

THE ETHICS OF HUMANITARIAN INTERVENTION
THE CASE OF THE KURDISH REFUGEES

by

Howard Adelman

JULY 16, 1991.

PART I

POLITICAL INTRODUCTORY NOTES

The 1991 Gulf War was fought ostensibly to protect the principle that sovereign nation states, who were members of the United Nations, could not be invaded occupied and annexed by more powerful neighbours. Following the defeat of the Iraqi army and the withdrawal of Iraq from Kuwait, uprisings took place in the north and south of Iraq to overthrow the Saddam Hussein regime. Both rebellions were quickly put down and, in the north, the suppression of the rebellion was accompanied by the harsh repression of the local population. Reinforced by memories of the use of chemical weapons on civilian populations, panic and a mass exodus took place as up to two million Kurds fled into the mountains towards the Turkish and Iranian borders.

The Turks, in contrast to the Iranians, would not let the Kurdish refugees in. In response to formal requests from both Turkey and France,¹ and under its mandate to protect threats to international peace and security, the United Nations Security Council passed Resolution 688 by a vote of 10-3 condemning, "the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region," and appealed to "all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts."²

President Bush of the United States had resisted the pressure of President Turgut Ozal of Turkey and Prime Minister John Major of Britain to become involved. He did not want to fuel Kurdish separatism, dismember Iraq, set a dangerous precedent for interference in the internal affairs of a sovereign state or recommit American ground forces on Iraqi soil.³ The ineffectiveness of the private relief operations, the refusal of the Turkish authorities to open its borders to the fleeing refugees, the inaccessibility of the sites in the mountains and the urgency and massive nature of the problem impelled Bush to act and reintroduce troops into Iraq to induce the Kurdish refugees to return while the army provided for their relief and protection.

Resolution 688 was interpreted by Britain, France and the United States as permitting, if not explicitly authorizing, the use of military force by those countries to create safe havens within Iraq to encourage the return of the refugees.

"Consistent (my italics) with United Nations Security Council Resolution 688, and working closely with the United Nations and other international relief organizations and our European partners, I have directed the U.S. military to begin immediately to establish several encampments in northern Iraq where relief supplies for these refugees will be made available in large quantities and distributed in an orderly way."⁴

A precedent had been set, with a widespread belief that it was backed by some international authorization, for military intervention in the domestic affairs of a state for purposes of protecting a minority population from the repression of its own government. Within several months, two unprecedented initiatives had been taken in the post Cold War world, one to reinforce the

principle of state sovereignty and one which appeared to undermine that principle. Both were said to be motivated, not for "reasons of state". but ostensibly in the interests of international peace and security and were perceived to be actions sanctioned by the Security Council. A new option to the traditional three solutions for refugees - repatriation, settlement in countries of first asylum and resettlement abroad - had been created, that is, preventing the refugees from crossing an international border in the first place by "humanitarian intervention", creating safe havens protected by foreign military forces within the national homeland of the refugees.

Humanitarian Intervention (HI) is to be distinguished from Humanitarian Action. Though both humanitarian intervention and humanitarian action are taken in response to clear abuses of humanitarian law, the two differ most explicitly in the means utilized. Humanitarian intervention employs military forces; humanitarian action does not. Humanitarian intervention acts without the consent of the host government; humanitarian action proceeds only with that consent.⁵ Though the American-led plan envisioned the troops being replaced by a protective force under UN auspices and being folded into the other humanitarian action initiated by the Secretary-General of the United Nations in the rest of Iraq, this article is focussed exclusively on the ethics of the humanitarian *intervention* defined herein as the use of foreign military forces within the sovereign territory of a state against the protests of that state for the humanitarian purpose of protecting a minority population.

PART II

INTRODUCTORY ETHICAL NOTES

An ethical analysis needs to be differentiated from a political-historical analysis, an analysis in terms of international law or in terms of political theory. If one compares the unilateral intervention of the Americans, Brits and the French to the multilateral humanitarian action of the UN in terms of the circumstances that led to the creation of two such diverse approaches followed by a thorough political analysis of the policies, motives, goals, norms and anticipated consequences of the key agents, we would provide a political-historical analysis which would help clarify why it was that two very different policies were followed for the population in Iraq in need of humanitarian assistance.

Further, the UN plan posed no challenge to international law or current political theory. The humanitarian intervention did. Was the humanitarian intervention sanctioned by international law? How did the intervention fit in with the tension between a concern for human rights of citizens and the sanctity of the sovereignty, territorial integrity and autonomy of states? Where does recognition of the legitimacy of a government, the principle of non-intervention and self-determination fit in? These are questions for international law and political theory.

Many believe that, in the final analysis, disputes in interpretations of international law and the theoretical basis for adjudicating between rival principles should be settled by ethics. One value system may require us to respect the rights of self determination and the sovereign authority of a state within its own territorial jurisdiction. Another value system demands that we have a duty to protect the human rights of individuals

throughout the whole world. We may look to ethics to determine which, if any, of the two principles should be given priority. The issue is what weight to give to each and what action would be appropriate given the weight assigned to the two sets of principles.

Ethics occupies the interstices between morality and political and legal theory. It attempts to ensure that political theory serves justice while attending, at the same time, to issues of personal morality. There are two distinct approaches to the use of ethics to resolve disputes in political theory and international law. One can presume that ethics can and should dictate the foundations of international law and political theory, as well, presumably, as the political actions of any players sensitive to such concerns. Some provide ethical foundations for opposing humanitarian intervention. Others, for example, Fernando R. Tesón, use ethics to argue for the utilization of humanitarian intervention.

"Because the ultimate justification of the existence of states is the protection and enforcement of the natural rights of the citizens, a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well. Consequently...foreign armies are morally entitled to help victims of oppression in overthrowing dictators, provided that the intervention is proportionate to the evil which it is designed to suppress."⁶

Not only does Tesón suggest that morality should dictate political theory, the foundations of international law and practical political action, but that morality, with its priority on the protection of individual human rights, should be the ethical foundation for international affairs. Further, on this

conceptual basis, foreign armies are not only entitled to intervene to protect the victims, the Kurds in this case, but arrange the overthrow of Saddam Hussein himself.

There are others, myself included, who believe that the function of ethics is not to provide categorical first principles from which all norms of behaviour can be derived, in imitation of the rules of international conduct, but that ethics develops because concrete cases pose problems for international law and political theory. Ethical reflection serves to mediate the dilemma. We start with practice and work our way back to the clarification of the ethical issues involved which, in turn, are then used to help adjudicate the appropriate principles and the actions based on them.

We do this by making clear the ethical norms implicit in a precedent setting case in the international arena, such as the humanitarian intervention on behalf of the Kurds, and compare those ethical norms to those espoused by ethical theorists who are proponents or opponents of humanitarian intervention. How do the ethical arguments for and against humanitarian intervention apply to the current case? The intention is not just an exercise in descriptive ethics, but is an attempt to develop an ethical set of norms which can be both rationally coherent and bear some correspondence with the actual practices and dilemmas encountered in the real world.

But what is the role of analyzing a single case in the clarification of the ethical issues and in formulating general principles and guidelines for the use of humanitarian intervention? How do we know that the case was not just a rare anomaly, an exception to the general conduct of international

affairs, rather than a precedent for future action? "A single case of action every decade or two, in the face of literally dozens of instances of inaction, in no way establishes humanitarian intervention as state practice."⁷

The answer is that we don't know whether it will become state practice. But unless we analyze whether the case **should** retain its exceptional status or whether it should be used as a precedent, we have no basis for encouraging its replication or, alternatively, relegation to an historical archive. Those who want to see individual human rights made the priority in international affairs will want it viewed as a precedent. Those wary of such an innovation will want the humanitarian intervention regarded as an exception. The point of an ethical analysis is to encourage one or the other of these alternatives through the analysis of the case in relationship to the ethical arguments supporting and opposing humanitarian intervention.

When a case at least has the appearance of a precedent, when some element of international authority seems to have been used to back up the case, and when it is clearly and unequivocally a genuine case of humanitarian intervention⁸, then it is clearly a case that demands analysis in terms of ethics, for it has the potential to serve as a precedent.

In the case, at least, of international norms of behaviour, the precedent must result in universalizable norms. The principle of universalizability applied to international ethical norms need not be applicable to all ethical norms, for communitarians believe that ethical norms are rooted in and derived from the history and cultures of particular peoples. We need not get into that debate. But an ethical norm applied to **international** behaviour **must** be universalizable.

The principle of universalizability is quite separate from whether one endorses or opposes humanitarian intervention on a *priori* ethical grounds. Tesón believes in universal ethical norms and opposes any communitarian position which argues that norms are relative to a particular community.⁹ He also promotes a universal principle of humanitarian intervention. Gerard Elfstrom opposes "intervention in the affairs of a nation-state by individuals who are not members of the nation-state, have no explicit authority or responsibility to oversee affairs within the nation-state, and have not contributed in any material way to the state of affairs which is the object of their moral concern,"¹⁰ but upholds the position that "moral principles and duties are universal in application."¹¹ In fact, one of his major reasons for opposing the position is that the universal claims of the principle are, he believes, unenforcible.

There is, however, a position which holds that such universal principles are not *a priori*, but are emergent universals, principles which reveal themselves to be valid and applicable when the historical circumstances are in place. There are two variations on this theme. From one perspective, the circumstances have emerged which allow for an exception to a still dominant and overriding norm. They are contingent conditions. The Economist of April 20th advocated a contingent universalist ethical approach to the subject of humanitarian intervention.

"The relief operation now undertaken by America, Britain and France is, by any standards, intervention in the internal affairs of a sovereign country. It thus offends one of the canons by which some sort of order is maintained in the modern world...(In) the matter of intervention elsewhere...Often the temptation to intervene was resisted for the good

reason that direct involvement would have risked world war...The only reasons for coming to their (the Kurds') aid, while rejecting the pleas of others, is that the allies, having just fought a war against Saddam Hussein, have a responsibility, however limited, to those he has tyrannised for so long, and have the popular support and the logistical ability to give both aid and security to at least some of them."¹²

In this case, the conditions were such that they permitted an exception to be exercised to the universal norm of non-intervention. This conditional subsidiary universal principle could be stated as follows:

If you have some direct responsibility for the situation, if your actions will not risk a larger conflict, if you have the logistical basis for carrying out the action in the area and if you have the political basis for support on the domestic front, then humanitarian intervention, which contravenes the more general norm not to intervene in the domestic affairs of another state, is permissible.

There is also what I refer to as an evolutionary universal position. This position holds that the norms become independent and universal only when the institutions of the civilized world evolved to support these ethical principles.¹³ Thus, Jack Donnelly argues, from a position of evolutionary universalism against humanitarian intervention.

"'Advanced' values may suit a community that has reached an appropriate level of political, emotional, intellectual and institutional development. In practice, however, the current 'corruption' of real states and the absence of effective international authorities to restrain them virtually guarantee pervasive abuse of a principle of humanitarian intervention."¹⁴

Whether he would now change his mind about the corruption of states and the absence of effective international authorities

is doubtful from reading his article. But others have. For example, The Washington Post, in an editorial headlined, "Human Rights, 'Territorial Integrity'", argued that, "All these moves are indications that the new world order may have higher standards than the old and give greater priority to rights of people as well as to rights of governemnt."¹⁵

Thomas Pogge adopts this position in this very volume. He argues that the protection of human rights are universal but are also conditional on the emergence of appropriate institutional mechanisms which are global in reach.

Now it should be clear from the depiction of the various positions that an a priori universalist may be someone who promotes (Tesón) or resists (Elfstrom) the introduction of humanitarian intervention. Similarly, an evolutionary universalist may promote (Pogge) or resist (Donnelly) the introduction of the principle of humanitarian intervention. The four positions on humanitarian intervention are independent of whether one is an a priori universalist or an emergent evolutionist.

One can be absolutely and unequivocally opposed to humanitarian intervention and uphold the absoluteness of the non-intervention principle. The NI position, as I refer to it, can be defended by one of the most thoughtful and strongest defenders of human rights. "A radical doctrine of nonintervention is, despite its flaws, preferable to the principle of humanitarian intervention; international law does not recognize humanitarian intervention, and considerations of policy strongly counsel against recognition in the future."¹⁶

One can defend the general principle of non-intervention, but allow exceptions. (NI with Exceptions) This appeared to be the position of The Economist editorial writers quoted above. Elfstrom holds this position. "The Samaritan is only justified in intervention either when the harm which the dependent party suffers is so great as to outweigh whatever benefit the guardian relationship offers to him or when the harm is such that the Samaritan may assume that it could not be in the interest of the dependent party to suffer it."¹⁷ Elfstrom offers the following special conditions to permit intervention as an exception:

"(1) The violation of rights of these citizens must be extremely and obviously serious, involving the systematic violations of the most basic rights such as the right to life, to human dignity, to freedom of expression, or to political activity.

(2) The citizens being abused must be no longer be capable of remedying the abuse by themselves.

(3) The abused individuals must be clearly desirous of outside aid or may reasonably be presumed to be desirous of assistance.

(4) Normal authorities charged with dealing with such cases must be either unable to respond or unwilling to respond, assuming that authorities who have responsibility to oversee the abuses in question exist."¹⁸

As Elfstrom summarizes his position,

"First, moral intervention in the affairs of nation-states by members of the larger world community is normally not justified...because it would constitute a violation of autonomy similar to that which occurs when an individual interferes in the affairs of another. Second, intervention is only warranted in exceptional cases when serious lasting harm is apt to befall the citizenry of a nation-state unless immediate action is undertaken by some outside party."¹⁹

There is then a position of Limited Humanitarian Intervention (LHI), a position I myself uphold so I will be very

brief at this point. Essentially this position puts forth a universal norm of humanitarian intervention, not as a conditional qualifier to the overriding norm of non-intervention, but as a universal principle in its own right, but one subject to its own stringent qualifiers. It is possible, as we shall see, that someone upholding LHI might resist the utilization of humanitarian intervention in cases where someone upholding NI with Exceptions would allow or even advocate its employment. There is no direct correlation between the stance taken on humanitarian intervention and the frequency of its application except if one upholds NI or Broad HI.

Tesón is a defender of the fourth stance, Broad HI. It is the position that humanitarian intervention, in all cases of gross human rights abuses, should override the principle of non-intervention.

Nor is there any necessary correlation between the political philosophical posture one adopts and the position on Humanitarian Intervention. There are four such political philosophical postures: transnational idealism, transnational realism, national idealism and national realism. A position is a realist one if it takes as its basis for the recognition of norms the existence of dominant and recognized institutions. For national realists, the dominant actor in the international arena remains the state.²⁰ For the transnational realist, international institutions, with real function and clout, have emerged in the twentieth century and are in the process of redefining the norms and possibilities of international transactions.

For the idealist, conceptualization precedes institutionalization. This does not mean that conceptualization precedes practice. Concrete actions and situations may give rise to conceptual clarification. But there normally is not and need not be any international institutions in place endorsing or upholding the new concept, whether it be peace keeping, confidence building measures or humanitarian intervention. Transnational idealists argue that the conception, in this case humanitarian intervention, should and ought to become the dominant international norm of the international community in dealing with gross violations of human rights. National idealists agree with national realists that the state remains the prime authority for action in the international sphere, but that its actions are not and need not always be governed by self-interest. Rather, it is in the state's interests in an increasingly interdependent world to foster humanitarian norms which make universal claims on all players in the international arena, and to institutionalize those new norms in appropriate international agencies and practices.

Transnational idealists occupy the opposite corner to the national realists. They want the priority to shift both from the self-interest and self-preservation of states **and** the state as the prime structural component of international action to the protection of individual citizens as the prime object of international affairs by authorized international agencies.²¹ For national realists and transnational idealists, there is virtually a direct correlation with their opposition to or defence of humanitarian intervention respectively.

The same cannot be said of transnational realists or national idealists. They share the common ground that the issue

of humanitarian intervention is not an open (for transnational idealists) or shut (for national realists) case. Rather it poses a dilemma for thinkers contemplating the introduction and expansion of humanitarian intervention as a norm of international practice.

"Humanitarian intervention thus seems to present a genuine moral dilemma in which important and well established principles conflict so fundamentally that reasonable men of good will may disagree on how that conflict is to be resolved. Policy considerations, however, clearly suggest that it should not be sanctioned as a general norm. Furthermore, arguments for humanitarian intervention seem to ignore the political environment of international law and the decisive interaction of law, morality and politics in the operation of legal norms."²²

Where a transnational realist such as Donnelly (above) might oppose humanitarian intervention, Tom Pogge might defend it. Similarly, a national idealist might oppose or defend humanitarian intervention in a specific case. There tends to be no correlation between the philosophical political postures of transnational realism or national idealism and the defense or opposition to humanitarian intervention. For these political philosophical stances, the ethical arguments must be weighed and considered rather than stacked up on one side or the other as if one were in an adversarial court proceeding.

PART III

The Ethical Arguments

Normative Priorities

Most commentators on humanitarian intervention in general and on the case of the Kurds in particular have viewed it as a conflict between two norms - the respect for individual human rights and the respect for the territorial integrity and sovereign authority of states. They viewed the two norms as requiring two different responses - intervention in the first case and non-intervention in the second case. Some argue for the priority of one over the other, though those arguing that priority be granted to the sanctity of the sovereign state might be willing to grant some exceptions to the general norm (see non-intervention with exceptions dealt with above).

I want to make two points. First, the conflict is between three norms, not two. Secondly, the issue is not one of ranking or subsuming one norm under the other, either as a subordinate or qualifier, but of reconciling the three normative positions.

The third norm is respect for the self-determination of peoples. John Stuart Mill used the principle of self-determination to argue against humanitarian intervention on the grounds that the people themselves must resolve their own differences without political interference by foreign states.²³ Why? There are two complementary reasons. First, because the first premise of freedom is that only the people themselves and not others can establish their own institutions which can continue to guarantee that freedom. Secondly, foreign intervention on behalf of a people's freedom is, by definition, the annulment of that freedom.

In the twentieth century, self-determination has come to be identified primarily with the second reason and self-determination is equated with the freedom of a colony from

imperial rule. It is not the people who determine their own institutions, but the institution of the colony already institutionalized by the imperial power that seeks its freedom from the domination and rule of that imperial power. The people are equated in such situations with the members of the colony, whether or not they constitute a single people or not and whether or not the members of the colony may belong to a people resident in several adjacent colonies.

Self-determination in an anti-colonial sense provides arguments for non-intervention lest a new form of colonialism become established. Self-determination, in the sense of a national people creating their own self-governing institutions, by contrast, may be the basis for instigating humanitarian intervention. Whether it is the case of the Croats and the Slovenes fighting for their collective rights to self-determination against the dominant Serbs, whether it is the Latvians, Estonians, Lithuanians, Armenians or Georgians fighting for self-determination against the dominant Russians or the imperial order of the Communist party, whether it is the Tamils fighting for self-determination against the dominant Sinhalese in Sri Lanka, national self-determination must be distinguished from state self-determination.

Further, there is no necessary connection between collective self-determination of a people or state self-determination and the protection of the civil rights of individuals. In the name of both a people's self-determination and state self-determination, civil rights may be the first thing sacrificed. Though the dominant Sinhalese have often used ruthless methods to crush the movement for self-determination of

the Tamils, the Tamil Tigers in Sri Lanka make the Sinhalese look like innocent babes.

The freedom of a community to express itself collectively is the principle that must be correlated with non-intervention, whether that intervention comes from a foreign power or the state to which that people or nation belongs. Non-intervention is a principle more appropriately applied to the self-determination of peoples and not the sanctity of states and existing borders.

The state has the responsibility of preserving peace and security for its own peoples and its neighbours. When it can no longer do so and the internal conflicts threaten the peace and security of its neighbours, then some kind of intervention may be warranted. The issue is not non-intervention as an absolute principle. Nor is it the primacy and legitimacy of the state dependent on its actions to protect the civil rights of its citizens. The issue is whether the state is fulfilling its functions vis a vis its own citizens and that of its neighbours - to preserve peace and guarantee the security of its own subjects from outside threats.

This means that, on the one hand, humanitarian intervention is not ruled out *a priori*. On the other hand, it is not invoked just because human rights have been violated, even in a massive way. The state may exist to protect the rights of its citizens, but its failure does not provide the grounds for intervention, whether that is a failure to protect the individual rights of its citizens or it is a failure to permit the self-expression of the national entities that constitute the state. A state loses its legitimate right to be respected only when it threatens the

peace and security of its neighbours, even if the only real threat comes from the failures of the state in exercising its domestic responsibilities.

The freedom of national communities to self-expression, self-realization and self-determination is not a subordinate principle to the integrity and the sovereignty of states. Nor do the political and civil rights of individuals occupy subordinate positions. Outsiders, through such actions as the Helsinki accords or extensive economic sanctions, may challenge the abuses of human rights or the repression of a national group, but can only engage in humanitarian intervention using military forces when the repression of civil and political rights and/or the suppression of a national group seeking self-determination poses a threat to international peace and security.

The principle of non-intervention in the domestic affairs of a state was erected not as an end in itself, but as a normative principle to serve the ethical value of peace and security. An issue, such as civil rights abuses or the suppression of the national self-determination of a people, no longer remain domestic issues when those repressive actions threaten the peace and security of neighbouring states, as is the case with mass flights of humans across borders.

Analogical Arguments - The State and the Individual

One common argument to defend or oppose humanitarian intervention is based on the analogy of the state to the individual. States are regarded as equal citizens before the law just as individuals are. According to John Rawls, the treatment of nations in the international field "is analogous to the equal rights of citizens in a constitutional regime."²⁴ Just as

citizens have the civil rights, the right to express his or her views in any way as long as there is no harm to other individuals, so the state is entitled to be secure from the scourge of intervention as long as that state poses no threat to another state.

But the same analogy can be turned on its head to justify intervention whenever the individual state is not fulfilling its function - the protection of individuals. If the first and primary function of an individual is preserve and care for his or her own life, and if the individual is not doing so but is starving his or herself to death, then forced feeding may indeed be permitted.

"The purpose of the state organization is to protect the right of individuals. Because the parties in the original (contract) position agree to terms of cooperation that are mutually acceptable and fair, the aim of the international community thus created - that is, divided into states - should be to protect the rights of individuals, not the perogatives of princes. Therefore, it is doubtful if the parties in the original position would agree to an unqualified rule of nonintervention that would jeopardize the very rights the original position is primarily supposed to secure - those that form the content of Rawls's first principle of justice."²⁵

There is a second analogical argument used to both oppose and defend humanitarian intervention. The state is conceived of as a parent and its citizens are its children so that the state has a guardian relationship to its children. Elfstrom, after postulating that "the government of a nation-state stands in a special relationship somewhat similar to the special relationship between parent and offspring,"²⁶ uses the analogy to argue against intervention.

"The individual whose rights are being violated is only one member of a larger citizenry whose rights, in

the great majority of cases, are not being violated and who will be harmed (i.e., their autonomy will be impinged) if action is taken on behalf of the injured individual. It is as if the Samaritan in attacking a parent beating his child were at the same time injuring the source of support of other children in the family."²⁷

Elfstrom claims that the explains the "hesitancy of the courts to remove children from the custody of their parents even in cases of abuse or neglect."²⁸ Evidence might suggest that the courts are not, in fact, that reluctant, but, in any case, this would merely reverse the use of the analogy to argue for humanitarian intervention. This is precisely what Tesón does when he challenges the view that only governments are authorized to interpret the interests of its citizens on the basis that, "it is widely accepted today that society may and must intervene to protect children against parental mistreatment."²⁹ Tesón turns the analogy around to attack those who believe intervention would be an abuse of the autonomy of citizens who alone have the absolute right to determine and overthrow an abuser, as if the child's autonomy would be abused if an outsider came to his or her aid when a parent was abusing that child. Quite the reverse, Tesón argues. The interventionist is protecting the autonomy of the child.

But Tesón surprisingly misses the key argument of Elfstrom's thesis. Tesón concedes that, "intervention is wrong where some of the oppressed individuals, perhaps a majority, oppose foreign humanitarian intervention (maybe their nationalist feelings are stronger than their dislike for the government)," and then continues to state that, "Elfstrom's thesis is nevertheless indifferent to that issue."³⁰ In fact, as my initial quote from Elfstrom indicates, this is his main argument. Intervention may be appropriate for the children being

abused but it deprives the majority who are not being abused, and who may even support the government, of their parental guardian. And this was the situation in Iraq where the Sunni majority at least, and perhaps the majority of Iraqis, according to April Glaspie, the U.S. Ambassador to Iraq at the time the Gulf War broke out. "Although in the West Saddam was not generally recognized as a legitimate leader, a great many Iraqis supported him. They may not like him, but they like his program. 'It is an illusion to think he is not supported.' " ³¹

In any case, Tesón slips around the issue by misleadingly claiming that the argument is only about the obligation to intervene, whereas he wishes to use the analogy to argue for the **right** to intervene.

"We regard children as having some fundamental rights that not even parental authority may override, and so we consider ourselves entitled to intervene in cases of serious abuse. Similarly, citizens have certain rights that governments may not ignore, and consequently foreigners are entitled to provide help to individuals whose rights are being violated by their government." ³²

Professor Przetacznick is quoted as a source to back up this right of intervention.

"When freedom is lost a man has the duty to fight for his own freedom, for freedom of his own country and for the freedom of other men. A man has a moral duty to help all other men who fight for their freedom against foreign and domestic oppressors. In the defense of freedom...and in the fight for the recovery of freedom, men, people or nations should use all legitimate means to achieve the sacred task to liberate everywhere men from a domestic and foreign deprivation of freedom." ³³

Thus an obligation which became only a right is now turned back into a duty again. And the parent-child analogy becomes the basis for a crusading moral and militant defence of freedom everywhere at anytime and any place, the precise formula which frightens all the critics of humanitarian intervention.

The analogy misses the point. A government sending in military forces to assist those whose rights are being abused is not an individual helping another, thereby taking a risk on his or her own part. A government is ordering its own young men and women to take that risk where it may be unclear whether more harm will be produced by the intervention than by the original abuse. If the guardianship analogy applies to the abuser, it also applies to the intervenor, and then the question is whether the intervenor is abusing his or her own children when he asks them to risk their lives to prevent the abuse of other children. This argument alone should indicate the fallacy of the analogy altogether.

Other analogies are used which seem more apt, even if not exact, in catching the connection between humanitarian intervention and questions of autonomy, though they clearly are lacking in comparative relevance if one does not want to suggest that a state involved in massive abuse of the rights of its own citizens has lost the ability to make decisions for itself. One of these is intervention when an individual is mentally or physically ill. Professor Brownlie uses the extreme case of euthanasia.³⁴ I'll look at the same issue from the angle of the right of a state in its death-throws, not to argue that the analogy provides a direction for resolving the dilemma, but because the analogy indicates the inadequacy of this type of analogical argument.

The analogy is this. In the modern nation-state system, protecting the absolute sanctity and autonomy of a sovereign state and its territorial integrity is akin to protecting the absolute sanctity of the life of the individual even when that nation-state has become dependent on an external supply line of life support systems for its continued maintenance. Outside nations are not entitled to intervene, except to supply relief and emergency treatment to sustain that life. Some would go further and argue that humanitarian intervention, without the consent of the individual state, would amount to the provision of unwanted medical treatment and would violate the integrity and rights of the individual state.

In other words, humanitarian intervention, as defined above in terms of the use of military forces to protect the rights of a minority population being subjected to abuse, goes beyond the legitimate bounds of the moral debate about intervention in cases of a terminally ill patient. In that case, the debate is between those who would give others the right to deny medical treatment and those who insist that it is their responsibility to provide such treatment even though the patient may even be comatose.

For example, "the right to interfere", that is the right to send humanitarian aid (not, note, military forces to protect the Kurds) into the hitherto sacrosanct internal affairs of a member state of the United Nations without the consent of that state, was evidently first publicly broached at a conference in 1987 at the Law School of the University de Paris-Sud, a conference appropriately co-sponsored by a medical group, Medecins du Monde and attended by philosophers as well as famous individuals such as the actor Yves Montand and the French President's wife,

Daniele Mitterand. The result was a government initiative in December of 1988 in the United Nations General Assembly which gave formal recognition to the right of NGO's to provide such aid

on their own initiative and, implicitly, without the consent of the host state. The General Assembly Resolution 45-100 of 1990 reinforced Resolution 43-131 of 1988 by providing the mechanisms for NGOs to reach the victims in need of aid. The Security Council Resolution 688 of April of 1991 was seen by the backers of the earlier resolutions as translating the soft law with only moral force of the General Assembly into the hard law of the Security Council, where there was a right of enforcement,³⁵ but no clear stipulation that this would directly involve the use of foreign military forces.

In other words, in the domestic debate over an individual's autonomy when facing death, the issue was whether other individuals have the right to interfere to stop feeding an individual who was comatose when the traditional norms had been that intervention was only allowed to sustain life. In the international arena the debate was reversed. The issue was whether outside parties had the right to intervene to provide food and medical assistance against the traditional norm which prohibited such intervention.

Not only does the analogy seem to break down because the sides of the debate seem to have reversed position - traditionalists in the case of individual morality holding that one can only intervene to provide aid but not deny it, except with the explicit consent of the individual to which the aid is to be given (as in the form of a living will), while traditionalists in the international arena holding that one can

only actively provide aid with the explicit consent of the individual state. In the one case, aid is provided, unless it is explicitly refused. In the other case, aid is not provided unless it is explicitly requested or, at the very least, consent is given to its provision.

What is the moral issue in each case. In the case of medical treatment for an individual, medical personnel face a dilemma. On the one hand, they must respect the autonomy of the the individual and his or her right to decide what medical assistance is acceptable. On the other hand, they also have the obligation to act in the patient's best interests.³⁶ In the international case, states have the obligation to respect the autonomy of other states but there is a question whether any authority has been assigned the responsibility of caring for the "best interests" of the state or its citizens. Assume for the moment that, through the two international covenants on human rights, the United Nations has been given this assignation, then the United Nations is akin to the medical profession in being faced with the dilemma of being required to respect the autonomy of its member states and, at the same time, its responsibility for taking care of the human rights of the members of the states which constitute its own membership.

In the case of individual moral issues of intervention for the health of the patient, the general principle is that the autonomy of the patient, rather than his best interests, will be decisive in all such cases. In the United States, in accordance with the so-called Missouri rule of the Supreme Court, intervention is endorsed in the case of incompetent individuals unless there is decisive evidence that the individual decided to the contrary. In other words, one cannot unilaterally decide to

stop giving aid unless one has explicit authority from the individual to which the aid is being given, to stop such assistance. In the case of aid to states, tradition ruled that one could not **start** giving aid unless one had the explicit consent of the state receiving the aid. In the case of humanitarian intervention for comatose patients, the Missouri rule is being challenged in favour of a rule where evidence need only be given that, were the patient competent, he or she would decide to have the technical support equipment cut off. In the case of humanitarian assistance for states, the traditional rule of non-intervention is being challenged to insist that aid be given even if the consent of the state is absent.

There is another angle at which to look at the issue, not from the analogy of the autonomy of the individual to the autonomy of the state, but from the responsibilities of authoritative institutions. In the case of the state and the individual, the state has been given the positive right, traditionally, to intervene with the autonomy of the individual to prevent abortion even if in most liberal western states that right of intervention is restricted to the third trimester of pregnancy. This has presumably be done on the basis that the state bears a special responsibility to protect life, and the only debate is when the foetus is considered to be a living being.

In the case of the relationship of the international community to a member state, the international institutions traditionally were **not** given any right to intervene even when individual states terminate the lives of its members for whatever reasons that state decides to do so. Though international institutions may have been given a right in the

protection of the human rights of those members, it could not intervene to prevent the state's decision to 'abort' the lives of its individual members. Again, the same traditionalists who demand the right of the state to intervene to prevent abortions in the case of individuals tend to be the same people who resist the right of intervention when another state is aborting the lives of its own people.

The point of using these analogies is not to indicate that conservatives and liberals are both hypocritical in arguing for very opposite positions in the case of intervention in cases of individual morality and in international behaviour, but to suggest that analogous arguments from the requirements of moral relations between individuals and between states just do not seem to work. The autonomy of the individual and the autonomy of the state are two very different kinds of autonomy. They seem to be akin in that the negative right denying others the right to intervene in a decision which belongs to the individual person or state alone seems similar, but the real debate is over what decisions remain the exclusive property of the individual to make. The direction of history seems to be on the side of increasing the rights of the individual to enhance his or her autonomy while, partly in response to the recognition of those increased rights, to reduce the areas of autonomous action of states, particularly where those actions infringe on the rights of individuals. This alone suggests that the classical parallelism between moral codes covering the relationship of individuals and the states to which they are members and the relationship between states and the organizations of which they are members just does not work.

This means that the underlying conception of consent and self-determination as applied to both individuals and states needs to be explored further.

Non-Intervention and Consent

The issue of consent has been raised both to argue against and for humanitarian intervention. As John Rawls depicts the theory of consent, pluralism depends on the normative commitment to noncoercion and to the achievement of "free and willing agreement".³⁷ Thus, Donnelly argues that, the "moral foundation of nonintervention is self-determination,"³⁸ whereas, "Humanitarian intervention rests on the presumption that a genocidal regime does not have the consent of the people, so that the general rule of nonintervention does not apply." In rebuttal, Donnelly claims that, "Such an argument confuses the injustice of a regime with the right of others to remedy the injustice."³⁹ This follows Walzer's dictum that outside intervention cannot make the majority population of a state better than they want to or can become.

But those who argue for humanitarian intervention claim that the very restriction on intervention depends on a principle of recognizing the legitimacy of a regime, and that legitimacy is in turn dependent on whether the regime acts to protect the rights of its citizens. The prescription against intervention is restricted only to those states, "which conduct themselves in compliance with the principle of equal rights and self-determination of peoples"...and this is only "possessed of a government representing the whole people belonging to the territory without distinctions as to race, creed or colour."⁴⁰

In contrast to this view of legitimacy as depending on how the state respects the human rights of its citizens is the Walzer

communal integrity thesis where, "the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves"⁴¹ is primary. As Walzer depicts what has become known as the 'fit thesis', "unless a government grossly mistreats its people, foreigners are to presume that the government is legitimate and therefore, refrain from intervening."⁴² In contrast, for Tesón, "A government is legitimate in internal and international relations when it observes a certain human rights standard determined by objectively valid (although not self-evident) principles of political justice."⁴³ Legitimacy would seem to be defined in a way simply to support or oppose humanitarian intervention.

Behind the issue of the correspondence of the requisite condition of the consent of the people to prevent any intervention, international humanitarian law is cited⁴⁴, in particular, Article 1,2 of the UN Charter, the friendly relations clause, which is based "on respect for the principle of equal rights and self-determination of peoples" and the General Assembly Resolution 1514 that, "all peoples have the right to self-determination."

But the Universal Declaration of Human Rights makes no reference to the self-determination, and only deals with individual and social rights, not the rights of peoples or community rights. Although Article 21, paragraph 3 states that the will of the people shall be at the basis of the authority of government, Article 2, paragraph 7 of the UN Charter is

unequivocal. "Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state."

Thus, although consent is a principle of self-government that the UN recognizes, the absence of such consent does not legitimate intervention. And the reason is clear. The peace and security of states is a higher norm than the existence of states based on the consent of its citizens.

Now it is clear that for individual rights theorists in the tradition of John Locke, what makes government legitimate is the consent of the individual. Similarly, for writers in the communitarian tradition of Rousseau, "the duty of obedience is owed only to legitimate powers"⁴⁵ and unless a ruler transforms force into right and obedience into the accepted duty of the citizens, there is no legitimacy. But a number of writers have challenged the very basic thesis that there is a connection between legitimacy and the corresponding obligation to obey the government, and the issue of consent. For, they argue, merely being a 'member' entails obligations *qua* member. The issue is not one of consent, but membership and belonging. Thus, for even a civil society to exist where an individual is permitted to pursue private ends, there must be a system of universal ethical rules, a system of rights and obligations binding on all members of the system. Membership in the state, for Hegel, provides this ethical framework of rights and obligations.⁴⁶

"Why should I (a member) accept the rules of the club? is an absurd question. Accepting the rules is part of what it *means* to be a member. Similarly, 'Why should I obey the government?' is an absurd question. We have not understood what it *means* to be a member of a

political society if we suppose that political obligation is something that we might not have had and that therefore needs to be *justified*." ⁴⁷

Obligations cannot be raised about duties to governments in general, but only in reference to specific laws or duties. But, as Carol Pateman points out ⁴⁸, it may raise questions about our obligations to *specific forms of government*. "Any argument that moves straight from the conceptual connection between 'being a member of a political society' and 'political obligation' to conclusions about our obligation to specific political institutions is stretching purely conceptual analysis beyond its proper limit." ⁴⁹

While I believe Carol Pateman's point is well taken, it does not challenge the major issue of a *Rechtsphilosophie*, that we may not be obliged to this or that type of state, that is, a liberal-democratic type of state based on consent or a dictatorship, but we must belong to some state to have rights and obligations. The real question is whether and under what conditions those obligations have limits such that I refuse to accept specific obligations that the state imposes and, at the extreme end of that spectrum, my sense of obligation to the state itself and everything it stands for ends and I declare myself, in effect, stateless. Further, when I declare myself as such, what obligations does the international community have towards me if that state begins to persecute me and others like me? In sum, why should the state lose its international legitimacy if large numbers of citizens in effect say they no longer accept any obligations to the existing regime and the state, in turn, persucutes those deefectors?

James Fishkin proposed two general kinds of legitimacy criteria, procedural criteria entailing conformity to some procedure or decision-rule which define the necessary and sufficient conditions for legitimate actions by the regime (consent, unanimity, majority rule or, one he himself proposes, the absence of intensity of opposition), and structural criteria whereby the political-economic arrangements are ethically acceptable if they achieve the prescribed distribution (equality, utilitarianism, Rawlsian maximin justice).⁵⁰ The point he makes is that any procedural or structural criterion will, in certain circumstances, legitimate a policy which will impose severe deprivations when an alternative policy would not - his definition of tyranny. Thus, consent is an inadequate criterion for legitimation of a regime

There is a separate objection to the use of consent or self-determination as a criterion of legitimacy. A government has legitimate authority if its citizens comply with its decisions without coercion.⁵¹ A citizen is morally obliged to comply with the decisions of such a government. But a government may exercise authority over most but not all of its citizens or all of its territory. Is it a legitimate government? Legitimacy entails not only procedural and structural criteria, which other governments *may* use, but there exists a separate and different external criterion - the recognition of such a government as having *de facto* power by other governments, that is, exercises authority over most of its population and most of its territory. Thus, a government may have the consent of the population - the government of Slovenia in July of 1991 - but not be recognized as legitimate, or, as in the case of the government in Zagreb, it may be recognized as legitimate but exercise virtually no authority.⁵²

In sum, consent or self-determination is neither a sufficient nor a necessary condition of legitimacy even when it is argued that consent is a necessary basis of both political obligation and authority. Nor are other states morally obliged to use consent as a necessary criterion for granting legitimacy to the state and its government.

Conditions for Intervention or Non-intervention:

A number of arguments both supporting and opposing humanitarian intervention use as a key consideration the evolution or non-evolution of international instruments which could legitimate intervention as a humanitarian rather than an action of a self-interested state. My own point, which can be made quite succinctly, is that the international agencies who should be the disinterested parties - the International Red Cross, the United Nations - are not the supporters and advocates of humanitarian intervention, but the ex-political and economic imperial powers are. Further, since the humanitarian intervention in Iraq was not initiated as a multilateral but as a unilateral action, it provides no evidence for the evolution of such international institutions.

There is another conditional argument that has been used to argue against humanitarian intervention - the absence of adequate knowledge on which to base any intervention. Michael Walzer makes this point when he claims that foreigners, "don't know enough about its (a people and a government's) history, and they have no direct experience, and can form no concrete judgements, of the conflict and harmonies, the historical choices and cultural affinities, the loyalties and resentments, that underlie it."⁵³ Without such knowledge, foreign states lack the knowledge to make the appropriate judgements to guide their

conduct. Jack Donnelly makes the same essential point in a more modest way. "While there have been major advances in recent years in human rights fact-finding, even the facts are subject to considerable uncertainty and partisan abuse."⁵⁴ For virtually all agree that if there is to be humanitarian intervention, it can only be done in cases of **gross** human rights abuses. But that poses problems with establishing evidence for the number of cases, the proportion per capita, the numbers of those that were killed or injures who were non-combatants and the proportion of those who were killed simply as a result of "collateral damage". And even then, given all these factors, there has to emerge an institutional procedure and substantive agreement for establishing a threshold, above which the human rights violations are deemed to be "gross". Even then, and this does not exclude international bodies as Israel would contend, one has to take into account ideology and interests that may distort such judgements.

Yet the Kurdish case seems to belie this argument. Though there are and will be disputatious cases where the warrant for action in terms of adequate knowledge and the basis for making an unbiased assessment is lacking, there would seem to be cases that where the evidence is clear and overwhelming. But if we examine this case, what is the evidence - a historical record of systematic human rights abuses, a harsh repression of a rebellion, but most of all a mass exodus and the clear and unequivocal suffering of those trapped in the mountains and prevented from crossing the border into Turkey.

Walzer and Donnelly are right in that the absolute number and proportion of human rights violations were not documented,

nor was there time to document them. Further, in the international definition of a refugee, one need not produce evidence that one's human rights have been violated but only that one has a "well-founded fear". The advocates for humanitarian intervention, in focussing on wide-spread human rights violations as the key epistemological factor, would seem to be barking up the wrong tree. One needs only to document subjective factors - fear and suffering, ironically easier to do than the objective evidence needed to establish systematic and wide-spread human rights violations. For the act of flight and the suffering endured is sufficient.

There is a third conditional argument which has nothing to do with knowledge or with institutional mechanisms being in place to make authoritative disinterested judgements and everything to do with capability and the willingness to act. There might have been 1,000,000 Tibetans killed, a very high proportion of its population, since the Chinese occupied that country. Does anyone envisage the international community acting against the member of the Security Council with 20% of the world's population? Put cynically, for humanitarian intervention to occur, the "necessary conditions seem to include very low prospects of successful retaliation or loss of benefits, the absence of Cold War concerns..., and an unusually high level of popular interest. In practice, this implies restricting humanitarian intervention to acting against weak, notorious and particularly peripheral countries, especially pariah regimes in relatively insignificant countries."⁵⁵

Donnelly's own examples of Rwanda, Burundi and Guatemala, though not the Indonesian action in East Timor, which were weak, notorious and particularly peripheral, did **not** invite

interventions, whereas Iraq, which was a central power in the Gulf region, did. Pakistan was not weak and peripheral when India intervened. The kernel of truth in Donnelly's claim is that humanitarian intervention would be administered unevenly and probably not against the most powerful states.

But since when do emergent new international institutions and practices have to come into existence in their most pristine form. In fact, one can cite numerous instances in which international humanitarian practices emerged for the most cynical of motives. Let me cite but two examples. The Nansen passports which provided refugees with travel documents so they could seek a safe haven were widely accepted, not because governments were so interested at the time in refugee protection, but because they wanted to get rid of the refugees. Secondly, when at the Evian Conference in 1938, the international community accepted for the first time an obligation to help refugees, but **at that time** it was but a cynical public relations exercise on the part of the Roosevelt government to give the impression of action on behalf of the Jews fleeing Nazi Germany, who knew at that time that the very same acceptance of an international obligation would become the foundation stone for creating an international regime to provide relief and protection for refugees. Cynicism in the historic emergence of humanitarianism can become a virtue.

There is a fourth relevant condition which is cited as a reason not to introduce humanitarian intervention in the form of foreign military forces on the territory of a sovereign power to protect endangered minorities - the existence of alternative extra-territorial instruments, such as economic sanctions, what Donnelly calls "positive non-intervention".⁵⁶ The Kurdish case,

as well, I believe, as the more disputatious case of the Iraqi invasion of Kuwait for international military action to counter aggression, made clear that time was not available to save the Kurds using economic sanctions. Humanitarian intervention should be an instrument of final resort. But the arguments supporting its use as a final resort cannot then be used to deny its utility altogether.

Consequentialism

The most telling argument, in my mind, against the introduction of humanitarian intervention as an instrument of protection for persecuted peoples has been the negative consequences of such actions - the prospect that more suffering will be wrought by the intervention than lives saved and the precedent set for abuse.

Beitz makes the first point succinctly. "I have not advocated the use of military force to move national societies toward conformity with any particular moral principles...For me, it is that the prospects of reform intervention in unjust states are normally uncertain whereas the costs in blood and treasure are certainly extreme."⁵⁷ Further, the suffering which would result from adopting alternative choices, such as the use of economic sanctions, must be weighed against the prospect of the suffering that may be wrought if humanitarian intervention is utilized.

But this is an argument, not for ruling out humanitarian intervention altogether, but for ensuring that the way in which one intervenes is both effective while minimizing the chances for confrontation and conflict. It is an argument for taking great care about its employment, just as one is urged to be very cautious about the situations and the conditions in which one

utilizes a newly invented radically invasive technique in medicine. Contemporary **military** strategies and tactics must be employed to ensure sufficient force is employed to intimidate the enemy while providing adequate protection, without, at the same time, threatening the territorial integrity of the state. Further, the prospective suffering of alternative choices will have to be weighed.

The real concern is that the precedent will be used and abused in situations in which humanitarian intervention is either unwarranted or is merely a cover for a power play by a state where self-interest is employed in the guise of humanitarianism against "weak neighbours whose civilizations are held in contempt and under circumstances that have more to do with self-interest of the 'liberators' than the 'liberated'".⁵⁸ "Behind this concern is the rule utilitarian argument that, regardless of the consequences of the particular case, the implicit norm of the particular act implies a general rule; we ought not to adopt a rule in which, in its observance, the overall consequences have a (high, reasonable) probability of producing more harm than if the norm were not adopted."⁵⁹ As Jack Donnelly succinctly puts it, "Intervention is a serious enough problem without offering great powers a fine-sounding cover for self-interested schemes...priority ought to be given to minimizing opportunities for intervention, rather than creating doctrines certain to be abused to justify self-interested actions."⁶⁰ He puts his case even more strongly as follows: "The noble aims of such legal idealism, however, are subverted by precisely the moral 'defects' they attempt to reform. 'Advanced values may suit a community that has reached an appropriate level of political, emotional, intellectual and institutional development. In practice, however, the current

'corruption' of real states and the absence of effective international authorities to restrain them virtually guarantee pervasive abuse of a principle of humanitarian intervention. Therefore, establishing such a principle is likely to produce a worse situation, as defined by the values being promoted. These values may even be corroded through pervasive cynical abuse."⁶¹ The result could be "a new normative basis for recourse to war that would give powerful states an almost unlimited right to overthrow governments alleged to be unresponsive to the popular will."⁶²

Schachter, in the last quote, however, was not arguing against an absolute ban on the use of military force for humanitarian purposes, but for the evolution of international rules and agreements on the employment of such force to prevent abuse. The benign effects can be greater than any bad precedent if the innovation is accompanied by very strict and limited rules for its application so that humanitarian intervention does not become "simply a cloak of legality for the use of force."⁶³ Though Donnelly is cynical about the corruption of states and the possibility of the emergence of such rules, particularly enforceable ones, as to be wary about the introduction of humanitarian intervention, the arguments made count only against the timing and the conditions under which this new international institutional device is introduced and not against its introduction per se.

Conclusion

- 1.. Letters sent by representatives of Turkey and France to the United Nations dated 2 April 1991 and 4 April 1991, respectively. (S/22435 and S/22447)
- 2.. Resolution 688 (1991) UNSC/Res/688 (1991), April 5, 1991.
- 3.. cf. Elaine Sciolino, The New York Times, April 18, 1991, A6.
- 4.. The New York Times, April 17, 1991, A7.
- 5.. cf. IRRC 280 Jan/Feb 91. p. 12.

- 6.. FernandoR. Tesón, Humanitarian Intervention: An Inquiry into Law and Morality. Dobbs Ferry, New York: transnational Publishers, 1988, p. 15.
- 7.. Donnelly (1983) p. 317.
- 8.. cf. Brownlie, 1974.
- 9.. Tesón (1988) pp. 31-50.
- 10.. Gerard Elfstrom "On Dilemmas of Intervention" Ethics 93 (1983), p. 709.
- 11.. *ibid*, p. 723.
- 12.. The Economist 319:7703, April 20, 1991, p. 12.
- 13.. There are those who argue that the basic principles of ethics, such as fairness, can never be influenced or determined by contingent circumstances. cf. John Rawls, A Theory of Justice, Cambridge, Mass.: Belknap Press, 1971, pp. 337-338. However, Thomas Pogge (Realizing Rawls. Ithaca, N.Y.: Cornell University Press, p. 138 text and fn. 35) argues that the serially ordering of basic rights and liberties in Rawls is dependent on whether the social conditions allow the establishment of such rights (Rawls (1971) pp. 152 and 542), though he does admit that Rawls "cannot mean what he says, because it would make completely obsolete the first priority rule attached to the special conception." (p. 139, fn.)
- 14.. Donnelly (1983) p. 323.
- 15.. The Washington Post, April 15, 1991, A9.
- 16.. Donnelly (1983) p. 312.
- 17.. Elfstrom (1983) pp. 721-722.
- 18.. *Ibid*, p. 723.
- 19.. *Ibid*, p. 725.
- 20.. cf. Hans.. Morgenthau, Politics Among Nations (1978) where he provides a critique of the limited humanitarian interventionism advocated by Walzer (1977) and Cohen (1984).
- 21.. For a more sophisticated case than Fernando Tesón makes, cf. Mark Gibney
- 22.. Donnelly (1983), p. 323.
- 23.. John Stuart Mill, "A Few Words on Non-Intervention," in Dissertations and Discussions. London: , 1983, pp. 171-176.
cf. Tesón (1988) for a discussion of Mill's and Walzer's position in this regard. (pp. 26-31)
- 24.. John Rawls, A Theory of Justice. Cambridge, Mass.: Belknap Press, 1971, p. 378.
- 25.. Tesón (1988) pp. 63-64.
- 26.. Elfstrom, "On Dilemmas of Intervention," 93 Ethics (1982-83), p. 714.
- 27.. Elfstrom (1983) p. 721.
- 28.. *Ibid*, p. 723.
- 29.. Tesón (1988) p. 84. Tesón uses his teacher, A. D'Amato, International Law: Process and Prospect (1987) p. 226 as his support and authority for this conclusion.
- 30.. Tesón (1988) p. 84.
- 31.. Bob Woodward, The Commanders. New York: Simon and Schuster (1991), p.359.
- 32.. Tesón (1988) p. 85.
- 33.. Przetacznick, "The Philosophical Concept of Freedom as a Basic Human Right," 63 Revue de droit international, de sciences diplomatiques et politiques 93, 157 (1985) as quoted in Tesón (1988) p. 85, fn. 33.

- ³⁴.. Ian Brownlie, "Humanitarian Intervention," in J.N.Moore ed., Law and Civil War in the Modern World, 1974.
- ³⁵.. cf. the account of Mario Bettati, who is a Professor of International Law and former Dean of the Law School of the Université de Paris-Sud and who sponsored the original conference, in The Washington Post, Sunday, April 14, 1991, entitled, "The Right to Interfere".
- ³⁶.. cf. Richard Dworkin, "The Right to Death", in The New York Review of Books, XXXVIII:3, January 31, 1991, p. 14.
- ³⁷.. John Rawls, "The Idea of an Overlapping Consensus," Oxford Journal of Legal Studies 7 (1987): 4.
- ³⁸.. Donnelly (1983) p. 328.
- ³⁹.. Donnelly (1983) p. 319.
- ⁴⁰.. cf. Khairallah (1973).
- ⁴¹.. Michael Walzer, "The Moral Standing of States," 9 Philosophy and Public Affairs (1978-79), p. 211.
- ⁴².. Walzer, p. 386.
- ⁴³.. Tesón (1988) p. 93.
- ⁴⁴.. cf. Umozurike (1973).
- ⁴⁵.. John Jacques Rousseau, The Social Contract. London; Penguin, 1968, Bk. I, Ch. 3.
- ⁴⁶.. cf. G.W.F. Hegel, Philosophy of Right
- ⁴⁷.. T. McPherson, Political Obligation. London: , 1967, p. 64. See also Margaret Macdonald, "The Language of Political Theory" in Anthony Flew ed., Logic and Language, Oxford: Oxford University Press, 1960, and Hanna Pitkin, "Obligation and Consent," in Peter Laslett and James Fishkin, eds., Philosophy, Politics and Society, Fourth Series, Oxford: Basil Blackwell, 1972 for arguments on the same theme. Carole Pateman, "Political Obligation and Conceptual Analysis" in the Fifth Series of the Laslett/Fishkin series provides an incisive analysis of this position.
- ⁴⁸.. Carole Pateman, "Political Obligation and Conceptual Analysis," in Peter Laslett and James Fishkin, Philosophy, Politics & Society. Fifth Series. New Haven: Yale University Press, 1979, pp. 227-256.
- ⁴⁹.. Ibid, p. 233.
- ⁵⁰.. James Fishkin, "Tyranny and Democratic Theory," in Peter Laslett and James Fishkin, eds., Philosophy, Politics & Society. New Haven: Yale University Press, 1979, pp. 197-226.
- ⁵¹.. cf. Leslie Greene,
- ⁵².. cf. Harry Beran, The Consent Theory of Political Obligation. London: Croom Helm, 1987 who concludes his book precisely on this point.
- ⁵³.. Michael Walzer, "The Moral Standing of States," 9 Philosophy and Public Affairs (1978-79), p. 212.
- ⁵⁴.. Donnelly (1983), p. 322.
- ⁵⁵.. Donnelly (1983) p. 321.
- ⁵⁶.. Donnelly (1983) pp. 325-28.
- ⁵⁷.. Beitz (1980) pp. 390-91.
- ⁵⁸.. Franck and Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Militarized Force," American journal of International Law (1973), p.

⁵⁹.. cf. Ian Brownlie, "Humanitarian Intervention" in Moore (1974), p. 226. cf. also Ewing "What Would Happen If Everyone Acted Like Me" 28 Philosophy 16 (1953).

⁶⁰.. Donnelly (1983), p. 321-22.

⁶¹.. Donnelly (1983) 323.

⁶².. Schachter, "The Legality of Pro-Democratic Invasion," in the American Journal of International Law. 78:1984, p. 649. See also his articles, "in Defense of International Rules on the Use of Force" in The University of Chicago Law Review 53:1985, and "The Lawful Resort to Unilateral Use of Force," in the Yale Journal of International Law 10:1985.

⁶³.. Hassan "Realpolitik in International Law: After Tanzanian-Ugandan Conflict, 'Humanitarian Intervention' Reexamined," Wilamette law Journal (1980-81), p. 862.