



Humanitarian Military Intervention

By Jules Lobel and Michael Ratner

The 1999 U.S.-led NATO air assault against Yugoslavia undertaken with the avowed aim of stopping human rights abuses in Kosovo has been extolled by some as a new model of humanitarian intervention. President Clinton and others have argued that when a nation is committing gross human rights violations against its citizens, other nations or multilateral coalitions have the right to intervene militarily, without the authority of the UN Security Council, to end those abuses.

However, the United Nations charter clearly prohibits nations from attacking other states for claimed violations of human rights. Article 2(4), the central provision of the charter, prohibits the "threat or use of force against" another state. There are only two exceptions to this prohibition. Article 51 allows a nation to use force in "self-defense if an armed attack occurs against" it or an allied country. The charter also authorizes the Security Council to employ force to counter threats to or breaches of international peace. This has been interpreted to allow individual nations to militarily intervene for humanitarian reasons, but only with the explicit authorization of the Security Council. This has occurred in Somalia, Rwanda, Haiti, and Bosnia.

the nature of things, it would be reserved for the most powerful states."

Some scholars argue that recent UN practice allows for an exception to Article 2(4)'s prohibition on humanitarian intervention. They assert that the world's interest in countering serious human rights abuses cannot be blocked by the veto of a permanent Security Council member. They would legitimize unilateral military action in instances where the Security Council is silent, where it has condemned the human rights record of the target country, or where the UN is participating in the settlement of the war.

The purported good that might come from allowing countries to intervene unilaterally based upon such arguments is, however, outweighed by the dangers that arise from weakening the international restraints on the use of force. In addition, the UN charter requires that the use of force be a last resort, taken only after all peaceful alternatives have failed. The UN's primary goal is to "save succeeding generations from the scourge of war." To further this goal, its charter requires that decisions to go to war be made by a deliberative body of states representing a broad range of constituents: i.e., the Security Council.

The Kosovo crisis illustrates the danger of bypassing the Security Council and lends credence to those who argue that intervention was not for humanitarian purposes. Had the United States gone to the Security Council, it is possible that a settlement similar to the one that ended the air war could have been achieved without the use of force. The Security Council might have insisted on more negotiations, a more flexible approach to the Rambouillet proposal, or a less prominent role for NATO and the United States. Moreover, the destructiveness of the war and its aftermath undermine Washington's humanitarian claims and reemphasize the reasons that the charter's framers chose peace as its central tenet.

There may, of course, be certain extreme cases of genocide where one country's veto blocks the Security Council from authorizing the use of force. In dealing with those cases, it is preferable to recognize that in rare instances (and the factual evidence indicates that Kosovo was not one of these) a nation or group of nations may need to intervene without UN authorization in order to save lives. That is a less dangerous alternative than permitting an "escape clause" on the prohibition of the unilateral use of force, an exception that would likely be widely and dangerously abused.

Key Points

- The history of "humanitarian" military intervention is replete with invocations of humanitarian intentions by strong powers or coalitions in order to conceal their own geopolitical interests.
- The United Nations charter prohibits nations from attacking other states to remedy claimed violations of human rights.
- The requirement that the Security Council must authorize any use of force to protect human rights is critical to the maintenance of world peace and order.

In line with post-World War II international law, most governments and jurists have rejected unilateral humanitarian military intervention because of the potential that powerful states will abuse such a doctrine. The history of humanitarian military intervention is replete with examples of powerful states or coalitions invoking the doctrine to conceal their own geopolitical interests. Professors Thomas Franck and Nigel Rodley examined the historical record of such interventions in the 1973 *American Journal of International Law* and concluded that "in very few, if any, instances has the right [to humanitarian intervention] been asserted under

circumstances that appear more humanitarian than self-seeking and power seeking." The International Court of Justice concluded in 1949 that the doctrine of forcible intervention in the name of international justice "has, in the past, given rise to most serious abuses . . . [F]rom

In the aftermath of the Kosovo War, U.S. administration officials have articulated a Clinton doctrine that proclaims that the United States will forcefully intervene to prevent human rights abuses when it can do so without suffering substantial casualties. This doctrine rhetorically suggests a new, assertive U. S. approach to promoting and defending human rights abroad.

However, the Clinton doctrine is highly selective, as indicated by Washington's decision to intervene in Kosovo—where, over the preceding year, an estimated two thousand had been killed—though ignoring the 1994 Rwandan genocide of over one million civilians within the span of a few weeks. Although the U.S. failed to act in Rwanda, a country of little strategic or economic importance, in other instances the Clinton administration has chosen not to intervene to defend human rights precisely because the U.S. has strong strategic or trade interests in a country. For instance, though the State Department recognizes that Turkey, a close ally, has committed flagrant human rights violations against its Kurdish minority, the administration not only fails to intervene to protect the Kurds but actually continues to export arms to Turkey. During his October 1999 visit to Turkey, Clinton went so far as to praise Turkey's progress on establishing democracy and to promote its entry into the European Union. If human rights were of serious concern to the U.S., Washington would at least stop selling guns and helicopters to Turkey.

Another close U.S. ally, Indonesia, which invaded and annexed East Timor, causing the death of over 200,000 Timorese, is one of the world's worst human rights violators. Yet, throughout the incursions into East Timor, the U.S. continued to arm and train the Indonesian military. When, in 1999, East Timor voted peacefully and overwhelmingly for independence, the U.S. opposed the rapid creation of an armed UN peacekeeping force that could have stopped the forced exile of hundreds of thousands and the slaughter of Timorese civilians by Indonesian-controlled paramilitaries. Today, the U.S. is giving only limited support to the Australian/UN force; it refuses to supply combat troops but is giving some logistical help and a few helicopters.

By acting selectively, the U.S. not only undermines the authority of the United Nations and the rule of international law but belies the claim that it is acting to protect human rights when it does intervene. President Clinton has attempted to explain the obvious inconsistencies in U.S. policy by contending that America

cannot be the world's policeman. Yet the United States has failed to promote UN-sanctioned international responses. Experts say that the genocide in Rwanda, for instance, could have been stopped with a few thousand soldiers. The killings in East Timor could have been curbed with even fewer—perhaps merely by the withdrawal of World Bank and International Monetary Fund credits to Indonesia. In Turkey, Washington (and other NATO countries) could still exert pressure to stop human rights abuses by halting U.S. arms flows. That Washington has not done so suggests not a lack of capacity but an unwillingness to raise human rights concerns in countries viewed as important strategic allies.

The Clinton doctrine of humanitarian intervention is simply the latest in a series of pretexts employed by the United States to justify unilateral military intervention. In recent decades, the U.S. has launched military actions under the rubric of overthrowing totalitarian governments and bringing democracy to people (Cuba, Vietnam, Nicaragua, Chile, Grenada), preventing terrorism (Sudan and Afghanistan), and stopping drug trafficking (Panama).

For over a year, the U.S., acting virtually alone and supported only by a token British military presence, has bombed the so-called no-fly zone in northern Iraq, which was established ostensibly to protect the Kurdish population. Unlike the war to oust Iraq from Kuwait, which had Security Council approval, Washington is currently bombing without UN backing. U.S. motives in continuing this bombing are related not to protecting the Kurds but to Washington's dispute with Iraq over weapons inspectors. With the end of the cold war and the struggle against communism, humanitarian intervention to prevent human rights abuses is providing a rationale for selective U.S. or U.S.-led military interventions, outside the framework of the United Nations.

Key Problems

- The Clinton doctrine of forceful military intervention to prevent a nation from committing human rights abuses has been highly selective.
 - In practice, the U.S. continues to provide arms to repressive regimes and has refused to intervene to stop human rights abuses committed by key allies or occurring where it has strategic or trade interests. Meanwhile, Washington tends to ignore genocide in countries considered of little importance.
 - Human rights is but one of the rationales that, along with stopping the drug trade, terrorism, or communism, the United States has used to justify intervention in the internal affairs of other countries.
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Foreign Policy in Focus is a joint project of the Interhemispheric Resource Center (IRC) and the Institute for Policy Studies (IPS). The project depends on sales and subscription income, individual donors, and grants from The John D. and Catherine T. MacArthur Foundation, General Service Foundation, and various church organizations. *In Focus* internships are available. ISSN 1524-1939

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The challenge for U.S. foreign policy in the twenty-first century is to improve the international regime of human rights without undermining the UN charter's prohibition on the unilateral use of force. The most important step toward this goal would be for the United States to eschew military force for alleged humanitarian reasons without the explicit approval of the UN Security Council. The failure to obtain such approval prior to the war against Yugoslavia and prior to the current and continuous bombing of Iraq seriously weakens the key international restraint against the use of force as embodied in the UN charter.

If the real purpose of U.S. humanitarian military intervention is to protect human rights, then America ought to employ peaceful and more principled methods for

protecting those rights before resorting to military action. The U.S., which dominates the UN Security Council, should end its political selectivity and begin to work for a more principled human rights stance within the United Nations itself. Humanitarian intervention to stop grave human rights abuses should only be used after multilateral diplomatic and economic measures have been exhausted. This is not currently the case. The United States played the

central role in imposing both the UN sanctions on Libya (finally lifted in 1999) and the prolonged, inhumane embargo on Iraq, while blocking sanctions against Israel, Turkey, and other allies that are serious human rights abusers. If Washington truly cares about furthering human rights, it must do so collectively and in a more evenhanded manner.

Former Amnesty International Secretary-General Ian Martin argues that there is too much "enthusiasm in the human rights movement, and especially in the United States, for military intervention on humanitarian grounds." Although he understands that national sovereignty does not necessarily prevail over the responsibility to prevent mass violations of human rights, he emphasizes that "such international responsibility can be properly exercised only by a multilateral decision of the international community through the UN." Martin states that the legitimacy of such decisions by the United Nations depends "upon a proper distribution of power within that organization, the application of a set of principled criteria for military intervention which is not politically selective, and the development of the ability of the UN itself to maintain the control of a military operation."

Although the Clinton administration has shown scant willingness to seek UN authority prior to using force, there is a step that the United States could more easily take: end its military support for nations committing

serious human rights violations. In 1998, Congress enacted the Leahy amendment, a provision in the foreign assistance legislation prohibiting foreign aid funds, including U.S. loan guarantees, from being used to bolster units of foreign security forces that are committing human rights violations. This legislation needs to be extended, strengthened, and fully implemented.

In the past, such provisions have often led to executive branch assertions that governments supported by the United States were, in fact, improving their human rights records. During the 1980s, for instance, the Reagan administration repeatedly certified El Salvador during years when that government was committing terrible atrocities. Currently, both the Clinton administration and Congress have pumped military hardware, training, and advisors into Colombia's armed forces and police, despite evidence of corruption and human rights abuses.

A positive sign in an otherwise bleak environment was the State Department's use of the Leahy amendment in December 1998 to deny, in part, a defense contractor's request for U.S.-government financing to underwrite Turkey's purchase of armored vehicles. A key test of administration arms policy toward Turkey is still pending; whether it will issue an export license for Turkey's planned acquisition of 145 attack helicopters, which would likely be used for the destruction of Kurdish civilian targets.

Finally, the United States ought to strengthen its own participation in international human rights agreements and support the international institutions that enforce such agreements. In the long term, stronger international agreements and institutions will save more lives than questionable ad hoc military interventions. The U.S. should sign and ratify the agreement establishing the International Criminal Court. The Senate should remove the reservations added to treaties (such as the International Covenant on Civil and Political Rights) that render them non-self-executing or non-enforceable under U.S. law. At present, U.S. courts have been following a double standard of imposing liability against foreign officials accused of committing serious international human rights abuses, while refusing to recognize such claims brought against U. S. officials. To encourage other nations to apply international human rights law in their domestic courts, we must apply it in our courts.

Changing U.S. foreign policy along these lines will not be easy and is unlikely to happen quickly. However, at the close of a century in which scores of millions have been killed in military conflicts and with the rise of new and extreme ethnic, national, and religious conflicts, multilateral cooperation through a more democratic United Nations is more important than ever.

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Key Recommendations

- The United States should not employ military force for alleged humanitarian reasons without the explicit approval of the Security Council.
 - The United States should end military support of nations committing serious human rights violations.
 - The United States should strengthen its own participation in international human rights agreements.
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Sources for More Information

Organizations

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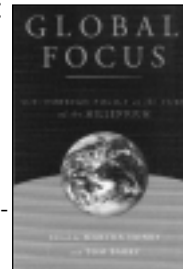
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