the international community for the development of a norm of humanitarian intervention. The international community is not obligated to forcibly intervene as a last resort to stop genocide, as evidenced by the genocide in Rwanda in 1994, so does not protect justice absolutely. Neither is the international system able to protect order absolutely by preventing the most powerful states from using force for humanitarian ends outside international law, as happened in the NATO intervention in Kosovo in 1999.

During the Rwandan genocide an estimated 800,000 Rwandans were systematically slaughtered by extremist militia. According to Schnabel and Thakur ‘the failure to prevent and end the genocide is the most appalling example of Western inaction in the 1990s’.\textsuperscript{78} When the plane of Rwandan President Habyarimana was shot down on 6\textsuperscript{th} April 1994, Hutu extremist militias along with radical army personnel initiated a campaign of genocide to kill the Tutsi population of Rwanda along with any moderate Hutu.\textsuperscript{79}

\textsuperscript{76} Wheeler, 2000, op. cit. p.11
\textsuperscript{77} Ibid, p.11
The international community actively made the situation worse by reducing the size of the 
UN peacekeeping force that was already there. When the extremists killed ten Belgian 
peacekeepers the Security Council voted to reduce the size of the UN peacekeeping force 
authorised under Chapter VI to 270. Although UNAMIR was unable to use force against 
the perpetrators of the genocide, a larger force could have deterred some of the massacres. 
‘Operation Turquoise’ was authorised two months after the start of the genocide, by which 
time most of the victims had already been killed.

In contrast to Rwanda, where a lack of political will meant that the international community 
stood by and let genocide unfold, NATO intervened in Kosovo in 1999 to stop a civil war 
from turning into a campaign of ethnic cleansing. The NATO intervention in Kosovo was 
not a response to genocide but is an insightful contrast to the lack of intervention in Rwanda. 
The intervention was taken without Security Council authorisation in response to atrocities 
being carried out by the Serbian military and police force against the Kosovar Albanians.

According to NATO, conflict in Kosovo in 1998 between the Serbian army and police force 
and the Kosovo Liberation Army had led to the death of over 1500 Kosovar Albanians. In 
February 1999 a peace agreement was proposed at Rambouillet, but Serbia refused to sign 
because in order to comply the Serbs would have had to make a number of large 
concessions. The NATO intervention started on 24th March 1999 in an attempt to secure 
Serbian acceptance of troop deployment to the region, which was seen as necessary to avert 
an extreme humanitarian emergency.

Therefore, while the international community did practically nothing to stop the massacre of 
over half a million people in Rwanda in 1994, NATO intervened in Kosovo in 1999 in 
response to the deaths of 1500 people, acting outside established legitimate mechanisms and 
arguably threatening international order. These cases show that it may not be possible to 
overcome the tension between order and justice as there may not be sufficient solidarity

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80 Ibid, p.11
82 McCwire, M. Why Did We Bomb Belgrade?, International Affairs, 2000, 76(1), p.16
83 Ibid, p.12
84 Power, op. cit. p.447
85 McCwire, loc. cit. p.16
within the international community for the establishment of a norm of humanitarian intervention.

While this paper suggests that humanitarian intervention in cases of genocide is morally necessary, there are two main objections to the development of a norm of humanitarian intervention that must be considered. The first is the realist objection that any norm of humanitarian intervention will be applied selectively and will be abused by states wanting to further their national self-interest. The second is the pluralist objection that there is insufficient solidarity in the international community for the existence of global principles of justice and human rights, so any attempt to introduce a norm of humanitarian intervention would damage international order and stability. It will be considered whether these are valid objections to the development of a norm of humanitarian intervention in cases of genocide.

**The Realist Objection to a Norm of Humanitarian Intervention:**

Realist theory asserts, in contrast to English School theory, that there is no international society of states and that states therefore have no binding obligations to one another. According to this view, states do not have a duty to use force to end grave abuses of human rights and will only act to further their national self-interest. The realist objection to a doctrine of humanitarian intervention is set out by Wheeler:

…[E]ven if some general principles could be arrived at for deciding when humanitarian intervention was legitimate, states acting in their national self-interest will always apply such principles selectively…In the absence of an impartial mechanism…states might espouse humanitarian motives as a pretext to cover the pursuit of national self-interest.

This realist objection to a norm of humanitarian intervention is not unfounded, as illustrated by the different responses of the international community to Rwanda in 1994 and Kosovo in 1999. It has been argued that the Security Council failed to take action in Rwanda because the permanent five members were ‘uninterested in a small Central African country that was...

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86 Wheeler, 1992, op. cit. p.471
87 Ibid, p.471
88 Bull, op. cit. p.53
89 Wheeler, 1992, loc. cit. p.471
marginal to their economic or political concerns and peripheral to international strategic rivalries’.\textsuperscript{90} The United States continued to block effective action throughout the progression of the genocide, and tried to stop UNAMIR being reinforced despite the decision on 15\textsuperscript{th} May by the Security Council to send more troops.\textsuperscript{91} The international community failed to intervene because of a lack of political will. No state with sufficient resources was willing to undertake the economic and political costs of an intervention until it was too late to save most of the genocide victims.

This stands in contrast to the NATO intervention in Kosovo in 1999 in which a vast amount of resources were employed to save a fraction of the number of lives that were lost in Rwanda. NATO’s motives in this intervention were not purely humanitarian as NATO had been involved in the conflict in Yugoslavia for a number of years and, as Power argues, it was ‘humiliating’ for NATO that they could not deter Serbia from committing atrocities in Kosovo.\textsuperscript{92} NATO also wanted to prove its continuing relevance to the international order after the end of the Cold War.\textsuperscript{93} These examples illustrate that humanitarian intervention has been applied selectively and there is little reason to suggest this might change.

The realist objection that a norm of humanitarian intervention would be abused by powerful states can also be illustrated by the NATO intervention in Kosovo. According to Chandler, NATO’s use of force outside the UN shows that there is now ‘little barrier to the assertion of US power around the world’.\textsuperscript{94} The implications of this are that the United States is able to use force where and when it wants, using flimsy legal justifications, such as humanitarian intervention, in an attempt to legitimate its pursuit of national self-interest. Schnabel and Thakur argue that the ‘over-riding message’ of the NATO intervention in Kosovo ‘is not that force has been put to the service of law, but that might is right’.\textsuperscript{95}

The responsibility to protect doctrine, as an attempt to overcome some of the failings of humanitarian intervention in the 1990s, attempted to create an obligation to act to prevent and end genocide and other mass atrocities. However, the concept has been criticised as being

\textsuperscript{90} Adelman and Suhrke, loc. cit. p.303
\textsuperscript{91} Willum, loc. cit. p.23
\textsuperscript{92} Power, op. cit. p.448
imperialistic and Focarelli asserts that a number of states have opposed it on the basis that it is not sufficiently impartial to protect human rights and could be used discretionally by the major powers to further their interests.\textsuperscript{96} For example, despite the human rights atrocities and violence that escalated in Darfur in 2004, Western states have not been willing to pay the political and material costs of an intervention that does not directly affect their national interests.\textsuperscript{97} This has prompted Bellamy and Williams to conclude that states have not matched ‘their bold words about the responsibility to protect with concomitant actions’.\textsuperscript{98} It has been suggested that as few as 5000 soldiers mandated to prevent further deaths by ensuring the delivery of humanitarian assistance, protecting the refugee camps from militias and setting up a no-fly zone could have made a ‘substantial difference’ to the situation.\textsuperscript{99} Despite the efforts of the ICISS to establish an obligation to use force as a last resort to stop grave violations of human rights, humanitarian intervention is still being applied selectively.

There are, however, some valid criticisms of the realist objection to a norm of humanitarian intervention. First of all, it can be argued that the realist contention that states have no duty to follow international rules and always act to further their national self-interest is not necessarily correct. Constructivism asserts that the emergence of a new norm in international society can cause states to redefine their behaviour and even act against their material interests.\textsuperscript{100} Klotz gives the example of the large number of states and international organisations that adopted sanctions against the Apartheid government of South Africa due to the emergence of a norm of racial equality, despite this being against the strategic and economic interests of many.\textsuperscript{101}

Therefore, an emerging norm of humanitarian intervention in cases of genocide could cause powerful states to apply the norm indiscriminately across international society rather than only intervening to further their national self-interest.

However, the likelihood of such a norm emerging and being applied consistently by powerful states is low due to the lack of political will evident in the failure of the international community to stop gross human rights atrocities in Rwanda and Darfur. Selectivity is to
some extent inevitable in the application of international justice and while this does not excuse it, it is arguably better to prevent some cases of genocide and mass atrocities than none. There will be cases where using force to end abuse will do more harm to the population at risk than good, and should therefore not be considered. For example Gareth Evans, co-chair of the ICISS, has not been convinced that military intervention in Darfur would do more good than harm. Selectivity only becomes abhorrent when a case of genocide is ignored because it is peripheral to great power interests while a less severe humanitarian emergency is given priority because of power politics and the narrow self-interest of powerful states. However, this is not necessarily a reason to discard humanitarian intervention as a damaging development because saving some lives is better than saving none.

The realist objection that a norm of humanitarian intervention would be applied selectively and abused as a justification for the use of force could potentially be overcome if an international procedural mechanism accepted as authoritative was devised that enabled impartial decisions on when forcible intervention is necessary to end genocide and other mass atrocities. The development of such a mechanism, possibly outside the Security Council, will be discussed in the fourth chapter. However, it will be argued that any decision on the use of force must be taken within the UN as to do otherwise ‘would imply the recognition…that international law is incapable of ensuring respect for socially indispensable standards of morality’.103

The Pluralist Objection to a Norm of Humanitarian Intervention

Pluralism is distinct from realism in that, like solidarism and constructivism, it recognises that states are bound by a common set of rules and have rights and duties under international law. According to Wheeler, pluralists object to a norm of humanitarian intervention on the grounds that no agreement is possible on ‘universal principles of human rights’ and therefore any attempt to impose ‘what must necessarily be a particularist value’ would disrupt order. Bull argued in 1966 that pluralism was a more realistic theory than solidarism because it is ‘founded upon the observation of the actual area of agreement between states’ and ‘seeks not

103 Wheeler, 2000, op. cit. p.41
104 Wheeler, 1992, loc. cit. p.467
105 Ibid, p.471
to burden international law with a burden it cannot carry.\textsuperscript{106} According to pluralist international society theory, rules in the international system enable states with different notions of justice to coexist and without internationally agreed rules governing humanitarian intervention, states will intervene according to their own notions of justice, damaging international order.\textsuperscript{107}

Caplan argues that the NATO intervention in Kosovo had such an effect, having ‘broad ramifications’ on international stability.\textsuperscript{108} For example concern has been raised that the intervention may set a precedent for other regional organisations to claim humanitarian justification when using force. Schnabel and Thakur have suggested that the Arab League could cite the NATO precedent as justification to use military force against Israel, claiming that Israel have committed grave violations of human rights against the Palestinian population.\textsuperscript{109} A norm of humanitarian intervention could be very damaging to the international community if it encouraged such uses of force.

For pluralists, peace should be the primary aim of the international community rather than the protection of human rights and according to the Secretary General’s High-Level Panel in 2004, ‘the United Nations was created in 1945 above all else “to save succeeding generations from the scourge of war”’.\textsuperscript{110}

Upholding the central principles of sovereignty, non-intervention and the non-use of force enable states with different conceptions of justice to live in a peaceful international society.\textsuperscript{111} Arguably more effort should therefore be put into supporting measures short of the use of force that could prevent genocide and other mass atrocities. Focarelli argues that while non-forcible interventions, such as political pressure, economic sanctions and national and international criminal courts, may be inadequate to deter, prevent or stop genocide, they are the only measures that have the full support of the society of states.\textsuperscript{112} This would enable the preservation of international order, although possibly at the expense of justice.

\textsuperscript{106} Bull, op. cit. pp.71-72
\textsuperscript{107} Wheeler, 2000, op. cit. pp.11-29
\textsuperscript{108} Caplan, R. Humanitarian Intervention: Which Way Forward? Ethics and International Affairs, 2000, 14, p.35
\textsuperscript{109} Schnabel and Thakur, op. cit. p.10
\textsuperscript{110} United Nations General Assembly, Secretary-General's High-Level Panel, loc. cit. p.11
\textsuperscript{111} Wheeler and Dunne, loc. cit. p.96
\textsuperscript{112} Focarelli, loc. cit. p.210
Wheeler has criticised pluralism, questioning the moral value that can be attached to the society of states ‘if its rules and norms provide a licence for governments to oppress their own people’. The pluralist position on international justice does not allow room for the developing solidarity of the international community and makes the assumption that international agreement on such principles will never be possible. There has been a movement towards agreement on universal standards of justice and human rights in relation to humanitarian intervention. The Security Council has broadened its mandate since the end of the Cold War and has authorised force on numerous occasions to protect populations from grave abuses of human rights. The 2005 World Summit Outcome Document codified this ‘normative transformation’, according to Wheeler. The Outcome Document also established the limits of state sovereignty, recognising it as a responsibility towards a population rather than an intrinsic right. Therefore, although international agreement has been limited there has certainly been a movement in the right direction since the end of the Cold War.

Pluralists may argue that as this agreement has been limited, a norm of humanitarian intervention will still damage international order. However, Bull contends that that there is truth in the idea that ‘without justice there [can] be no lasting order’. In 1983 Bull argued that Western states have a moral obligation, but also a long-term interest, in strengthening international justice. Therefore it could be argued that international justice is necessary for the maintenance of international order.

This paper has argued that there should be an obligation to use force as a last resort in cases of genocide, but humanitarian intervention must be governed by a legitimate body within the UN in order to mitigate as much as possible the realist and pluralist objections that such a norm will be applied selectively, abused, and will damage international stability. The next chapter will consider Security Council reforms and other procedural mechanisms that could be incorporated into the international system to enable the development of a norm of humanitarian intervention in cases of genocide.

**Operationalising a Norm of Humanitarian Intervention**

113 Wheeler, 1992, loc. cit. p.473
114 Wheeler, 2008, loc. cit. p.16
115 Wheeler and Dunne, loc. cit. p.100
116 Ibid, p.101
It has been argued that although there is currently no norm of humanitarian intervention under international law, states have a moral duty to stop or prevent genocide using force as a last resort. Tesón puts forward the solidarist argument that ‘non-interventionism is a doctrine of the past’ and that its effect is ‘to protect established political power and render persons defenceless against the worst forms of human evil’.\textsuperscript{117} It is argued that states do have a ‘responsibility to protect’, but that using force to protect populations from genocide should not be unrestrained. It should be governed by a legitimate authority that is able to make impartial decisions in accordance with international law, thereby mitigating the problems of abuse and selectivity and helping to maintain international order.

The Responsibility to Protect Doctrine

Criteria have been seen as an essential part of implementing the responsibility to protect into international law and have been promoted by supporters of the ICISS report, Kofi Annan, the Secretary General’s High-Level Panel and the African Union.\textsuperscript{118} The use of decision-making criteria could enable the establishment of a system that can distinguish and legitimate genuine humanitarian interventions. Ayoob argues that:

\begin{quote}
If humanitarian interventions have to occur, decisions to intervene must be taken with great deliberation and through a transparent, impartial and legitimate mechanism, which does not favour the national interest concerns of intervening powers.\textsuperscript{119}
\end{quote}

The ICISS set out six criteria for military intervention in 2001, although these were not incorporated into the 2005 World Summit Outcome Document.

The six threshold criteria are the requirement of a ‘just cause’, with any case of genocide as defined under the 1948 Genocide Convention qualifying for military intervention; ‘last resort’, meaning that every avenue for prevention and peaceful resolution must have been exhausted; ‘proportional means’, meaning that the ‘scale, intensity and duration’ of the intervention should be the minimum necessary to stop the humanitarian emergency;

\begin{footnotesize}
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\item\textsuperscript{117} Tesón, op. cit. pp.128-129
\item\textsuperscript{118} Bellamy, loc. cit. p.168
\item\textsuperscript{119} Ayoob, M. Humanitarian Intervention and International Society. \textit{Global Governance}, 2001, 7(3), p.228
\end{itemize}
\end{footnotesize}
‘reasonable prospects’, in that there should be a high probability that the intervention will be successful; ‘right intention’, meaning that the primary purpose of the intervention should be to avert a humanitarian catastrophe; and ‘right authority’. Archibugi argues that having the ‘right authority’ is important because humanitarian interventions are likely to be carried out by Western states in weaker countries and this should be regulated to ensure interventions are in the interests of the international community. The Security Council has the authority to authorise force to stop genocide and has acted within an expansive interpretation of Article 39 of the UN Charter since the end of the Cold War but has not comprehensively or effectively prevented genocide since then.

Evans has argued that the above criteria are necessary both to establish a high threshold for intervention so that the responsibility to protect doctrine does not become a licence for unilateral humanitarian intervention, and to ensure that the use of force is always a last resort. However, making decisions using the above criteria does require multiple subjective judgements and as Chandler argues, there is little consensus as to how they might be interpreted, leaving the system open to abuse from states wanting to use the responsibility to protect doctrine to further their national interests.

The ICISS’ six criteria for military intervention are comprehensive criteria that, if properly implemented, could relieve the tension between order and justice that pluralists see as enduring in humanitarian intervention. However, whether these criteria will actually ever be incorporated into the international system is doubtful. The international community had the chance to pass an international agreement on the responsibility to protect and incorporate the criteria into an international agreement at the 2005 World Summit. However, this chance was not taken up. Bellamy asserts that the discussion surrounding the responsibility to protect paragraphs at the 2005 World Summit shows that there is an emerging consensus that the international community has responsibilities to protect populations from genocide and other mass atrocities, although argues that the wording of ‘we are prepared to take action’ in paragraph 139 reduces the sense of obligation on the Security Council to act.

120 International Commission on Intervention and State Sovereignty, loc. cit. pp.33-55
121 Farer, loc. cit. p.221
122 Wheeler and Egerton, loc. cit. pp.126-127
123 Chandler, loc. cit. p.69
124 Wheeler, 2000, op. cit. p.11
125 Bellamy, loc. cit. pp.164-166
The ICISS had recommended measures that would make it very difficult for powerful states to avoid their responsibilities towards humanity, for example by the Security Council agreeing to use criteria on its decisions on the use of force, openly recognising its responsibilities and agreeing to consider suspending the veto. However, none of this was achieved, with the United States opposing criteria because they restricted the use of force, and China and Russia opposing criteria because they were seen as enabling the use of force. Therefore any mention of criteria was removed from the Outcome Document. According to Wheeler and Egerton, the criteria were seen as too controversial by the Secretary General of the UN, the High-Level Panel and the international community at the 2005 World Summit. Bellamy argues that the Outcome Document will help ‘very little’ in preventing future Rwandas and Kosovos. The international community had the opportunity in 2005 to set out detailed principles governing the use of force and its obligations to protect distant populations from atrocities such as genocide. This opportunity was not taken.

It seems unlikely that this situation is going to change in the near future. Genocide was occurring in Darfur at the same time that states were sitting down to discuss the extent of their obligations to stop genocide. States who endorsed the responsibility to protect doctrine have not intervened in Darfur to protect the population from grave violations of human rights: they have not lived up to the promises they made in 2005. Therefore it can be argued that the responsibility to protect has not been successfully operationalised.

**Problems with Operationalising the Responsibility to Protect**

The emerging concept of the responsibility to protect has remained ‘weak and contested’ despite efforts by some members of the international community to incorporate it into legitimate mechanisms. According to Wheeler and Egerton there are two fundamental limitations to ‘operationalising’ the responsibility to protect doctrine that have stunted its development into an established norm in international society. The first is a lack of political

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126 Ibid, p.167
127 Ibid, p.168
128 Wheeler and Egerton, loc. cit. p.131
129 Bellamy, loc. cit. pp.168-169
130 Williams and Bellamy, loc. cit. p.27
will for putting the concept into practice. The second is that there is no agreed solution to the question of what should happen if the Security Council is unable or unwilling to authorise the use of force in the case of an extreme humanitarian emergency. These problems will be discussed in turn.

The ICISS report recognised that there was a lack of political will for forcible intervention, stating that ‘the most compelling task now is to work to ensure that when the call goes out to the community of states for action, that call will be answered’. The Commission saw its report as enabling the generation of political will on the subject of intervention to stop grave violations of human rights. Initially the ICISS report did seem to generate political will for the responsibility to protect doctrine and a version of the concept was endorsed at the 2005 World Summit. However, Evans noted that many countries who signed up to ‘R2P-lite’ in 2005 began to retreat from their earlier responsibilities, with UN delegates from Latin America, the Middle East and Africa saying that ‘the concept of the responsibility to protect has not been adopted by the General Assembly’.

A lack of political will for humanitarian intervention is arguably the main barrier to effective intervention by the international community in cases of genocide and without sufficient political will a norm of humanitarian intervention will never be successfully operational. It has been argued that states do have a moral responsibility to protect populations from genocide but state leaders will inevitably be concerned about the domestic repercussions of sending their troops into dangerous war zones in the name of humanitarianism rather than national interests. This was particularly noticeable in the United States after it contributed troops to UNOSOM II in Somalia under Security Council Resolution 814 (1993) but then pulled out of the country after eighteen American soldiers were killed.

Adelman and Suhrke argue that the international community’s failure to intervene in Rwanda is an example of the ‘propensity of states to be guided by narrow self-interest rather than moral obligations to uphold international norms of justice’ and it would seem that not a lot

131 Wheeler and Egerton, loc. cit. p.116
132 Ibid, p.116
133 International Commission on Intervention and State Sovereignty, loc. cit. p.70
134 Wheeler and Egerton, loc. cit. p.118
135 Ibid, p.124
136 Gray, op. cit. pp.287-288
137 Adelman and Suhrke, loc. cit. p.302
has changed since then. Although the international community has, on occasion, acted to uphold norms of international justice, for example the Security Council authorised interventions in Somalia and Haiti in the 1990s and NATO intervened in Kosovo in 1999, there is no legal or other imperative that obligates states to forcibly intervene as a last resort to stop genocide.

Despite the intentions of the ICISS, the responsibility to protect doctrine has not been successful in generating political will for intervention to end genocide and other mass atrocities. UN officials have blamed the Security Council’s limited response to Darfur on ‘a lack of political will’, meaning that the 2005 World Summit Outcome Document has not generated sufficient political will in the international community to necessitate action.

Using regional forces for humanitarian intervention could overcome the problem of a lack of political will as such forces are more likely to have national interests tied to the outcome of the conflict. Regional forces are also more likely to be closer geographically, enabling a rapid response. Etzioni recommends the use of regional forces such as the African Union or the Organisation of American States in efforts to halt or prevent genocide, arguing that they would add legitimacy because they are less likely than Western powers to have agendas other than stopping the humanitarian emergency. Holzgrefe gives the example of the ECOWAS interventions in Liberia in 1990 to 1995 and Sierra Leone from 1998. However, genocide tends to happen in the most impoverished regions in the world and regional actors in these areas are unlikely to have the funds to be able to effectively deal with genocide. The African Union, which is the regional force most involved in the conflict in Darfur, ‘suffers from a chronic lack of capacity’ and therefore requires substantial assistance from western donors in order to act effectively.

Archibugi recommends a permanent UN ‘Rescue Army’, with fifty states each contributing about 1000 soldiers that could be deployed by the UN to intervene, the idea being that so many countries are involved in the intervention it is much more likely to be undertaken for humanitarian reasons and pursue humanitarian objectives. However, this would require a

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138 Wheeler and Egerton, loc. cit. p.128
139 Etzioni, loc. cit. pp.480-481
140 Holzgrefe, op. cit. p.46
141 Williams and Bellamy, loc. cit. p.43
142 Farer, loc. cit. pp.223-224
number of states agreeing to contribute troops. Under-Secretary General Brian Urquhart proposed a rapid UN reaction force comprising of 10,000 volunteer soldiers with air support, which would eliminate the problem of finding states willing to supply troops. However, there has been no sign of the establishment of such a force, meaning it is unlikely to appear in the near future.

It has been argued that there would have been much more political support for an emerging norm of humanitarian intervention had the United States and its allies not embarked upon the ‘war against terror’ in 2001. Since the intervention in Afghanistan in 2001, and more particularly in Iraq in 2003, many states have become suspicious of the responsibility to protect doctrine and the uses it might be put to by Western powers with ‘neo-imperial’ objectives. In 2004 Evans argued that the ‘poor and inconsistent’ attempt by the United States and its allies to justify the intervention in Iraq as humanitarian has ‘choked at birth’ the emergence of a new norm justifying intervention on the basis of the responsibility to protect doctrine.

It can be concluded that the lack of political will in the international community for humanitarian intervention in cases of genocide based on the responsibility to protect has been central in the failure of a norm of humanitarian intervention to emerge since the ICISS report in 2001.

The second problem that has prevented the responsibility to protect doctrine from being successfully implemented is the failure of the international community to agree on what should happen if the Security Council is unable or unwilling to authorise the use of force to stop grave violations of human rights, specifically genocide. The Security Council only has fifteen members at any one time and is therefore able to make decisions more rapidly than a more democratic body such as the General Assembly. However, it is not representative of the international community and has five permanent members (the United States, the United Kingdom, France, Russia and China) whose veto gives them an inordinate amount of power. The Security Council has not used its power under the UN Charter to stop human rights abuses such as genocide in a consistent and effective way. The Secretary-General’s High-

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143 Wheeler, 2000, op. cit. p.304  
144 Williams and Bellamy, loc. cit. p.36  
145 Wheeler and Egerton, loc. cit. p.125
level Panel advised in 2004 that the Security Council pass a resolution outlining the guidelines it will use when debating whether or not to authorise the use of force in order to make the global collective security system more effective and legitimate.\textsuperscript{146} These criteria are very similar to those proposed by the ICISS and could help to ensure that the Security Council acts more effectively and consistently in cases of genocide.\textsuperscript{147} So far the Security Council has not passed such a resolution.

Security Council reform has also been suggested as a way to enable the Security Council to act more consistently and effectively. Ayoob suggests that the Council should be expanded and its membership made more geographically representative.\textsuperscript{148} The ICISS proposed that the permanent five members agree to a ‘code of conduct’ on the use of their veto, agreeing to not use the veto power to obstruct action that could stop an extreme humanitarian emergency unless this conflicted with vital interests.\textsuperscript{149} As the Commission has argued, ‘it is unconscionable that one veto can override the rest of humanity’.\textsuperscript{150}

However, in practice it is unlikely that the permanent members will ever agree to such a constraint on their power, and it seems apparent that there will continue to be situations where gross violations of human rights occur and the Security Council is unable or unwilling to do anything about it. Therefore, it may be necessary to consider other decision-making bodies for legitimate authority.

The ICISS suggested the General Assembly, which has the general authority under Article 11 of the UN Charter to ‘consider the…maintenance of international peace and security’.\textsuperscript{151} Wheeler argues that while General Assembly resolutions are not legally binding, a two thirds majority in the General Assembly when the Security Council is unable to act would ‘constitute a high standard of legitimacy’.\textsuperscript{152} However, as the ICISS points outs, a two thirds majority as required by the Uniting for Peace procedure would be extremely improbable except in the most extreme circumstances, although the Commission adds that the Rwandan

\begin{itemize}
\item[146] United Nations General Assembly, Secretary-General’s High-Level Panel, loc. cit. pp.57-58
\item[147] Ibid, p.58
\item[148] Ayoob, loc. cit. pp.228-229
\item[149] International Commission on Intervention and State Sovereignty, loc. cit. p.51
\item[150] Ibid, p.51
\item[151] United Nations Charter, loc. cit. Article 11
\item[152] Wheeler, 2000, op. cit. p.298
\end{itemize}
genocide might have been such a case. Critics have also argued that a large number of governments in the General Assembly do not have good human rights records and therefore should not have a say in decisions on international justice.

A General Assembly resolution passed by a two thirds majority to authorise humanitarian intervention in cases of genocide when the Security Council is unable to act has undoubted legitimacy owing to the near universal membership of the UN. Therefore, it is a reasonable alternative for ‘right authority’, although it should undoubtedly be a secondary authority used only when Security Council action is blocked by a veto.

Chandler argues that the ICISS’ report does not help to limit and define cases of humanitarian intervention but erodes the role of the UN and particularly the Security Council. Even conferring legitimate authority on the General Assembly may have repercussions. As the ICISS argue:

It is a real question in these circumstances where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by.

Despite Chandler’s concerns, the international community did not authorise any other body to make decisions on the use of force to prevent grave violations of human rights at the 2005 World Summit. Even those states that supported the responsibility to protect emphasised the necessity of the Security Council as the only authorising body. The Outcome Document stated that any intervention, peaceful or otherwise, must be taken ‘in accordance with the Charter’, thereby ruling out authorisation by the General Assembly or any body other than the Security Council.

It can therefore be concluded that the responsibility to protect doctrine has not been operationalised in the way envisaged by the ICISS. It has not galvanised the political will of the international community into accepting an obligation to intervene to stop genocide and

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153 International Commission on Intervention and State Sovereignty, loc. cit. p.53
154 Wheeler, 2008, loc. cit. p.6
155 Chandler, loc. cit. p.69
156 International Commission on Intervention and State Sovereignty, loc. cit. p.55
157 Focarelli, loc. cit. p.203
158 United Nations General Assembly, 2005 World Summit Outcome, loc. cit. p.30
other mass atrocities, and neither has any alternative to Security Council authorisation been legitimised in cases where the Council is unable to act. Without a normative commitment from states to actively prevent or halt genocide, the fact that intervention outside international law could seriously and dangerously weaken the international order is not the main concern. The main concern is that after all the promises of ‘never again’ the international community has still not acknowledged a moral or legal obligation to use force as a last resort to stop genocide.

There is no consensus over what should be done when the Security Council is unwilling or unable to act and neither is there sufficient political will or solidarity for a norm that obligates the use of force as a last resort, meaning that the UN and the international community are no better equipped to deal with genocide than they were in 1994. As Focarelli argues, the 2005 World Summit Outcome Document, which endorsed a version of the responsibility to protect doctrine has not avoided the major risk of humanitarian intervention: that the Security Council continues to act on a case-by-case basis, depending on the national self-interests of the permanent five members, authorising the use of force to protect human rights in some places but not guaranteeing that the worst atrocities, such as genocide, necessitate action. The ‘responsibility to protect’ doctrine has not been operationalised and the 2005 World Summit Outcome Document, while codifying the expansion of the interpretation of the Security Council mandate to include the protection of human rights, has not strengthened the commitment of the international community to humanitarian intervention and the protection of the most vulnerable populations.

Conclusion

This paper has examined the status of the norm of humanitarian intervention in international society, specifically focusing on the use of force to protect populations from genocide. Having examined the relevant international law and state practice it has been concluded that at present there is no norm of humanitarian intervention that allows or obliges states to take military action to stop or prevent genocide, except when force has been authorised by the Security Council on a case-by-case basis. Since the end of the Cold War the Security Council has expanded its interpretation of Article 39 to include humanitarian emergencies as

159 Focarelli, loc. cit. p.212
‘threats to international peace and security’. This ‘normative transformation’ was codified in the 2005 World Summit Outcome Document along with the recognition that sovereignty entails a responsibility towards the population of a sovereign state. It can therefore be argued that there is a weak emerging norm of an international responsibility to protect, implemented through the Security Council, that enables military intervention to be authorised as a last resort in cases of genocide and other mass atrocities. However, the Security Council is not obligated to authorise force in such cases and has not consistently and effectively protected populations from genocide and other human rights abuses.

It has been argued, in line with solidarist international society theory, that genocide is such a grave and widespread abuse of human rights that the international community has a moral obligation to use force as a last resort to save populations from such atrocity. Military intervention should, however, meet certain basic standards in order to classify as legitimate. To ensure that humanitarian intervention is not abused as a justification for the use of force and that the general prohibition on the use of force is not weakened, it should be governed by a legitimate authority that is able to make impartial decisions that take into account the well-being of the entire international community, not just the most powerful states. The Security Council, as the only body with the power to authorise the use of force in the international system, will play a fundamental role in shaping the future of humanitarian intervention. However, the veto power of the permanent five members means that decisions made by the Security Council are likely to further the national self-interest of the permanent states but may not protect international justice or be beneficial to the international community as a whole.

Various measures have been proposed by bodies such as the ICISS and the Secretary General’s High-Level Panel that could enable the Security Council to work more effectively and improve its credibility and legitimacy. The more controversial proposals include agreeing to a ‘code of conduct’ for the use of the veto when action is needed to stop a humanitarian emergency, and expanding the geographical representation of the Security Council.

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160 Wheeler, 2008, loc. cit. p.18
162 International Commission on Intervention and State Sovereignty, loc. cit. p.51
Council. However, these measures have not been introduced. It has also been proposed that the Security Council passes a resolution committing members to take into account a series of basic criteria of legitimacy when considering humanitarian intervention, but these have not been implemented.

The General Assembly has been proposed as a secondary body to authorise the use of force in cases of supreme humanitarian emergency, although this option should only be considered when the Security Council is blocked from acting and military intervention is necessary to stop genocide from occurring. It has been argued that the international community does have a moral responsibility to use force as a last resort to stop genocide, but the UN is and should remain the ‘sole legitimate guardian of international peace and security’. If UN decisions on the use of force are ignored and states take international justice into their own hands and intervene unilaterally there is a risk that UN authority will be eroded and that the ‘world order based on international law and universal norms’ will be severely undermined. However, if the UN is to remain the sole legitimate guardian of international peace and security it must, to the best of its ability, ensure that populations are protected from the worst human rights abuses, particularly genocide. If the UN fails in this endeavour and there are many more cases of supreme human suffering like that of Rwanda in 1994 and Darfur from 2004, its legitimacy and authority will be seriously eroded.

It is acknowledged, however, that without political support from the most powerful states in the international community the UN can do very little to uphold the responsibility to protect doctrine and use force as a last resort to stop genocide. The lack of political will of the western powers and the permanent five states on the Security Council remains the major barrier to the development of a norm of humanitarian intervention to stop genocide. Numerous states including the United States, China, Russia and those in the Non-Aligned Movement have resisted attempts to facilitate decision-making on humanitarian intervention in the UN, preventing the establishment of criteria and limits to the veto power.

The lack of obligation of the international community to use force as a last resort to stop genocide makes genocide prevention even more crucial because once genocide has begun there is no guarantee that the international community will intervene to put a stop to it. Evans

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163 Ayoob, loc. cit. pp.228-229
164 International Commission on Intervention and State Sovereignty, loc. cit. p.48
165 Ibid, p.48
166 Bellamy, loc. cit. pp.151-152
has argued that there have been some positive developments towards an emerging norm of humanitarian intervention: UN Secretary General Ban Ki-Moon has identified operationalising the responsibility to protect as one of his key priorities, and the Security Council has invoked the concept in some of its resolutions. The 2005 World Summit Outcome Document was also a positive step in that it acknowledged clear limits to sovereignty and codified the responsibility to protect, although this did not include an obligation to act or any decision-making criteria. These are modest developments, but even so may bring the international community closer to fulfilling its promise that ‘never again’ will genocide be tolerated.

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